



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

Exclusion of Gender Alterations from the Medical Benefits Package

AGENCY: Department of Veterans Affairs.

ACTION: Petition for Rulemaking and request for comments.

SUMMARY: On May 9, 2016, the Department of Veterans Affairs (VA) received a Petition for Rulemaking petitioning VA to amend its medical regulations by removing a provision that excludes “gender alterations” from its medical benefits package. The effect of the amendment sought by the petitioners would be to authorize gender alteration surgery as part of VA care when medically necessary. VA seeks comments on the petition to assist in determining whether to amend the medical benefits package and eliminate the exclusion of gender alteration from VA’s medical benefits package.

DATES: Comments must be [received/submitted] on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through

<http://www.regulations.gov>; or by mail or hand delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “Notice of Petition for Rulemaking and request for comments - Exclusion of Gender Alterations from the Medical Benefits Package.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) During the comment period,

comments may also be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Michael Shores, Director, Office of Regulation Policy and Management, Office of the Secretary, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC, 20420; (202) 461-4921.

SUPPLEMENTARY INFORMATION: Section 1710 of title 38 United States Code (U.S.C.) requires VA to “furnish hospital care and medical services which the Secretary determines to be needed” for eligible veterans. In 1999, VA promulgated 38 CFR 17.38, establishing the Department’s medical benefits package for veterans enrolled in VA’s health care system. 64 FR 54207 (Oct. 6, 1999). The regulation describes the types of medical care and services available for such veterans. Care referred to in the medical benefits package is provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. 38 CFR 17.38(b). Paragraph (c) of that section provides a list of medical services the medical benefits package does not include. Paragraph (c)(4) explicitly excludes “gender alterations” from the medical benefits package.

On May 9, 2016, VA received a Petition for Rulemaking petitioning VA to amend its medical regulations by removing the exclusion of “gender alterations” from its medical benefits package. The petition asks VA to remove 38 CFR 17.38(c)(4), allowing VA to provide gender alteration surgeries.

As part of its ongoing consideration of the petition, VA now seeks public comment on the petition and on whether “gender alterations” should be included in the

medical benefits package. On February 22, 2018, the Department of Defense issued a report that considered the efficacy of gender alteration surgery as treatment for gender dysphoria. That report noted considerable scientific uncertainty and overall lack of high quality scientific evidence demonstrating the extent to which transition-related treatments such as sex reassignment surgery remedy the multifaceted mental health problems associated with gender dysphoria.

Commenters are specifically invited to address the following questions:

What evidence is available about the safety and effectiveness of gender alterations for the treatment of gender dysphoria and how reliable is that evidence?

Given the challenge of the high rates of Veteran suicide, what does the evidence, including peer-reviewed evidence, suggest about the impact of gender alterations on the rates of suicide and suicide ideation among those suffering from gender dysphoria?

Given that any addition to the medical benefits package will have an associated cost and burden on existing specialists, especially urological and vascular surgeons and other highly trained specialists who are already in short supply nationwide, what is the potential impact of adding “gender alterations” on Veterans’ access to care, particularly for Veterans facing life-threatening medical conditions waiting to see surgical specialists?

We are providing a 60-day period from the date of publication of this Federal Register Notice for the public to submit comments on this subject. VA will consider the comments received, and then determine whether to propose a regulatory change in response to the Petition for Rulemaking. VA will announce any action it takes in the Federal Register.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document 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. Jacquelyn Hayes-Byrd, Acting Chief of Staff, Department of Veterans Affairs, approved this document on June 19, 2018, for publication.

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Michael Shores,  
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Department of Veterans Affairs.

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