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January 11, 2021

SUBMITTED VIA ELECTRONIC MAILING

The Honorable Robert Wilkie
Secretary
Department of Veterans Affairs
810 Vermont Ave. NW, Room 1068
Washington, DC 20420

[Submitted online at: <https://www.regulations.gov>]

Re: Re: RIN 2900–AQ94—Authority of VA Professionals to Practice Health Care

Dear Secretary Wilkie,

On behalf of the American Academy of Otolaryngology—Head and Neck Surgery (AAO-HNS),¹ I am writing to express strong opposition to the Department of Veterans Affairs' (VA) Interim Final Rule, entitled "RIN 2900–AQ94—Authority of VA Professionals to Practice Health Care." Our comments will address the patient protection, national standards vs. state licensing, and oversight issues included within the interim final rule.

I) Patient Protection

Our nation's veterans, many of whom suffer from multiple chronic conditions or traumatic injuries, have uniquely complex medical needs. They are among the nation's most medically vulnerable patient populations. Our veterans require and have earned care led by the most highly educated, trained, and skilled healthcare professions--physicians.

The AAO-HNS has significant concerns about the interim final rule (IFR) which seeks to preempt state law by asserting that state and local scope of practice laws relating to non-physician providers (NPPs) that are employed by the VA "will have no force or effect," and that state and local governments "have no legal authority to enforce them." The VA has noted

¹ The AAO-HNS is the nation's largest medical organization representing specialists who treat the ear, nose, throat, and related structure of the head and neck. The Academy represents approximately 10,000 otolaryngologist-head and neck surgeons practicing in the United States who diagnose and treat disorders of those areas.

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that during the public health emergency (PHE) there have been numerous cases where local governments have had to relax their state requirements to allow healthcare providers to cross state lines and meet the emergency health needs of their citizens. However, these are short-term emergency measures without long-term empirical evidence of effectiveness in all healthcare areas. Most states/local governments intend to revert the regulations back to what they had been before the PHE. This IFR, however, suggests that expanded scope authorizations would become permanent without following proper administrative procedures or any evidentiary rationale.

The IFR does not adequately account for the differences in education and training that exist between physicians and NPPs and thus, does not sufficiently address the lower standard of care that will ultimately be provided to veterans. There are stark differences between the education and training requirements for physicians and NPPs. Medical students spend four years learning both the physiologic and clinical components of evidence-based medicine before undertaking an additional three to seven years of residency training to further develop and refine their ability to safely evaluate, diagnose, treat, and manage the healthcare needs of patients. By gradually reducing teaching physician oversight, residents are able to develop their skills with progressively increasing autonomy, thus preparing these physicians for the independent practice of medicine.

NPPs play a key role in the care provided to patients, however, the physician has ultimate responsibility for patient care. Otolaryngologists have a minimum of nine years of graduate level education and training and more than 10,000 hours of clinical experience while NPPS often complete only two to three years of graduate level education and between 500-2,000 hours of clinical training. By virtue of this level of education and training, physicians are most qualified to lead healthcare teams.

II) National Standards vs State Licensing

The VA maintains that they have the right to create national standards for practitioners. **While the AAO-HNS is pleased that the VA does not create any standards through this IFR, we have significant concerns that this regulation moves toward creating national standards in the future.**

States have different healthcare professional licensure requirements based on state law and local needs. They have a diversity of populations and healthcare needs addressed through individualized state laws and regulations around healthcare. In fact, some states are constitutionally mandated to provide their resident with proper healthcare. Currently, the VA allows one to practice across state lines, but they must adhere to the requirements of the license provided by their home state licensure. National standards would remove this requirement. **The VA should not expand its scope of practice parameters and allow NPPs to perform procedures for which they are not properly licensed or trained.**

III) Oversight

State licensing boards play an important role in ensuring provider competency, proper administration of patient care, and the use disciplinary measures when required. However, when the VA seeks to remove state scope of practice laws and regulations, such oversight becomes increasingly difficult. Unlike physicians who are required to have their licenses reviewed every two years, NPPs within the VA are appointed for an indefinite time. **This IFR makes it more difficult for state boards to oversee the practitioners that they license and creates confusion due to a lack of clarity about these practitioners' scope of practice.**

Finally, the VA's efforts to supersede state requirements conflicts with the mission of the VA, to provide the highest professional standards, along with the excellence in quality healthcare, to our nation's veterans. **Since it has been shown that the VA is unable to adequately oversee healthcare providers, it is vital to rescind the IFR and ensure that state licensing boards can adequately supervise their NPPs to ensure the highest quality of care for veterans.**

IV) Conclusion

The American Academy of Otolaryngology—Head and Neck Surgery appreciates the opportunity to provide comment and recommendations regarding these important policies on behalf of our members. We look forward to working with the VA as it continues its efforts to promote innovation and improve patient access to quality care. If you have any questions or require further information, please contact healthpolicy@entnet.org.

Respectfully Submitted,



James C. Denny, III, MD, FACS
Executive Vice President and Chief Executive Officer