

# AMERICAN ASSOCIATION OF MEDICAL ASSISTANTS

## Report of the CEO and House Legal Counsel

### for the Period Ending July 5, 2021

*(Because of the two-year period covered by this report, it is longer than previous annual reports. To prevent greater length, some points have not been included.)*

The following is a summary of Chief Executive Officer (CEO) Balasa's priorities and accomplishments, and an update on pertinent developments, since the 2019 annual conference of the American Association of Medical Assistants (AAMA) in Greensboro, North Carolina.

The CEO's focus has been on facilitating the AAMA's accomplishment of its *Mission and Strategic Issues Plan* by (1) assisting President Houston and all other volunteer leaders to achieve their goals; (2) scanning the external environment to discern opportunities and threats; and (3) overseeing the deployment of AAMA resources (e.g., staff and capital assets) in an effective and efficient manner.

## Protecting and Advancing the Right to Practice and Teach

### *Federal/National*

#### NCQA Medication Reconciliation Measure

On May 4, 2021, Legal Counsel Balasa sent the following letter to the General Counsel of the National Committee for Quality Assurance (NCQA):

The AAMA has noted the following language in Quality ID #46 (NQF 0097): Medication Reconciliation Post-Discharge; 2019 Collection Type:

NUMERATOR (SUBMISSION CRITERIA 1 & 2 & 3): Medication reconciliation conducted by a prescribing practitioner, clinical pharmacist or registered nurse on or within 30 days of discharge

It is the position of the American Association of Medical Assistants that professionally educated and appropriately credentialed medical assistants are capable of, and competent in, performing—under the authority of a licensed provider—post-discharge medication reconciliation. Therefore, the AAMA respectfully requests that “credentialed medical assistant” be added to the above list of health professionals permitted to perform post-discharge medication reconciliation as directed by the overseeing licensed provider.

He received the following response on May 20, 2021:

Thank you for your feedback on the NCQA Medication Reconciliation Post Discharge measure (endorsed by National Quality Forum). ...

NCQA recognizes the supervising physician as providing the service when they have signed off on the medical record/documentation. It is our understanding many LPNs and medical assistants work with physicians and RNs. With this in mind, medication reconciliation provided by the medical assistant and signed off by a physician, clinical pharmacist or RN may be counted toward NCQA Medication Reconciliation indicators as the signature indicates additional clinical oversight for this work.

He sent this follow-up question the same day:

Thank you for your careful consideration and most helpful response. This clarification will be appreciated by medical assistants and the licensed providers and professionals who delegate medication reconciliation to them, and who review, approve, and sign off on their medication reconciliation.

Could you please let me know whether this review and sign off also applies to physician assistants? As you know, physician assistants practice medicine under the authority of a physician (i.e., MD or DO) and also delegate tasks to medical assistants.

He received the following response the same day:

Thank you for the follow-up question. The measure specification is specific to prescribing practitioners which would include Nurse Practitioners, Physician Assistants, and clinical pharmacists with prescribing privileges in their state of practice. (This will vary some by state.) If the NP, PA and clinical pharmacist do not have prescribing privileges in the state of practice, then they would also require the clinical supervision/signature of a credentialed individual.

Mr. Balasa is in the process of requesting further clarification from the NCQA.

### **Ending of Medicaid Promoting Interoperability Order-Entry Program**

The **Medicaid** Promoting Interoperability Program (formerly, Medicaid Electronic Health Record Incentive Program) will be ending December 31, 2021. Stage 3 of this program requires that at least 60% of medication orders, 60% of laboratory orders, and 60% of diagnostic imaging orders be entered into the computerized provider order entry (CPOE) system by either “credentialed medical assistants” or licensed health professionals. (The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) initiated the phasing out of the **Medicare** Electronic Health Record (EHR) Incentive Program.)

CEO Balasa has proposed to the Board of Trustees a strategy for responding to the ending of this Medicaid program. More information will be forthcoming.

### **United States Department of Labor Advisory Committee on Apprenticeships (ACA)**

The Department of Labor of the Biden Administration announced in May of 2021 that it is reconstituting its Advisory Committee on Apprenticeships (ACA). Note the following information:

## **Overview of the ACA**

- Authorized by the National Apprenticeship Act, 29 U.S.C. §50a which authorizes the Secretary of Labor to appoint a national advisory committee to serve without compensation.
- The ACA is a discretionary committee established by the Secretary of Labor and is subject to the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, and its implementing regulations (41 CFR §101-6 AND 102-3).
- Charter is typically renewed every two years.
  - The ACA has been dormant since 2017.

## **Previous Recommendations from the ACA**

- The ACA has provided recommendations on a range of issues since establishment in 1937, including most recently: policy proposals for growing apprenticeship; regulatory reform; apprenticeship ratio policy; pre-apprenticeship definitions, and efforts to increase participation of women.

## **Current Scope for Recommendations**

- Diversity, Equity and Inclusion
- Apprenticeship Modernization
- Expansion into New Industries and Sectors

## **Membership**

### **Balanced membership of 27-30 members from the following:**

- Employers and Industry Associations (9-10 members);
- Labor and Joint Labor-Management Organizations (9-10 members); and
- Members of the Public (9-10 members)

### **Other Membership Elements:**

- Chair of the ACA appointed by the Secretary from the Public Sector
- DOL seeking a current apprentice/youth apprentice to serve on Committee
- President of NASTAD (State Apprenticeship Agencies) invited to serve on ACA
- Federal Agencies Involved – 6 Ex-officio Members
  - Commerce; Education; Energy; Health and Human Services; HUD, and Transportation

## **Proposed Ad-Hoc Subcommittees**

...

2. Subcommittee on Apprenticeship Modernization (e.g., competency approaches, degreed apprenticeship and college credit, industry wide standards)

Mr. Balasa is advising the Board of Trustees about ways in which the AAMA would be able to have a voice on the ACA.

### **Comments to the Centers for Medicare & Medicaid Services (CMS)**

Mr. Balasa submitted August 14, 2020, comments to the Centers for Medicare & Medicaid Services (CMS) regarding the Medicare proposed rule revising payment policies under the Physician Fee Schedule and other changes to Part B payment policies. He will see whether the substance of his comments is incorporated into forthcoming CMS policies and rules.

### **ACCESS to Careers Act**

In June of 2021, the Assisting Community Colleges in Educating Skilled Students to Careers Act, or ACCESS to Careers Act, was introduced into the United States Senate. The following are comments from supporters of this bill:

Specifically, the legislation calls for partnerships between community colleges and in-demand industries to provide apprenticeship programs, work-based learning opportunities and paid internships. Institutions would also be able to use the grant funding to develop or expand stackable credential programs and dual or concurrent enrollment programs, as well as accelerated learning programs.

It would help to bridge the dual purposes that community colleges often serve in their localities—according to Higher Learning Advocates executive director Julie Peller—of offering both workforce training and postsecondary education.

“A learner often has to choose between a training program on the noncredit side or something on the credit side that might take longer,” Peller said. “The programs that this bill would support help bridge between that so learners don't need to make that choice.”

Counsel Balasa drafted the following comments to the bill sponsors in the United States Senate for the National Network of Health Career Programs in Two-Year Colleges (NN2):

America's community colleges continue to be committed “to developing, improving, and scaling evidence-based strategies and delivery structures...that best meet the skill needs of students and employers.” From an equity perspective, community colleges have been in the forefront of efforts to serve and educate “individuals with barriers to employment, veterans, spouses of members of the Armed Forces, Native American Indians, Alaska Native, Native Hawaiians, [and] incumbent workers who are low-skilled and who need to increase their employability skills.” Establishing grant programs to assist and incentivize community colleges to achieve these noble goals is sound public policy, and NN2 commends you for recognizing the vital role community colleges play in meeting the workforce needs of the American economy and providing individuals with employment opportunities they otherwise would not have.

The ACCESS Act of 2021 defines “work-based learning” as “sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated

environments at an eligible institution that foster in-depth, firsthand engagement with the tasks required in a given career field, *that are aligned to curriculum and instruction* [emphasis added].” Health career programs in community colleges have been leaders in recognizing the value of students who are nearing completion of their curriculum being exposed to “real workplace settings,” as evidenced by the externships/internships that have been an essential part of community college health education programs for several decades. **However, to protect externing students, health professionals at the externship sites, and patients, students should not be assigned to externship sites until they have completed the necessary curriculum components.** This principle is applicable to all occupational education programs—whether provided in community colleges or other settings.

**As valuable as work-based learning can be, it cannot and should not replace the academic training that is foundational for success in the labor market.** Grants issued under this legislation should ensure that students have sufficient knowledge in the occupation before they begin working in the occupation.

NN2 wishes to remind Congress that career laddering—especially in the health professions—should be another policy priority incorporated into the ACCESS Act of 2021. **Empowering workers “who need to increase their employability skills” can only be accomplished by ensuring to the greatest extent feasible that non-credit learning experiences (including work-based learning) be readily translatable into college credit. If this is not done, these individuals will soon be stranded on another career plateau.**

## **Assistance to Medical Assisting Program Directors**

CEO Balasa wrote an August 2020 article entitled “How Do the United States Department of Education (USDE) Regulations on Licensing and Mandatory Certification Requirements Affect Medical Assisting Programs?” This article has been provided to medical assisting program directors and educators to enable them to assist their institutions in complying with the new USDE regulations that went into effect July 1, 2020.

### ***State***

#### **2021 California Assembly Bill 1273**

This bill would prohibit the California Department of Consumer Affairs and its various boards from prohibiting, or approving an accrediting program that prohibits, “earn and learn” programs for training in a profession licensed or certified by the board. Mr. Balasa has analyzed this bill and provided input to CAAHEP leaders in framing a response to it. **There is concern that passage of this bill would reduce the number of delivery settings in California that would be willing to serve as practicum/externship sites for allied health programs if sites would be required to pay externing students.**

### **Maryland**

Legal Counsel Balasa worked closely with medical assisting leaders in Maryland and the Nurse Practitioners Association of Maryland (NPAM) on legislation that would authorize the Maryland Board of Nursing to issue regulations that would permit advanced practice registered nurses (APRNs)—including nurse practitioners—to delegate to knowledgeable and competent medical assistants the administration of injections. The bill was supported by all segments of the nursing profession in Maryland, including the Maryland Board of Nursing. It was enacted into law without opposition.

He will assist NPAM and the Maryland Board of Nursing with the drafting of these regulations.

## **Nebraska**

Beginning in 2018, a particular interpretation of Nebraska law cast doubt on the legal authority of physicians to delegate to medical assistants the performing of certain tasks under direct/onsite physician supervision in outpatient settings. In response, the Nebraska Medical Association drafted an amendment to the Medicine and Surgery Practice Act to eliminate any ambiguity about medical assistants' scope of practice. The American Association of Medical Assistants and the Nebraska Society of Medical Assistants submitted written testimony supporting this legislation, and the amendment was enacted into law.

The new language clarifies the authority of physicians to delegate—and the right of medical assistants to perform—tasks within the standard scope of practice for medical assistants throughout the United States. Mr. Balasa has incorporated this new language into his legal opinion letter for Nebraska, which is available on the AAMA State Scope of Practice webpage.

(This legislative victory is dedicated to Laura M. Blankenship, CMA-C (AAMA), long-time Chair of the Public Policy Committee of the Nebraska Society of Medical Assistants and a valued colleague of Mr. Balasa.)

## **Washington**

During the early days of the pandemic Washington Governor Inslee issued executive orders allowing several different categories of health professionals, including medical assistants, to work under less stringent supervision. These liberalized supervision requirements were codified into statute by a Washington bill that contained the following new language:

During a telemedicine visit, supervision over a medical assistant assisting a health care practitioner with the telemedicine visit may be provided through interactive audio and video telemedicine technology.

## **Texas**

Legal Counsel Balasa contacted the Texas Medical Board about the legality of medical assistants being delegated, and performing, the initiating of IVs under direct/onsite physician supervision. The Texas Medical Board sent Mr. Balasa a brief email stating that physicians are permitted

under Texas law to delegate to knowledgeable and competent unlicensed professionals such as medical assistants the starting/initiating of IVs.

## **California**

Mr. Balasa assisted the California Society of Medical Assistants in formulating a strategy for responding to a proposed amendment to the regulations of the Medical Board of California (MBC) that would require medical assisting certification programs to be accredited by the National Commission for Certifying Agencies (NCCA) in order for their certificants to meet the MBC requirements for being a “qualified medical assistant” and thus able to instruct other medical assistants on the job.

## **Connecticut**

The Connecticut Society of Medical Assistants has been working for over twenty-five years to get the law changed so that physicians would be allowed to delegate to appropriately educated and credentialed medical assistants the administration of injections—or even just vaccinations. A bill was raised in 2020 that would permit certain medical assistants to be delegated vaccinations by physicians and nurse practitioners. In February of 2021 Mr. Balasa submitted written and virtual oral testimony and watched hours of testimony presented to a joint legislative committee of the Connecticut legislature.

The bill passed the Connecticut Senate but did not advance out of committee in the CT House of Representatives. Having heard the testimony opposing the bill during the joint legislative committee hearing, Counselor Balasa offered to the lobbyists for the Connecticut Society of Medical Assistants revised wording for the next iteration of the bill for the next Connecticut legislature.

## **Tennessee**

A bill was introduced at the behest of Vanderbilt University Medical Center because (it is asserted) Tennessee law did not permit medical assistants working in ambulatory outpatient hospital clinics to be delegated certain standard medical assisting tasks. In this legislation “ambulatory outpatient hospital clinic” is defined as follows:

(1) ... means a clinic or physician office that is owned and operated by a hospital licensed under this title and that provides treatment to patients who are not admitted as inpatients to the hospital.

Mr. Balasa participated in a conference call with leaders of the Tennessee Society of Medical Assistants and expressed his concerns about the current wording of the bill. He put his concerns into writing in a memorandum to the Tennessee Society leaders.

The bill was enacted without significant opposition.

## **Alabama**

Counsel Balasa was asked whether Alabama law permits physicians to assign to medical assistants the taking of vital signs and other tasks performed in the homes of patients. His response was that Alabama law did not forbid medical assistants performing certain tasks in the homes of patients as authorized by the overseeing/delegating physician.

## **Scope of Practice Related to COVID-19—Performing Nasopharyngeal Swabbing and Administering COVID-19 Vaccinations**

### ***Federal/National***

#### **CMS Final Rule Supports Medical Assistants Performing Nasopharyngeal Swabbing**

July 8, 2020

The Centers for Medicare & Medicaid Services (CMS) published an interim final rule with comment period entitled “Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency” (85 FR 19247 through 19253) in the April 6, 2020, *Federal Register*. Its language supports Mr. Balasa’s legal position that medical assistants are permitted to perform nasopharyngeal swabbing to test for COVID-19. Note the following excerpts from this CMS rule:

Even if the patient is confined to the home because of a suspected diagnosis of an infectious disease as part of a pandemic event ... a nasal or throat culture ... could be obtained by an appropriately-trained medical assistant or laboratory technician. ...

Services furnished by auxiliary personnel (such as nurses, medical assistants, or other clinical personnel acting under the supervision of the [rural health clinic] or [federally qualified health center] practitioner) are considered to be incident to the visit and are included in the per-visit payment.

#### **Centers for Disease Control and Prevention (CDC): Medical Assistants Are “Vaccinators”**

The Centers for Disease Control and Prevention (CDC) published *COVID-19 Vaccination Program Interim Playbook for Jurisdiction Operations* (2nd version). In this publication medical assistants are classified as “vaccinators” in regard to the COVID-19 Vaccination Program. This is a significant recognition of the medical assisting profession and bolsters arguments at the state and federal levels that knowledgeable and competent medical assistants should be delegated the administration of COVID-19 vaccinations under licensed provider authority.

#### **National Council of State Boards of Nursing (NCSBN): Medical Assistants May Administer COVID-19 Vaccinations**

In its December 15, 2020, Policy Brief “COVID-19 Vaccine Administration,” the National Council of State Boards of Nursing (NCSBN) stated that knowledgeable and competent “certified medical assistants” may be delegated COVID-19 vaccine administration:

Waivers by the [state or territorial] governor or [board of nursing] may be necessary to authorize an RN or LPN/VN to delegate vaccine administration to *certified medical assistants*, medication aides, and emergency medical technicians/paramedics that have been trained in COVID-19 informed consent, vaccine administration, COVID-19 vaccine side effects, emergency management of adverse reactions and the principles of reconstitution and proper storage. [Emphasis added.]

The inclusion of “certified medical assistants” in this important NCSBN document strengthens arguments for the legal legitimacy of medical assistants performing COVID-19 vaccinations.

## ***State***

### **Tennessee**

A Tennessee educator asked Counsel Balasa whether medical assistants are permitted to administer COVID-19 vaccinations under TN law. Mr. Balasa opined that a 2018 policy statement of the Tennessee Board of Medical Examiners **permits physicians** to delegate to knowledgeable and competent unlicensed allied health professionals such as medical assistants working under their authority and supervision the administration of certain types of injections, which would include COVID-19 vaccinations.

He also discovered that, on December 4, 2020, Tennessee governor Bill Lee issued *Executive Order No. 68: An Order to Facilitate the Continued Response to COVID-19 by Increasing Health Care Resources and Capacity*. In part, this order authorizes “**medical assistants certified by the American Association of Medical Assistants** [to be delegated] tasks that would normally be within the practical nurse scope of practice, including, but not limited to, administration of COVID-19 vaccinations.” Tasks delegable to certified medical assistants “are required to have been ordered and authorized by a Tennessee licensed practitioner with prescriptive authority” and “performed **under the supervision of the delegating registered nurse**” (emphasis added).

### **Maryland**

On January 1, 2021, the Maryland Department of Health issued an amended directive and order that, in part, permits the following to administer COVID-19 vaccinations:

- D. Other individuals provided that:
  - i. Each individual has successfully completed training on the administration of COVID-19 vaccines;
  - ii. Qualified supervisory personnel at the vaccination site reasonably determine that each individual is able to administer COVID-19 vaccines under appropriate supervision; and

iii. The individual administers the COVID-19 vaccine at the vaccination site under the reasonable supervision of qualified supervisory personnel.

It is Mr. Balasa's opinion that this category of individuals allowed to administer COVID-19 vaccinations includes knowledgeable and competent medical assistants who have completed "training on the administration of COVID-19 vaccines."

### **New Jersey**

On January 6, 2021, the New Jersey Department of Health issued an executive order and directive stating that "health care providers," including "ancillary healthcare personnel," are "authorized to administer COVID-19 vaccines that are approved or authorized by the United State Food and Drug Administration (FDA) at any vaccination site established within the state" as long as the healthcare providers are trained in and are competent in administering COVID-19 vaccinations. It is Mr. Balasa's opinion that "ancillary healthcare personnel," and therefore "health care providers," include knowledgeable and competent medical assistants.

### **New York**

CEO Balasa wrote a letter to New York Governor Cuomo requesting that he issue an executive order suspending the restrictions on tasks delegable to medical assistants. Mr. Cuomo issued an executive order (March 7, 2020) allowing unlicensed allied health professionals such as medical assistants to receive training and be assigned the performing of nasopharyngeal swabbing for COVID-19 testing under appropriate supervision.

### **Iowa**

An Iowa educator was asked by the local health department whether medical assistants were allowed to administer COVID-19 vaccinations under registered nurse supervision. The educator asked Mr. Balasa whether medical assistants performing COVID-19 vaccinations under RN supervision was legal under Iowa law. He responded that the weight of Iowa nursing law supports the conclusion that RNs are permitted to delegate to competent medical assistants the administration of COVID-19 vaccinations under direct/onsite RN supervision.

## **Scope of Practice Related to Telehealth**

### **CDC Affirms Medical Assistants' Role in Telehealth**

July 22, 2020

In a recent guidance on how to expand access to health care during the COVID-19 pandemic, the Centers for Disease Control and Prevention affirmed that medical assistants and other health care professionals are permitted to interact with patients by several means. Note the following from this guidance:

## Telehealth Modalities

Several telehealth modalities allow [health care personnel] and patients to connect using technology to deliver health care:

- **Synchronous:** This includes real-time telephone or live audio-video interaction typically with a patient using a smartphone, tablet, or computer.
  - In some cases, peripheral medical equipment (e.g., digital stethoscopes, otoscopes, ultrasounds) can be used by another HCP (e.g., nurse, *medical assistant* [emphasis added]) physically with the patient, while the consulting medical provider conducts a remote evaluation.
- **Asynchronous:** This includes “store and forward” technology where messages, images, or data are collected at one point in time and interpreted or responded to later. Patient portals can facilitate this type of communication between provider and patient through secure messaging.
- **Remote patient monitoring:** This allows direct transmission of a patient’s clinical measurements from a distance (may or may not be in real time) to their healthcare provider.

## American Medical Association

Additionally, in its *Telehealth Implementation Playbook*, the American Medical Association listed ways in which medical assistants can use telehealth to help their overseeing physician/provider:

### **MEDICAL ASSISTANT (MA) OR PATIENT CARE TECH (PCT)**

Be familiar with the conditions and situations that are appropriate for a telehealth visit

Educate patients on telehealth expectations

Support patient troubleshooting related to platform pre-visit and during visit

Let [the] doctor know when a patient has “checked in” for a telehealth appointment (if platform does not include this feature)

## Public Affairs and *Legal Eye* Highlights

Mr. Balasa has continued to write a Public Affairs article for each issue of *CMA Today* and semimonthly posts for his *Legal Eye: On Medical Assisting* blog. The following are the most noteworthy articles and posts since (approximately) the 2019 AAMA Annual Conference that are not mentioned specifically elsewhere in this report.

### Public Affairs Articles

- ["Basics of Not-for-Profit and Tax-Exempt Law"](#)
- ["Federal Policy and the Pandemic: How the Pandemic and Changes in Federal Policy Have Expanded Medical Assistants' Scope of Practice"](#)
- ["Medical Assistants Answer the Call to Work in Acute Care Settings: What Is Their Scope of Practice?"](#)
- ["Medical Assistants' Role in Remote Physiologic Monitoring Services"](#)
- ["Nurse Practitioner Delegation in South Carolina"](#)

### **Legal Eye Posts**

- ["Permissible Delegation to Montana Medical Assistants"](#)
- ["CMA \(AAMA\) Certification Outside the United States"](#)
- ["Legal Requirements for Venipuncture in Washington"](#)
- ["Delegation of COVID-19 Vaccinations in Oregon: Part I"](#)
- ["Delegation of COVID-19 Vaccinations in Oregon: Part II"](#)
- ["Medical Assistants Deserve COVID-19 Vaccinations as Health Care Workers"](#)
- ["Permissible Delegation of IV Infusions in Florida"](#)
- ["The Delegation of Off-Site Blood Draws in WA"](#)
- ["Permissible Delegation of Influenza Vaccination Administration in Michigan"](#)
- ["New Jersey Prescription Monitoring Program: Medical Assistants as Delegates"](#)
- ["Suicide Safety Plan Delegation"](#)
- ["Medical Assistants in Ambulatory Surgery Centers"](#)
- ["Meeting the Standard of Care"](#)
- ["New Alaska Standards for Delegation of Certain Duties"](#)
- ["Medical Assistants and Vaccination Administration under Pharmacists"](#)
- ["Medical Assistants Working with Dually Licensed Providers"](#)
- ["Permissible Initialisms for Student Medical Assistants"](#)
- ["Medical Assistants and Fetal Nonstress Test Monitors"](#)

### **House Legal Counsel Responsibilities**

Legal Counsel Balasa has continued to provide assistance to state societies on the legalities and practicalities of (1) holding virtual house of delegates or general assembly meetings; (2) voting by remote means for state society officers, and delegates and alternates to the AAMA House of Delegates. The laws governing these issues vary from state to state.

He has continued to help constituent state societies and component chapters with issues involving bylaws, parliamentary procedure, suspected or actual misappropriation of funds, records retention, obtaining an Employer Identification Number/Taxpayer Identification Number (EIN/TIN), incorporation, responding to questions from the Internal Revenue Service, and the ineligibility of states and chapters for state sales tax exemption. He has sent cease and desist letters to medical assistants who are using the CMA (AAMA) credential and are not CMAs

(AAMA), and to former CMAs (AAMA) who are using the credential even though their CMA (AAMA) is not current.

### ***Assisting State Societies with Legal Issues Regarding (1) Hotel Contracts and (2) Conducting General Assemblies/Houses of Delegates by Electronic Means***

*(In reading the following, please keep in mind that the state not-for-profit corporations acts vary from state to state—sometimes in major ways. For example, some state acts permit electronic meetings, and some do not. Some state acts permit voting by electronic means or by traditional mail, but do not permit electronic meetings. Also, the bylaws and other governance documents of the state societies differ from each other. Finally, hotel contracts are not totally standardized, and often contain widely differing provisions.)*

*(The specific titles of the state statutes governing not-for-profit entities vary from state to state. In the following, all not-for-profit statutes will be referred to as “state not-for-profit corporations act.”)*

#### **Michigan**

The Michigan Not-for-Profit Corporations Act allows members of not-for-profit associations to participate in meetings “by a conference telephone or other means of remote communication that permits all persons that participate in the meeting to communicate with all the other participants.” Unless prohibited by the association’s bylaws, “the board of directors may hold a meeting of...members that is conducted solely by means of remote communication.”

#### **New York**

Mr. Balasa helped the New York State Society of Medical Assistants (NYSSMA) weigh the options of holding or cancelling its spring 2020 annual meeting. Because of the recommendations of the Centers for Disease Control and Prevention (CDC), the hotel released the NYSSMA from its contractual obligations with no cancellation penalty.

#### **Missouri**

Counselor Balasa advised the leaders of the Missouri Society of Medical Assistants to “write to the hotel and indicate that, as an association of health professionals, you want to make sure the hotel takes all reasonable measures to lessen the likelihood of exposure to COVID-19 for the attendees. You should request an email from the hotel affirming receipt of your email and assuring you that it will take reasonable measures to protect the attendees from coronavirus exposure, even though it cannot offer any guarantees.” The meeting was subsequently postponed because of the worsening of the pandemic.

#### **Ohio**

Mr. Balasa participated in a conference call with the officers of the Ohio State Society of Medical Assistants (OSSMA) and discussed the pertinent provisions of the Ohio Not-for-Profit Corporations Act and the OSSMA Bylaws regarding the conducting of an annual meeting by

electronic means. He attended by telephone the virtual OSSMA House of Delegates meeting May 9, 2020, and was impressed by how well it was run. He commended the Speaker, Vice Speaker, and other officers of the OSSMA.

## **Pennsylvania**

The Pennsylvania Society of Medical Assistants was contemplating rescheduling its May 2020 annual meeting but was concerned about meeting the AAMA deadline for submitting the names of delegates and alternates to the AAMA House of Delegates (HOD). Mr. Balasa informed an officer of the Pennsylvania Society that—at the recommendation of the Speaker and Vice Speaker of the AAMA HOD—the AAMA Board of Trustees (BOT) moved the deadline for submission of names of delegates and alternates to July 1, 2020. The AAMA BOT also decided that state societies who are not able to meet the July 1 deadline will have the usual opportunity to have the HOD vote to seat their delegates at the opening of the AAMA House of Delegates.

## **Florida**

The Bylaws of the Florida Society of Medical Assistants (FSMA) contain the following language:

### Section 4. Meetings

A. The Annual Meeting of the General Assembly shall be held during the Annual Meeting of FSMA.

B. Special meetings of the General Assembly may be held at the call of the Executive Council or the Speaker of the General Assembly by written notice mailed/emailed/posted on the FSMA website to each member of FSMA at least thirty (30) days in advance of such meeting.

### Section 5.

In the event of an administrative emergency, declared as such by the Executive Council, the Executive Council may take a vote of the membership by email and FSMA website announcement instead of calling a special meeting of the General Assembly. Ballots shall be sent and returned by certified mail with ample time, not less than fifteen (15) days, allowed for reply.

Counselor Balasa researched the Florida Not-for-Profit Corporations Act and expressed his opinion that the procedures set forth in the Florida SMA Bylaws are permitted by the Florida Act.

## **Virginia**

Mr. Balasa explained to an officer of the Virginia Society of Medical Assistants what type of “remote participation in annual and special meetings” is permitted by the Virginia Not-for-Profit Corporations Act.

## **Texas**

At the request of officers of the Texas Society of Medical Assistants, Mr. Balasa analyzed the Bylaws of the Texas SMA and the Texas Not-for-Profit Corporations Act to determine whether the provisions of the Bylaws are consistent with the Act. His opinion was that the Bylaws language sets forth a procedure that is permitted by the Texas law.

### **Tennessee**

Legal Counsel Balasa informed a leader of the Tennessee Society of Medical Assistants about the non-face-to-face meeting options for a membership meeting (such as a house of delegates or a general assembly) that are allowed by the Tennessee Not-for-Profit Corporations Act.

### **Illinois**

Mr. Balasa provided the officers of the Illinois Society of Medical Assistants with the options available under the Illinois Not-for-Profit Corporations Act for electronic meetings and electronic voting for membership assemblies and boards of directors.

### **North Carolina**

Mr. Balasa reviewed the “impossibility clause” in the North Carolina Society of Medical Assistants’ contract with the hotel at which its annual meeting (originally scheduled for April of 2020) was to be held. He also explained the “action by written ballot” provisions of the North Carolina Not-for-Profit Corporations Act.

### **Utah**

Counsel Balasa informed a leader of the Utah Society of Medical Assistants that the Utah Not-for-Profit Corporations Act authorizes meetings by electronic means.

### **South Carolina**

Mr. Balasa clarified for the Executive Committee of the South Carolina Society of Medical Assistants that the language in its Bylaws about conducting business, and electing officers and delegates and alternates to the AAMA House of Delegates, does not violate the South Carolina Not-for-Profit Corporations Act.

### **Indiana**

Counselor Balasa offered his opinion that language in the Indiana Society of Medical Assistants Bylaws regarding elections and terms of office is consistent with Indiana law.

### **Oregon**

Mr. Balasa answered questions from leaders of the Oregon Society of Medical Assistants about what types of virtual meetings are permitted by the Oregon Not-for-Profit Corporations Act. The following excerpt from the Act answered many of the OR SMAs’ questions:

65.205 Participation in meeting by remote communication. (1)(a) Members that are not physically present for a membership meeting may participate in, be deemed present in person

at, and vote at the membership meeting if the board of directors authorizes participation by remote communication. Participation by remote communication is subject to guidelines and procedures that the board adopts.

(b) Before a board of directors may authorize members to participate in a membership meeting by remote communication, the corporation shall implement measures to:

(A) Verify that a person that is participating in the membership meeting by remote communication is a member; and

(B) Ensure that a member may participate by remote communication in an effective manner.

### **Wisconsin**

A leader of the Wisconsin Society of Medical Assistants asked Mr. Balasa procedural questions about elections of its 2020-2021 officers and of the delegates and alternates to the 2020 AAMA House of Delegates. His analysis of the Wisconsin SMA Bylaws and the Wisconsin Not-for-Profit Corporations Act provided answers to these questions.

### **California**

Leaders of the California Society of Medical Assistants consulted Legal Counsel Balasa about several procedural matters involving their rescheduled, virtual annual meeting of the CA SMA General Assembly (GA). One of these questions involved criteria for determining which matters of business could be placed on the agenda of the rescheduled GA meeting.

### **Montana**

Mr. Balasa offered his opinion about election of officers of the Montana Society of Medical Assistants, and delegates and alternates to the AAMA House of Delegates. As was the case with questions from other state societies, the answer was predicated on the language of both the Montana SMA Bylaws and the Montana Not-for-Profit Corporations Act.

### **Nebraska**

The Nebraska Society of Medical Assistants asked Counsel Balasa about holding a session of its House of Delegates by electronic means. He responded as follows:

Based on the Nebraska SMA Bylaws and the language of the Nebraska Not-for-Profit Corporations Act, it is my legal opinion that the Nebraska SMA is permitted to elect delegates and alternates to the AAMA House of Delegates, and to elect Nebraska SMA officers, by holding a House of Delegates (HOD) meeting by teleconferencing or videoconferencing as long as each voting member of the HOD is able to hear the proceedings and have an opportunity to speak.

### **New Hampshire**

Mr. Balasa affirmed the legality of the decision of the New Hampshire Society of Medical Assistants to conduct elections by electronic means.

### **Arizona and Washington**

Counselor Balasa also provided assistance to the Arizona and Washington State SMAs in regard to the above issues.

### **State Societies Disbursing Funds to Needy Members**

CEO Balasa received a question from a state society leader about the society making disbursements from its reserves to needy members who are out of work or have suffered other financial catastrophes. He responded as follows:

As you have stated, the Society is a not-for-profit professional association exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code (IRC). The money it receives (such as dues) must be spent to fulfill its tax-exempt purposes—the primary ones being the provision of education and other professional benefits for medical assistants and the advancement of the medical assisting profession. No association assets are permitted to inure to the benefit of individual members. Note the following from a relevant page from an online IRS document:

Other examples of inurement include:

- *Providing financial assistance and welfare benefits for members* (emphasis added)
- Paying members for expenses incurred in defending, and judgments rendered in, malpractice suits
- Owning a copyright on a product sold, and distributing the royalties to, members
- Distribution of non-member income to members in the form of rebates or reduced dues
- Rebates to members of amounts paid by both members and nonmembers for space rental at a trade show.

There is a *de minimis* (in other words, small enough to not violate the law) exception to the non-inurement principle. It would be permissible, in my legal opinion, for the Society to set aside a small amount of funds (up to \$5,000, for example) in a separate account as an emergency welfare fund for members who are experiencing a severe financial hardship. There would have to be guidelines for determining which financial hardships are serious enough to justify a disbursement from this fund. There would have to be an application process for members desiring some financial assistance. There would have to be a limit on how much could be disbursed from the fund each year, and also a limit on how much any one member would be permitted to receive. Finally, the authorization of a disbursement would have to be done by a four- or five- person committee of Society leaders, not by one or two Society leaders, and the recipient should be required to pay back the amount disbursed when able to do so.

### ***Partnerships***

**NCCRT award**

The American Association of Medical Assistants is an “honoree recipient of the *2021 80% in Every Community National Achievement Awards* in the professional associations category.” This award was bestowed by the National Colorectal Cancer Roundtable (NCCRT). Mr. Balasa, with invaluable assistance from other staff members, was pleased to assist Partnership Strategy Team Manager Monica Case with the preparation of the submission form and documentation for this award.

### **AMA Annual Meeting**

The AAMA is an official observer to the American Medical Association (AMA) House of Delegates. Legal Counsel Balasa represented the AAMA at the June 2021 and 2020 virtual Annual Meetings, and the November 2020 virtual Interim Meeting, of the AMA House of Delegates and their respective reference committee hearings.

In May of 2021 the American Academy of Physician Assistants (AAPA) voted to change the name of its professionals from “physician assistants” to “physician associates.” This action by the AAPA was a major issue at the 2021 AMA Annual Meeting. A resolution opposing this AAPA initiative was passed by the AMA House of Delegates.

### **AAMA Involvement in New CDC-CASAT FASDs Grant**

Beginning in 2015 the American Association of Medical Assistants was the sole subgrantee under a three-year grant awarded by the Centers for Disease Control and Prevention (CDC) to the Center for the Application of Substance Abuse Technologies (CASAT) of the University of Nevada, Reno (UNR). This grant was part of a coordinated national effort to prevent fetal alcohol spectrum disorders (FASDs) by preparing medical assistants to assist their overseeing providers in reducing alcohol-exposed pregnancies.

In 2019 the CDC awarded another grant to the CASAT of the University of Nevada, Reno, with the AAMA as the sole subgrantee. The purpose of this new grant project is as follows:

to develop, deliver, disseminate, and evaluate trainings and materials for medical assisting students and practitioners on how to conduct alcohol screening and brief intervention (SBI). These activities will teach medical assistants to assist their overseeing providers to identify patients’ risky drinking behaviors, to provide health education to change those behaviors (especially among women of childbearing age), and to prevent alcohol exposed pregnancies (AEPs) and FASDs. These activities will be important in promoting primary prevention and sustained practice change. In addition, CASAT’s proposed translation and development of products in culturally appropriate in-person and online versions (including language translation) will facilitate implementation of these services by medical assistants and their providers working with underserved populations (e.g., non-English-speaking patients).

AAMA volunteer leaders and staff continue to work with CASAT staff to accomplish the objectives of the CDC grant.

## ***Career Professional Development Series***

Mr. Balasa wrote the career professional development series module “The Patient Navigation/Patient Advocacy/Patient Care Coordination Model: Its Philosophy, Characteristics, and Effectiveness” for the AAMA Population Health Module digital badge program. This module will be submitted for two (2) AAMA CEUs. He also wrote “The Expanding Field of Health Coaching: An Ideal Role for Credentialed Medical Assistants.” This module will be submitted for one (1) AAMA CEU.

He is writing continuing education unit (CEU) questions for other modules and will do pre-editing of modules before they are given to the Marketing and Communications Department for final editing and formatting.

## ***ABC-P Accreditation***

On February 26, 2021, the AAMA Assessment-Based Certificate-Pediatrics (ABC-P) was awarded accreditation by I.C.E. under *ANSI/ICE 1100-2019, Standard for Assessment-Based Certificate Programs*. Mr. Balasa had assisted the Continuing Education Board (CEB) and Manager Mickowski prepare the application for accreditation. The ABC-P is the only medical assisting assessment-based certificate accredited under *ICE 1100*. This fact will provide a noteworthy marketing niche for the ABC-P.

## **2020 AAMA Annual Conference**

### **Cancellation of the 2020 AAMA Annual Conference**

Mr. Balasa and Director Langley provided information to the Board of Trustees (BOT) about options for the scheduled September 2020 AAMA Annual Conference, including a May 23, 2020 (revised July 2, 2020), summary of the contract with the Hilton Orlando Lake Buena Vista. The BOT decided to cancel the AAMA Annual Conference. The AAMA did not incur any costs from the cancellation.

### **Extension of the Terms of the 2019-2020 Board of Trustees Members**

At the request of the Board of Trustees, Legal Counsel Balasa analyzed the legalities of allowing the current BOT members to remain in office for another AAMA year. In his June 30, 2020, memorandum to the BOT, he concluded that Illinois law and the AAMA Bylaws did not permit the House of Delegates (HOD) to authorize the BOT members to remain in office for another AAMA year by means of a resolution (that requires a majority vote). He reviewed the governance documents of ten health and allied health associations “in regard to the terms of officers and trustees/directors being extended because of emergencies...that prevent board

members from performing their usual responsibilities.” His findings were transmitted to the BOT in a July 3, 2020, email.

He then researched the legal permissibility of the HOD extending the terms of office of the BOT members by means of amendments to the AAMA Bylaws. In his July 5, 2020, memorandum to the BOT, he concluded that the HOD could authorize extended terms for BOT members by means of amendments to the AAMA Bylaws. (Amendments to the AAMA Bylaws require a two-thirds vote by the House of Delegates.)

CEO Balasa drafted proposed Bylaws amendments (PBAs) (and rationales) extending the terms of the current BOT members for another AAMA year. After approval of the PBAs by the BOT, he drafted a memo to the delegates, alternate delegates, and state society officers setting forth the PBAs and their rationales. All the PBAs were approved unanimously by the HOD.

### **Certifying Board**

Mr. Balasa has assisted Director of Certification Gottwaldt with submitting continuing accreditation applications and annual reports to the National Commission for Certifying Agencies (NCCA) and the International Accreditation Service (IAS) that provides accreditation under *ISO/IEC 17024:2012(E): Conformity assessment — General requirements for bodies operating certification of persons*. The Certifying Board of the AAMA and its CMA (AAMA) program are one of only five certifying bodies/programs that hold joint National Commission for Certifying Agencies (NCCA) and IAS *ISO 17024* accreditation.

### **Presentations, Papers, and Positions of Leadership**

#### ***Education and Accreditation—CAAHEP, its Committees on Accreditation (CoAs), and Sponsoring and Related Organizations***

##### **Council for Higher Education Accreditation (CHEA) Hearing**

On March 9, 2021, Mr. Balasa represented the Commission on Accreditation of Allied Health Education Programs (CAAHEP) at a hearing on continuing recognition of CAAHEP by the Council for Higher Education Accreditation (CHEA), the body that recognizes CAAHEP as an accrediting body. Also representing CAAHEP were the CAAHEP President, Executive Director, and Chair of the Recommendation Review Committee. The CHEA decision about continuing recognition of CAAHEP will be made in September of 2021.

(CAAHEP is recognized by CHEA but not by the United States Department of Education (USDE) because CAAHEP is not a gatekeeper for student financial assistance under Title IV of the Higher Education Act. ABHES is recognized by the USDE but not by CHEA.)

##### **Election as President of CAAHEP and Appointment to CAAHEP Executive Director Search Committee**

CEO Balasa continues to serve as the AAMA commissioner to CAAHEP and as a director on the CAAHEP Board of Directors. He was elected as President of CAAHEP and assumed office July 1, 2021. The CAAHEP President presides at all meetings of the Commission and the Board of Directors. The term of office is one year, and the President may be reelected.

Jenny Spegal, CMA (AAMA), MT, MEd, former Chair of MAERB and the MAERB commissioner to CAAHEP, was elected Vice President of CAAHEP. Mr. Balasa looks forward to working with Ms. Spegal in these new roles.

CAAHEP Executive Director Kathy Megivern will be retiring December 31, 2021. Mr. Balasa was appointed to the CAAHEP Executive Director Search Committee.

### **Virtual Presentation for LEAARC**

On June 22, 2021, Legal Counsel Balasa presented “Legal Principles for CAAHEP Committees on Accreditation, Antitrust, International Accreditation, Interfaces between Accreditation and Certification, and ‘New’ United States Department of Education Rules” for the Lactation Accreditation and Approval Review Committee (LEAARC). LEAARC is a committee on accreditation of CAAHEP.

### **NA2RC Presentation**

Mr. Balasa presented “Legal Concerns for Respiratory Therapy Practitioners, Educators, and Accreditation and Certification Bodies” for the virtual annual conference of the National Association of Associate Degree Respiratory Care (NA2RC) April 20, 2021. There is a disagreement within the respiratory therapy profession about whether the entry-level education should be at the associate degree or bachelor’s degree level.

### **Presentation for the 2019 and 2020 NN2 Annual Conferences**

Mr. Balasa gave the presentation “Antitrust Issues for Health Career Programs and Schools” to the annual conference of the National Network of Health Career Programs in Two-Year Colleges (NN2) in September of 2019.

On October 1, 2020, he gave a virtual presentation entitled “The USDE Stance on Accrediting Bodies and Anticompetitive Collusion with Testing Bodies” for the annual conference of NN2.

### **Presentation for CoA-NDT**

On February 29, 2020, Legal Counsel Balasa met with and presented to the governing body of the Committee on Accreditation for Education in Neurodiagnostic Technology, a committee on accreditation (CoA) of CAAHEP, at its meeting in Tampa, Florida. He addressed good governance practices for CoA boards, work emails and open records laws, and antitrust issues for health career programs and schools.

### **Presentations for the JRC-CVT Annual Meeting**

Legal Counsel Balasa presented “Good Governance Practices for Committee on Accreditation (CoA) Board Meetings; Work Emails and Open Records Laws; Antitrust Issues for Health Career Programs and Schools” for the Annual Meeting of the Joint Review Committee for Education in Cardiovascular Technology (JRC-CVT) in November of 2019. The JRC-CVT is a CoA of CAAHEP.

## ***Certification—I.C.E., ATP, and Similar Organizations***

### **Presentations for and Attendance at I.C.E. Annual Exchange and Other I.C.E. Roles**

Legal Counsel Balasa attended the Institute for Credentialing Excellence (I.C.E.) Annual Exchange in November of 2019. He and two colleagues copresented a three-hour interactive education session entitled “Accommodations for High-Stakes Testing: Legal, Operations, and Practical Considerations.” He also attended a session on obtaining and maintaining accreditation under *ISO 17024* by the International Accreditation Service (IAS).

He has served and is serving on the I.C.E. Government Affairs Committee for the 2019-2020, and 2020-2021, I.C.E. years. Mr. Balasa has been appointed to the Technical Advisory Group for the revision of the *NCCA Standards for the Accreditation of Certification Programs*.

Mr. Balasa will be a copresenter for “The Americans with *Diagnoses Act?* Legal and Practical Implications for Test Accommodations” at the 2021 I.C.E. Annual Exchange in November of 2021.

### **I.C.E. Accreditation Services Council (ASC)**

CEO Balasa was appointed to complete a term on the Institute for Credentialing Excellence Accreditation Services Council (ASC). This body makes recommendations to the I.C.E. Board of Directors about policies regarding NCCA accreditation, accreditation under *ISO 17024* by the International Accreditation Service (IAS), and assessment-based certificate accreditation under *ICE 1100*.

### **I.C.E. Subgroup on USDE Disclosure Regulation**

Counsel Balasa was appointed to the Institute for Credentialing Excellence (I.C.E.) Subgroup on the United States Department of Education (USDE) regulation (effective July 1, 2020) that requires schools and their programs leading to licensure or mandatory certification to publicly disclose three (3) lists for each such program: (1) states for which the curriculum meets the licensing requirement; (2) states for which the curriculum does not meet the state licensing requirement; (3) states for which the school/program has not made a determination whether the program meets the licensing requirement. This regulation is important for both certifying bodies and programmatic accrediting bodies because accredited programs are asking certifying bodies whether they have current information about the licensing or mandatory certification laws for the profession in each American jurisdiction.

### **Association of Test Publishers (ATP) Annual Conference Presentation**

Legal Counsel Balasa co-presented “Test Accommodations: The Perils of the ‘Approve Everything’ Model” April 29, 2021, at the virtual annual conference of the Association of Test Publishers (ATP).

### ***Public Policy, Scope of Practice, and Legal Issues***

#### **Presentation at Super Regional Leadership Conference**

Mr. Balasa will present “Meeting Structure and Protocol” at the inaugural AAMA Super Regional Leadership Conference in the Cincinnati, Ohio, area August 6 and 7, 2021.

#### **Acceptance of Article for Publication by CLEAR**

Mr. Balasa’s article “The Professional Less-Regulation Movement: How Should Professions and Regulators Respond?” was accepted for publication by the Council on Licensure, Enforcement, and Regulation (CLEAR).

#### **First Healthcare Compliance Webinar and Podcast**

Legal Counsel Balasa presented a webinar for First Healthcare Compliance (FHC) entitled “Expanded Roles and Duties for Medical Assistants during the COVID-19 Era” on April 13, 2021. In addition, he did a podcast for FHC promoting the webinar. According to FHC, there was a large number of registrants for this webinar in comparison with other FHC webinars. Mr. Balasa received positive evaluations and was given an open invitation by FHC to present another webinar of his choice in the future.

#### **“Robert’s Rules of Order for Virtual Meetings” Virtual Webinar Presentations**

On March 20, 2021, Legal Counsel Balasa presented “Robert’s Rules of Order for Virtual Meetings” for the Washington State Society of Medical Assistants. He presented the same program March 27, 2021, for state society leaders at the request of the Leadership Development Strategy Team.

#### **Health Professions Network (HPN) Advocacy Workshop Presentation**

Mr. Balasa presented “How the Health Professions Should Respond to the Professional Less-Regulation Movement” for the virtual Health Professions Network (HPN) Advocacy Workshop March 30, 2021. His presentation was well received, and he was asked to consider serving on the HPN Board of Directors. (Former Associate Executive Director Anna Johnson served on the HPN Board for several years before her retirement.)

#### **Virginia Society of Medical Assistants Virtual Presentation**

Counsel Balasa presented “Scope of Practice Developments for the Medical Assisting Profession” for the Virginia Society of Medical Assistants April 10, 2021.

### **AAACN Annual Conference Presentation**

Legal Counsel Balasa gave a virtual presentation entitled “Tasks Delegable to, and Performable by, Medical Assistants” for the American Academy of Ambulatory Care Nursing (AAACN) Annual Conference in July of 2020. This presentation was converted into two Public Affairs articles for *CMA Today*.

### **Legal and Scope of Practice Presentations**

Legal Counsel Balasa gave audio or video presentations of: “Good Board Practices and the Significance of Bylaws” for the Tri-County Chapter of the Ohio State Society of Medical Assistants and the Massachusetts Society of Medical Assistants; and “Tasks Delegable to, and Performable by, Medical Assistants” for the Indiana Society of Medical Assistants and the Rasmussen College-Romeoville, Illinois, College Advisory Board.

### **FARB Annual Forum**

Legal Counsel Balasa was one of the presenters in a panel discussion on the anti-regulatory movement at the January 2020 Annual Forum of the Federation of Associations of Regulatory Boards (FARB). The theme was “20/20 Vision: A Vision for the Future of Smart Regulation.”

### **PAHCOM Journal Article**

Mr. Balasa was asked to write an article for the Professional Association of Health Care Office Management (PAHCOM) Journal. He will be writing about how the scope of practice for medical assistants has changed because of the COVID-19 pandemic and the consequent changes in federal and state law.