

**MEMORANDUM OF UNDERSTANDING
JOINT 38 U.S.C. § 7422 WORKGROUP RECOMMENDATIONS AS
REVISED AND APPROVED BY THE SECRETARY OF THE
DEPARTMENT OF VETERANS AFFAIRS.**

The 7422 Workgroup, a joint labor-management effort, was charged to work collaboratively to formulate recommendations to the Secretary of Veterans Affairs that will improve knowledge, and correct misunderstanding, misinterpretation, and inconsistent use of 38 U.S.C. § 7422. This task was met by creating a dialogue about understanding and identifying matters that are excluded from bargaining and grievance exclusions in the areas of professional conduct or competence, peer review, and/or compensation. In addition, the Department invited each of the national Unions involved in the 7422 Workgroup to submit brief, individual position papers reflecting their viewpoint on the issue of 38 U.S.C. § 7422 within the Department. These position papers are included as attachments.

The parties recognize that under 7422, issues involving direct patient care, clinical competence, peer review, and establishment, determination, or adjustment of compensation for health care workers are not subject to negotiation with labor unions, nor can such matters be grieved under negotiated grievance procedures.

The parties also recognize proposals for procedures that are peripheral (i.e. related but not substantively) to an exempted issue may not be subject to the exemptions; the particulars of a given proposal determine whether it falls inside a 7422 exemptions. Nothing in this means 7422 is being expanded to appropriate arrangements and procedures (impact and implementation).

It is the Department's desire to work with its labor partners to eliminate even the appearance of bias or inappropriate use of the 38 U.S.C. § 7422 exclusions.

The parties recognize that the recommendations are advisory to the Secretary regarding future VA policy as well as communication and training on the use of 7422.

A. Universal Principle Recommendations

1. Unions have an equal right to request an Under Secretary for Health review and decision on 7422 exclusions at any step of the grievance process.
2. The VA's failure to follow its own regulations and policies is not excluded by 7422.
3. The parties agree that a procedural 7422 flow chart will be developed.

2.

4. The parties agree that joint training at all levels and all facilities on the 7422 exclusions and decision process, as well as communicating the work product of the 7422 Workgroup, is essential for improved knowledge, understanding and consistent use of 38 U.S.C. 7422. Such training should include, but not be limited to, the peer review process.
5. The parties agree that a mechanism for capturing, tracking, evaluating, and reporting the data reflecting informal and formal efforts to resolve 7422 disputes should be created.

B. Compensation:

1. Pay scales are set by the agency, outside of collective bargaining and arbitration.
2. Consistent with the Compensation recommendation B1 above, procedures for collecting and discussing (but not analyzing) data used in determining pay scales, such as Union representatives' participation in the surveys, are not excluded by section 7422.
3. The Department will provide access to all pay survey data.
4. Not following established VA policy regarding payment of compensation to which employee is entitled is grievable, including appropriate remedy as determined by the Secretary.
5. Failing a timely promotion process, and/or a higher review process, the employee's pay and promotion will be effective from the date when the employee becomes eligible for the promotion, so that the employee is made whole in terms of effective date of promotion and retroactive payment of compensation. If the VA fails to comply with this policy, employees may grieve.

C. Professional Conduct or Competence (PCC):

1. Issues of direct patient care, including, but not limited to, the level of care to be given to a patient, are not subject to collective bargaining or arbitration.
2. Issues indirectly related or not related at all to patient care, including, but not limited to, the guidelines for otherwise qualified employees (as determined by management) who want to trade days off, are negotiable.

3.

3. Management makes decisions with respect to employees' professional growth and clinical competencies. After management has determined the qualified persons and approved overtime work, then procedures for the development of voluntary and mandatory rates for overtime are negotiable.

4. Management will strive to provide advance notice of proposed changes in personnel policies, practices and matters affecting working conditions under implementation of the change whenever possible.

5. When management intends to make a change in personnel policies, practices and matters affecting working conditions, it will engage in a good faith dialogue with the exclusive representative over the change without regard to any management belief that Section 7422 precludes bargaining over any aspect of the change.

D. Fair Review

1. When deficiencies are due, a notification should be given to the employee if proficiency is going to be delayed.

The signatures below represent the commitment of both the Labor and Management parties to the successful implementation of the approved recommendations.

W. Scott Gault 12/16/10
W. Scott Gault Date
Deputy Secretary (001)

Anna Westmerland, RN 12-2-10
Anna Westmerland, RN Date
Chair, NFFE-VA

Robert A. Pincel, MD 12/1/10
Robert A. Pincel, MD Date
Under Secretary for Health (10)

Robert R. Rindley 12/22/10
Robert Rindley Date
President, NFFE-LAM DVA Council

John U. Serravallo 12/1/10
John U. Serravallo Date
Assistant Secretary for HR&A (006)

Alanna Brown, RN 12/16/10
Alanna Brown Date
President, SRU Local 2001

Alma Lee
Alma Lee Date
President, AFGE NVAE

James R. Bates 12/16/10
James Bates Date
Vice President, NAGE Local 88-19

