

False positive results can lead to unnecessary additional imaging or diagnostic testing through their personal treating providers, including biopsies and unnecessary surgeries, the costs of which may be borne by the subject individual. Veterans seeking a mammography screening under section 7322(c) will be assessed to ensure that further evaluation is clinically needed, and if so, Veterans will receive a risk assessment, along with clinically appropriate discussions before an ultimate decision is made on whether to furnish a mammography.

There are several important limitations regarding the authority in section 7322(c) that should be made clear. First, the expanded eligibility authority in section 7322(c) does not create eligibility for Veterans to obtain mammography screening if it is not determined to be clinically appropriate. Clinical necessity is a threshold requirement for the delivery of all care. If care is clinically indicated, a patient must also provide informed consent to receive such care. Second, section 7322(c) does not independently authorize the provision of any recommended or additional needed medical care through VA; Veterans who are enrolled in VA health care or eligible to receive VA health care without enrolling may receive any necessary follow up care from VA, but Veterans without such eligibility can only receive the breast cancer risk assessment and clinically appropriate mammography screening as authorized by section 7322(c). Section 7322(c) does not authorize the delivery of any care or services for the treatment of breast cancer or any other condition for Veterans who are not enrolled in VA health care. Asymptomatic Veterans less than 40 years of age may return for the breast cancer risk assessment and mammogram screening as indicated every 5 years until age 40 when they would become eligible for standard breast cancer screening. This is consistent with current national guidelines and standards. Veterans who are eligible for care exclusively under the SERVICE Act will be eligible to present for a breast cancer risk assessment and mammogram screening as indicated more frequently than once every 5 years at any time in which they develop interim symptoms such as breast lump, breast pain or nipple discharge. This is also consistent with current national guidelines and standards. Third, section 7322(c) does not establish a claim for service-connection. Section 7322(c) only authorizes the provision of a breast

cancer risk assessment and mammogram screening; it has no effect on establishing eligibility for any other benefits.

The American College of Radiology has established a uniform way for radiologists to describe mammogram findings. See <https://www.cancer.gov/types/breast/mammograms-fact-sheet#what-is-the-breast-imaging-reporting-and-database-system-bi-rads>. The Breast Imaging Reporting and Data System (BI-RADS) categories included in mammography reports help inform radiologists and other providers whether any follow-up testing, or imaging is recommended or needed, including any MRI imaging, biopsy, or sonogram. *Id.* VA will ensure the mammography screening performed is of the quality required for the assigned radiologist to reliably list the appropriate BI-RADS category. BI-RADS are scored from 0–6. BI-RADS 0 represents an incomplete evaluation. In this case, VA must perform additional imaging as needed, such as ultrasound, to assign a final BI-RADS category. VA may perform additional imaging, such as ultrasound, for all SERVICE Act eligible Veterans to reach a “complete” exam designation (BIRADS 1–6). VA is not authorized under the SERVICE Act to provide further care to Veterans based on the results of the breast cancer risk assessment and/or clinically appropriate mammogram. If the Veteran is enrolled in VA health care, VA may perform the additional imaging that is required because of an abnormal BI-RADS (3–6). However, if the Veteran is not enrolled in VA health care and additional imaging is needed beyond establishing the final BI-RADS (such as follow up for an abnormal BI-RADS category (3, 4, 5 or 6), VA will not be able to provide that care and will advise such individuals to pursue follow-up care promptly with their health care provider.

#### Eligible Providers

Section 7332(c) establishes a Veteran’s eligibility for a mammography screening “by a health care provider of the Department.” This language allows for screenings to be conducted by VA-authorized community providers who have entered into an appropriate agreement with VA to furnish such care. As mentioned above, many Veterans who qualify under section 7322(c) would not be eligible for a mammography screening in the community (based on applicable screening standards to which the health care system outside of VA is bound). Based on the Veteran’s eligibility under section 7322(c), however, VA can

provide the mammography screening in-house or through a contractual arrangement. Any service VA is authorized to provide the mammography screening, it may also provide by contract or agreement, subject to other applicable law and regulations. Veterans who are covered under the Veterans Community Care Program (38 U.S.C. 1703 and §§ 17.4000 through 17.4040 of title 38, CFR) may elect to receive their screening in the community if they are eligible to make such an election under that Program. For Veterans who are not covered for purposes of 38 U.S.C. 1703 and §§ 17.4000 through 17.4040 of title 38, CFR, if VA is not able to furnish the mammography screening itself, a VA provider will order such a screening to be performed, and, per the terms of the authorization, receive a report of the imaging results. We do not view this as conflicting with the language of the SERVICE Act because it is the VA provider who still provides this preventive health care benefit, even if indirectly in some cases.

#### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 20, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

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## DEPARTMENT OF VETERANS AFFAIRS

### Notice of Request for Information on the Department of Veterans Affairs Creative Arts Therapists (Art) Standard of Practice

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Request for information.

**SUMMARY:** The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Creative Arts Therapists (Art). VA seeks comments on various topics to help inform VA’s development of this national standard of practice.

**DATES:** Comments must be received on or before September 26, 2023.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov).

Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any potential future rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202-461-0500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**Authority**

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification or other requirements that unduly interfere with their practice (38 CFR 17.419; 85 FR 71838). Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a State other than the health care professional's State of licensure, registration, certification or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals which

would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the State license, registration, certification or other State requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

**Need for National Standards of Practice**

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the COVID-19 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of

Defense (DoD). DoD has historically standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

**Process To Develop National Standards of Practice**

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on VHA Publications website at: <https://vaww.va.gov/vhapublications/> (internal) and <https://www.va.gov/vhapublications/> (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132 to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation; they may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and registration organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States and registration organization have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals, and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at <https://www.va.gov/standardsofpractice>.

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

### **National Standard for Creative Arts Therapists (Art)**

The proposed format for national standards of practice when there is a national registration and some States require a license is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and registration needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard set by the national registration body. A final statement explains that while VA only requires a

national registration, some States also require licensure for this profession. The standard includes information on which States offer an exemption for Federal employees and where VA will preempt State laws, if applicable.

We note that the proposed national standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration and other requirements.

Art Therapists integrate psychotherapeutic principles and art interventions to evaluate, diagnose and treat individuals with various clinical mental health and rehabilitation issues that impact their health, function and quality of life. VA qualification standards require Art Therapists to have an active, current, full and unrestricted registration as a Registered Art Therapist (ATR) from the Art Therapy Credentials Board (ATCB). Please note that while VA Handbook 5005, Part II, Appendix G60 refers to this position as Creative Arts Therapists (Art), this position is commonly referred to as Art Therapists, and we will use that terminology throughout. Although ATCB is the registration body for Art Therapists, the American Art Therapy Association (AATA) has developed the Ethical Principles for Art Therapists, which is followed by all VA Art Therapists.

VA reviewed whether there are any alternative registrations, certifications or State requirements that could be required for an Art Therapist and found that 14 States require a license to practice as an Art Therapist in that State. Of those, one State exempts Federal employees from its State license requirements. The standards set forth in the licensure requirements for all 14 States are consistent with what is permitted under the Ethical Principles for Art Therapists standards from the AATA. Therefore, there is no variance in how Art Therapists practice in any State.

VA proposes to adopt a standard of practice consistent with the Ethical Principles for Art Therapists by the AATA. The AATA standards can be found here: <https://arttherapy.org/wp-content/uploads/2017/06/Ethical-Principles-for-Art-Therapists.pdf>.

*Because the practice of Art Therapists is not changing, there will be no impact on the practice of this occupation when*

*this national standard of practice is implemented.*

### **Proposed National Standard of Practice for Art Therapists**

1. Art Therapists integrate psychotherapeutic principles and art interventions to evaluate, diagnose and treat individuals with various clinical mental health and rehabilitation issues that impact their health, function and quality of life. Art Therapists use art-making and the creative process to improve cognitive and sensorimotor functions, foster self-esteem and emotional resilience, promote insight, enhance social skills and reduce and resolve conflicts and distress in order to ameliorate biopsychosocial conditions.

2. Art Therapists in VA possess the education and registration required by VA qualification standards. See Handbook 5005, Staffing, Part II, Appendix G60, dated June 7, 2019.

3. VA Art Therapists practice in accordance with the Ethical Principles for Art Therapists from the American Art Therapy Association (AATA), available at: <https://arttherapy.org>. VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that all Art Therapists in VA follow the AATA standards.

4. Although VA only requires a registration, 14 States require a State license in order to practice as an Art Therapist in that State: Connecticut, Delaware, District of Columbia, Kentucky, Maryland, Mississippi, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Texas and Virginia. Of those, the following State exempts Federal employees from its State license requirements: Virginia.

VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that there is no variance in how VA Art Therapists practice in any State.

### **Request for Information**

1. Are there any required trainings for the aforementioned practices that we should consider?

2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?

3. Is there any variance in practice that we have not listed?

4. What should we consider when preempting conflicting State laws, regulations or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with us about this national standard of practice?

#### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

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## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Veterans Health Administration (VHA), Department of Veterans Affairs (VA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, notice is hereby given that VA is modifying the system of records entitled, “Community Residential Care and Medical Foster Home Programs—VA” (142VA114). This system is used for determining a potential facility’s initial eligibility and ongoing participation in the program, provision of medical and psycho-social services to Veterans, operation of the programs, and information required by VA Medical Centers to complete quarterly statistical reports.

**DATES:** Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov) or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted

in response to “Community Residential Care and Medical Foster Home Programs—VA” (142VA114). Comments received will be available at [regulations.gov](http://regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Stephania Griffin, VHA Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, (105HIG) Washington, DC 20420; telephone 704-245-2492 (Note: This is not a toll-free number) or [stephania.griffin@va.gov](mailto:stephania.griffin@va.gov).

**SUPPLEMENTARY INFORMATION:** VA is amending the system of records by revising the System Number; System Location; System Manager; Categories of Records in the System; Routine Uses of Records Maintained in the System; Policies and Practices for Retention and Disposal of Records; and Administrative, Technical and Physical Safeguards. VA is republishing the system notice in its entirety.

The System Number is being updated from 142VA114 to 142VA10 to reflect the current VHA organizational routing symbol.

The System Location will be updated to replace VA Data Processing Center, with Austin Information Technology Center (AITC). Also being added, Community Residential Care (CRC) locations are listed in VA Appendix 5. Medical Foster Home (MFH) programs have been established or are in development at all VA health care facilities.

The System Manager is being updated to include Director, Home and Community Based Programs. Telephone number 202-632-8321. (Note: This is not a toll-free number).

The Categories of Records in the System is being updated to include operators and staff of CRC and MFH Homes.

The language in Routine Use number 4 is being updated. It previously reflected the following language, “Disclosure of the records to the Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records and that VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.”

Routine Use number 4 will now read as follows, “DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.”

Routine use number 15 is being added to state, VA may disclose any information or records to appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

Policies and Practices for Retention and Disposal of Records is being updated to remove “Paper records and information are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.” This section is being updated to state that Records are scheduled in accordance with Records Control Schedule (RCS) 10-1, 6110.4, temporary disposition; Destroy approved applications 1 year after home withdraws from program. Destroy disapproved applications after 5 years.

Administrative, Technical and Physical Safeguards is being updated to replace Austin VA Data Processing Center with Austin Information Technology Center (AITC).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB Circular No. A-108, Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act, 81 FR 94424 (December 23, 2016).