



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

Out of Many/One Union
AFGE NVAC/AFL-CIO

7S/404602

NATIONAL GRIEVANCE NG-6/29/23

Date: June 29, 2023

To: Denise Biaggi-Ayer
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Denise.biaggi-ayer@va.gov
valmrlitigation@va.gov
Sent via electronic mail only

From: Shalonda Miller, Staff Counsel, National Veterans Affairs Council (#53) (“NVAC”),
American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: National Grievance against the Department of Veterans Affairs for violating law and contract by failing to bargain regarding VHA Bookable Hour and Appointment Length Standards

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (“MCBA”), American Federation of Government Employees/National Veterans Affairs Council (“the Union”) is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs (“Department” or “Agency”) for unilaterally implementing new standards for appointment lengths, as well as a bookable hours requirement for providers throughout the Veterans Health Administration (“VHA”). To date, the Department has failed to remedy this violation, and as such, continues to violate policy, contract, government-wide regulations, and law. Specifically, the Department violated Articles 2, 3, 47, 49 of the MCBA, 5 U.S.C. § 7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

STATEMENT OF THE CASE

Background

Articles 47 and 49 of the MCBA require that the Department provide reasonable advance notice to the Union prior to changing conditions of employment of bargaining unit employees as to provide the Union with sufficient information for the purpose of exercising its full right to bargain. Notices of changes impacting two or more VA Locals requires notice to NVAC. *See* Article 47 Section 4. The MCBA language is meant to prevent the Department from making a unilateral change with more than *de minimis* impact on a bargaining unit employee's conditions of employment, without first notifying the Union and bargaining, if requested. The Federal Service Labor-Management Relations Statute ("the Statute") similarly provides that an agency must notify and bargain in good faith with labor unions prior to changing conditions of employment. *See* 5 U.S.C. § 7116(a)(5). Nonetheless, on August 22, 2022, sent a memorandum to VISN Directors, Medical Center Directors and other senior leadership outlining a bookable hours program which would ensure that a minimum of 80% of a provider's total outpatient clinically-mapped time worked is bookable for in-person, telephone, or telehealth care. (Memorandum attached as Exhibit A). The memorandum also described new standards for appointment lengths with established patients, new patients, and for follow-up appointments. The notice stated that the new standards would begin in November 2022, with full roll-out planned for May 30, 2023. The memorandum falsely claimed that the Department had met its bargaining obligations with national unions.

Then, on August 24, 2022, the NVAC Mid-Term Bargaining Committee ("MTBC") submitted a cease and desist/demand to bargain to the VA Office of Labor-Management Relations over the Department's proposed changes. (Demand to Bargain attached as Exhibit B). Although the parties met for a briefing, the Department did not engage in bargaining with the NVAC, despite its claim to the contrary.

On May 30, 2023, the Department implemented the bookable hours and appointment length standards nationwide, thereby violating law and contract as noted above.

Violations

By refusing to negotiate in good faith with the Union prior to implementing the VHA bookable hours and appointment length standards, the Department committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5). Additionally, Article 2 of the MCBA requires that the Department comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating 5 U.S.C. § 7116(a), the Department also violated Article 2. Further, Article 3 encourages the parties to maintain a cooperative labor-management relationship that is based on mutual respect, open communication, consideration of each other's views, and minimizing collective bargaining disputes. By failing to consult with the Union before implementing new bookable hours and appointment length standards, the Department renounced its commitments under Article 3 of the MCBA and triggered further collective bargaining disputes. The Department also violated Articles 47 and 49 of the MCBA, which set forth the parties' mid-term bargaining obligations at the national level.

Remedies Requested

The Union asks that to remedy the above situation, the Department agree to the following:

- To cease and desist the implementation of VHA bookable hour and appointment length standards until its bargaining obligations are met;
- To return to *status quo ante* until its bargaining obligations are met;
- To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA, and its statutory obligations under 5 U.S.C. § 7116(a)(1) and (5);
- To distribute an electronic notice posting, signed by the Secretary of the VA, concerning the Department's unilateral implementation of changes in conditions of employment in violation of the MCBA and federal law;
- To make whole any VHA provider adversely affected by the unilateral implementation of VHA bookable hour and appointment length standards, including back pay, interest, and attorney's fees; and
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions, please contact the undersigned at AFGE Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Filed by,



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cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, AFGE/NVAC

EXHIBIT A

Date: August 22, 2022

From: Assistant Under Secretary for Health for Operations (15)

Subj: Veterans Health Administration (VHA) Bookable Hour and Appointment Length Standards

To: Veterans Integrated Service Network Directors (10N1-23)
Medical Center Directors (00)
VHA Senior Leaders

1. VHA has established enterprise-wide bookable hour and appointment length standards to improve access to care and workload equity among providers. By November 30, 2022, facilities must adhere to the following:

a. Ensure a minimum of 80% of a provider's total outpatient clinically mapped time worked is bookable for in-person, telephone, or telehealth care. Some providers or service types are [exempt from the bookable hours standard](#). Bookable hours do not need to be reduced if providers are already at or above the standard.

b. Decisions about provider-specific modifications to the bookable hours standard will be made at the facility level and will be approved by the Facility Chief of Staff using the [VHA Bookable Hours Provider Exceptions LEAF Form](#). Provide one point of contact for the LEAF form for each facility through the [VHA Provider Exception LEAF Form Point of Contact list](#) by September 9, 2022.

c. Apply [standardized appointment length ranges](#) for high-volume stop codes. The appointment length ranges are maximums; clinics that are operating effectively with appointment lengths below the given range may elect to continue providing care in this manner.

d. Confirm that the bookable hour and appointment length standards are being met through the Fiscal Year (FY) 22 Annual Clinic Review process. The due date for the FY22 Annual Clinic Review has been extended from September 30, 2022, to November 30, 2022.

2. Successful implementation of these standards is predicated on accurate provider labor mapping and Account Level Budget Cost Center (ALBCC) assignments. Provider labor mapping and ALBCCs must be reviewed for each provider to ensure labor mapping and ALBCCs reflect current outpatient schedules and assignments.

3. The bookable hour and appointment length standards were set by Clinical Services and the Office of Integrated Veteran Care (IVC) with input from field representatives including Chiefs of Staff, Service Chiefs, and Group Practice Managers.

Subj: Veterans Health Administration (VHA) Bookable Hour and Appointment Length Standards

4. Facilities should follow guidance in this memorandum while directives are being updated. Facilities adopting Cerner Millennium Electronic Health Record are exempt from the bookable hour and appointment length standards for 8 weeks prior to the facility go-live date and 6 months post-implementation.

5. Resources to support implementation are available on the [Bookable Hours and Appointment Lengths Standards](#) SharePoint site. In addition to the posted implementation resources, asynchronous and synchronous forums will be offered to answer questions regarding standards implementation.

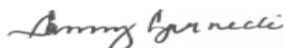
a. A [Q&A Database](#) is available to submit a question or view a list of Frequently Asked Questions and Answers.

b. A Microsoft Teams [resource room](#) will be open August 15-26, 2022 from 8 a.m. – 5 p.m. ET daily to support implementation and answer questions live.

c. A five-week office hours series with subject matter experts will begin on August 31, 2022, to answer your questions related to these standards. Office hours will be held on [Microsoft Teams](#) during the following dates and times:

- August 31, 2022 at 3pm ET;
- September 7, 2022 at 12pm ET;
- September 14, 2022 at 3pm ET;
- September 21, 2022, at 12pm ET;
- September 28 at 3pm ET.

6. All bargaining obligations have been met with all National unions. Bargaining related to implementation of these standards will not occur at the local level.



for
RimaAnn O. Nelson

Appendix A: Standards for Appointment Lengths

Stated slot ranges are maximums; clinics that are operating effectively with appointment lengths below the given range may elect to continue providing care in this manner.

Primary Care

Appointment length ranges for common appointment types in Primary Care are described below.

Stop Code	Appointment Type	Appointment Lengths
(323) Primary Care/Medicine	Established Patient	30 minutes
	New Patient	60 minutes
	Established Women Veterans	30-60 minutes*
	Patient Evaluation and Education/Consultation (Nursing Appointment)	30 minutes
	Immunizations or Blood Pressure Checks (Nursing Appointment)	15 minutes
(160) Clinical Pharmacy	All appointment types	30 minutes
	Telephone	30 minutes
(322) Comprehensive Women's Primary Care Clinic	Established Patient	30-60 minutes*
	New Patient	60 minutes

* Women's Health appointments for established Veterans should be 30 minutes unless they involve performing a Pap smear and performing a comprehensive history and physical, which permits extending the appointment to 60 minutes. Appointments not involving a Pap smear or dedicated solely to performing a Pap smear should be scheduled for 30 minutes.

Mental Health

Appointment length ranges for common appointment types in Mental Health are described below.

Stop Code	Appointment Type	Appointment Lengths
(502) MH Clinic Ind	New Patient	60-90 minutes
	Individual therapy	60-90 minutes
	Individual Medical	30-60 minutes
(527) Telephone/Psych	Individual therapy	60-90 minutes
	Individual Medical	30-60 minutes
(534) MH Intgrtd Care Ind	Individual therapy	30-45 minutes
	Individual Medical	30-60 minutes
(562) PTSD Outpatient	Individual therapy	60-90 minutes

Specialty & Residential Programs: Individual	Individual Medical	30-60 minutes
(513) Sub Use Disorder Indiv	Individual therapy	60-90 minutes
	Group therapy	60-90 minutes
	Individual Medical	30-60 minutes
	Group Medical	30-60 minutes

Specialty Care

Appointment length ranges for common appointment types in Specialty Care are described below.

Stop Code	Appointment Type	Appointment Lengths
(408) Optometry	New Patient F2F	30-60 minutes
	New Patient/Tele/VVC	30-45 minutes
	Established Patient F2F	30-60 minutes
	Established Patient/Tele/VVC	30-45 minutes
	Office Procedure Visit	30-45 minutes
	Post-Op Visit	15-30 minutes
(411) Podiatry	New Patient F2F	30-45 minutes
	New Patient/Tele/VVC	30-45 minutes
	Established Patient F2F	20-30 minutes
	Established Patient/Tele/VVC	20-30 minutes
	Office Procedure visit	45-60 minutes
	Post-Op Visit	15-30 minutes
(304) Dermatology	New Patient F2F	20 minutes
	New Patient Consult/Tele/VVC	20 minutes
	Return Patient F2F	20 minutes
	Mohs - for approved Providers	75 minutes
	Office Procedure Visit	60 minutes
(321) Gastroenterology Endoscopy	Colonoscopy	30-60 minutes
	Upper GI Endoscopy	30-45 minutes
(305) Endocrinology	New Patient F2F	30-60 minutes
	New Patient/Tele/VVC	30-60 minutes
	Established Patient F2F	30-60 minutes
	Established Patient/Tele/VVC	30-60 minutes

Surgery

Appointment length ranges for common appointment types in Surgery are described below.

Stop Code ^{1,2}	Appointment Type ³	Appointment Lengths
(409) Orthopedics/Joint Surgery	New Patient	30-60 minutes
	Established Patient	20-40 minutes
	Post-operative	15-30 minutes
	Procedure	30-60 minutes
(414) Urology	New Patient	30-60 minutes
	Established Patient	20-40 minutes
	Post-operative	15-30 minutes
	Procedure	30-60 minutes
(403) Otolaryngology (ENT)	New Patient	30-60 minutes
	Established Patient	20-40 minutes
	Post-operative	15-30 minutes
	Procedure	30-60 minutes
(401) General Surgery	New Patient	30-45 minutes
	Established Patient	20-40 minutes
	Post-operative	15-30 minutes
	Procedure	30-60 minutes

¹ Within each specialty stop code, there are multiple subspecialties with significant variations in service type (evaluation/management +/- procedures), disease complexity, and recommended/available resources. Due to aggregation of these variables, recommended slot lengths are proposed as ranges.

² Clinics within each specialty stop code may be named to reflect subspecialty patient cohorts and service type.

³ Appointment types are recommended without guidance for parameters to define requirements (e.g., virtual care appointments, nursing appointments). As such, additional appointment types may be necessary. Appointment types are considered separately from clinic mnemonics and are presumed to be able to be mixed within a single clinic.

Rehabilitation and Prosthetic Services

Appointment length ranges for common appointment types in Rehabilitation and Prosthetic Services are described below.

Stop Code	Appointment Type	Appointment Lengths
(197) Polytrauma/Traumatic Brain Injury (TBI)- Individual	New Patient	60 minutes
	Established Patient	30-60 minutes

Stop Code	Appointment Type	Appointment Lengths
(201) PM&RS Physician	New Patient	60 minutes
	Established Patient	30-60 minutes
(202) Recreation Therapy Service	New Patient	60 minutes
	Established Patient	30-60 minutes
(203) Audiology	Consults	60 minutes
	Fittings	30-60 minutes
	Follow ups	30 minutes
	Repairs	15-30 minutes
	Vestibular	60-120 minutes
	ABR	60 minutes
	Cochlear Implants	60-120 minutes
(204) Speech-Language Pathology	Consult/New Patient	60-90 minutes
	Treatment/Return	30-60 minutes
(205) Physical Therapy	New Patient	60 minutes
	Established Patient	30-60 minutes
(206) Occupational Therapy	New Patient	60 minutes
	Established Patient	30-60 minutes
(209) VIST Coordinator	New Patient	30-120 minutes
	Established Patient	30-120 minutes
(211) PM&RS Amputation Clinic	New Patient	60 minutes
	Established Patient	30-60 minutes
(214) Kinesiotherapy (KT)	New Patient	60 minutes
	Established Patient	30-60 minutes
(220) VISOR & Advanced Blind Rehab	New Patient	30-120 minutes
	Established Patient	30-120 minutes
(221) Telephone Visual Impairment Service Team (VIST)	New Patient	30-60 minutes
	Established Patient	30-60 minutes
(229) Telephone Blind Rehab Program	New Patient	30-60 minutes
	Established Patient	30-60 minutes
(437) VICTORS & Advanced Low Vision	New Patient	30-120 minutes
	Established Patient	30-120 minutes
(438) Intermediate Low Vision Care	New Patient	30-120 minutes
	Established Patient	30-120 minutes
(436) Chiropractic Care	New Patient	60 minutes
	Established Patient	30-60 minutes

EXHIBIT B



**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL VETERANS AFFAIRS COUNCIL #53**

**Affiliated with the AFL - CIO
Mid-Term Bargaining Committee**

**Oscar L. Williams Jr., Chair
2nd Exec. V-President
29 Lake Street
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August 24, 2022

Denise A. Biaggi-Ayer, Executive Director
Office of Labor Management Relations (LMR)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Subject: Veterans Health Administration (VHA) Bookable Hour and Appointment Length Standards

Dear Ms. Biaggi-Ayer:

In accordance with Article 47, Section 2, C, of the Master Agreement, the National VA Council #53 is formally demanding to bargain on the VHA Bookable Hour and Appointment Length Standards as cited above within the Department. Please provide the NVAC's Mid-Term Bargaining Committee with any/all information/data concerning the cited subject above. The negotiations of this subject should normally begin no later than twenty (20) workdays after the Management's Chief Negotiator in this matter receives NVAC's demand to bargain.

Please cease and desist any implementation until the bargaining obligation has been met. The above named NVAC's Mid-Term Bargaining Committee may be requesting a briefing over the cited subject above, before sending any proposals. If you have any questions, please call me at (217) 554-4979.

Sincerely,

Oscar L. Williams, Jr.
Chairperson, Mid-Term Bargaining Committee
2nd Executive Vice President
National VA Council #53

cc: Alma L. Lee, President National VA Council #53
NVAC Executive Committee

AFGE: Good Government We Are Ready