

Department of Veterans Affairs (VA)
Response to American Medical Association (AMA) and Physician Organizations
Regarding Development of National Standards of Practice

Concern 1: Introductory Remarks

VA Response: VA is committed to a transparent process to develop all national standards of practice. The process will include publication of each proposed national standard of practice in the Federal Register for all members of the public, including professional associations, to comment. In addition, there will be specific engagement with State Boards and predecisional collaboration with our labor partners. All interested parties and external stakeholders will have an opportunity to review and provide comments on the standards for VA to consider prior to implementation. *For more detail, please see attached Process Map.*

While we understand the important role VA plays in the delivery of health care nationally, we clarify that the national standards of practice VA is creating are exclusively for VA employees practicing within the scope of their VA employment and that the majority of VA health care professionals will not experience any change in the way they practice health care.

VA embraces the concept of team-based care and has been a national leader in its implementation. VA wholeheartedly agrees that health care professionals do not operate independently, but instead operate as a team. To that end, the process of developing national standards of practice includes an initial review by an internal group to ensure that each national standard of practice will be implementable in our team-based model of care delivery. The internal group contains membership from individuals throughout the VA system to include: quality management, academic affiliates, ethics, surgery, a field chief medical officer, electronic health record management, credentialing and privileging, workforce management and consulting, patient care services, and a field chief of staff. In particular, this review group examines how each standard aligns and affects the health professional team and the Veterans they serve. After their review is completed, a final national standard will be implemented with external input and through a robust enterprise governance process as demonstrated by the process map. *For more detail, please see attached Process Map.*

The initiative does not attempt to replace the important role physicians play in health care delivery; rather, it is an effort to delineate standardized core elements of practice for health care professionals within their VA practice. Importantly, the inclusion of a practice element within the national standards of practice does not automatically permit every health care professional to practice that element. It remains the responsibility of the independently accredited VA medical centers and healthcare systems to grant scopes of practices and privileges in accord with the education, training, skills, experience, and expertise of each individual health care professional.

Concern 2: Creating one standard for all physicians is impractical and not consistent with the practice of medicine.

VA Response: The draft national standard of practice for physicians has not yet been finalized, but an initial review of the State rules regarding the practice of medicine revealed there is not great variance among the States. When finalized, the standard of practice for physicians will likely cover “core” privileges such as conducting histories and physicals, ordering laboratory and imaging studies, making referrals and requesting consultations, and resident supervision (with respective academic appointments) that are included in all State licenses.

The physician standard of practice will not replace the requirement for VA facilities to have physician privileges which are facility, specialty, and provider specific. Furthermore, the standards of practice will only be incorporated into privilege forms that are relevant to the specialty. For example, a pathologist would not generally require that “conducting history and physical exam” be incorporated into their privilege form. We reiterate that the purpose is not to achieve equality across specialties, but instead across physician licenses, which do not generally have a great degree of variation.

Concern 3: The VA must allow meaningful input into the National Standards of Practice of non-physicians by the physician community.

VA Response: VA always intended to provide a meaningful opportunity for engagement. Additionally, to ensure we are fully responsive to your concerns regarding physician input, VA will publish every draft national standard of practice in the Federal Register. All members of the public, including professional associations, physicians, and other health care professionals, will have the opportunity to comment on each proposed standard prior to implementation. Additionally, VA will engage with State Boards and our labor partners. *For more detail, please see attached Process Map.*

There is no intent with the development of these standards for non-physician health care professionals to perform clinical duties beyond their education, occupational training, skills, and expertise.

Physicians play a critical and often leading role in many care teams and are invaluable in our health care system. The purpose of this initiative is not to undermine the critical role of physicians in healthcare; rather, it is to ensure that Veterans receive high quality care by all professions in VA’s integrated health care system and to ensure that VA health care professionals can meet the needs of Veterans when practicing within the scope of their VA employment.

Concern 4: The VA’s National Standards of Practice does not consider the importance of State licensing boards and the negative consequences of inadequate oversight of non-physician providers.

VA Response: All licensed providers within Veterans Health Administration (VHA) (over 180,000) must maintain their State licensure as a condition of employment. If they allow

their license to lapse, have their license revoked, or relinquish their license in lieu of revocation, they may be immediately terminated from VHA employment.

VA anticipates that the relationship with State Boards will work similarly to the Department of Defense who has already established national standards of practice for certain health care professionals.

In most cases, VA will be adopting standards that are consistent with current State requirements and will only deviate to the extent necessary to effectively furnish health care services to our Veterans. VA is committed to ensuring that State Boards are engaged in the process to develop national standards of practice. VA will send every State Board a letter with information on the impact of the proposed national standard of practice on the specific State, with an opportunity for the State Board to respond. In addition, every draft national standard will be published in the Federal Register for public comment.

While the development of national standards provides increased protection against adverse State action when a VA health care professional is acting within the scope of their VA employment, it does not impact a State Board's ability to take appropriate disciplinary action against a VA health care professional when their behavior or clinical practice substantially fails to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. This is consistent with VA's current practice.

In addition, VHA has a robust and standardized reporting process to State licensing boards in accordance with 38 C.F.R. § 47.2 and VHA Directive 1100.18, Responding and Reporting to State Licensing Boards, dated January 28, 2021. The standardizing of practice does not negate VHA's commitment to partnering with State Boards and reporting when a VA health care professional fails to meet standards of care. VA will continue to report negligent practice.

There is a misunderstanding related to non-privileged providers (i.e., registered nurses, licensed practical nurses) having "indefinite appointments" in VHA. Licensure is monitored on an ongoing basis for all providers. The term "indefinite appointment" is a credentialing term used to differentiate between privileged providers who cannot have an appointment which exceeds two years (in conjunction with privileges which cannot exceed two years) and non-privileged providers who do not have the two year limitation. The licenses of all credentialed, licensed providers in VHA are monitored on an ongoing basis through the National Practitioner Data Bank's Continuous Query program. Additionally, licenses are verified throughout the year based upon expiration dates. Even though non-privileged providers are given an "indefinite" appointment in the credentialing system, their licenses are still monitored on an ongoing basis, and they must update their information upon renewal of time-limited credentials (i.e., licensure, certification, or registration).

Concern 5: The Interim Final Rule (IFR) violated the Administrative Procedure Act and did not meet the standards set out in Executive Order 13132.

VA Response: VA had good cause under the Administrative Procedure Act to publish the interim final rule with an immediate effective date. As stated in the rule, 38 C.F.R. § 17.419, VA needed the rule to be effective immediately not only to facilitate VA's response to the public health emergency resulting from COVID-19, but also to facilitate stronger operational partnership with DoD, including through the new electronic health record (EHR).

Moreover, the IFR confirmed that VA's health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, to include practicing across State lines as well VA's authority to establish national standards of practice. It has been VA's longstanding practice to allow VA health care professionals to practice in a State other than the State where they are licensed, registered, or certified. In regard to establishing national standards of practice, the IFR did not establish any national standards. As explained above, each national standard of practice will be published in the Federal Register for public comment and VA will also engage with each State Board prior to implementation, consistent with the principles outlined in Executive Order 13132.

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