

United States Senate

WASHINGTON, DC 20510

September 22, 2016

Secretary Robert A. McDonald
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington D.C., 20420

Dear Secretary McDonald:

We write today to urge the Department of Veterans Affairs (VA) to move swiftly to ensure that all those who have served our nation so bravely have access to medically necessary care, including surgical treatment for gender dysphoria. Numerous federal agencies have taken steps to remove barriers to healthcare access for transgender people and it is critical that the Department do so as well.

We applaud the Department for its efforts to date to review this issue and explore a regulatory change to the current blanket exclusion for such care.¹ However, as we swiftly approach the end of the calendar year, it is crucial that the VA move forward with publishing a proposed rule to remove the arbitrary and outdated restriction that prohibits the VA from providing medical services to treat gender dysphoria.

Under current VA regulations (38 C.F.R. § 17.38(c)(4)), the Veterans Health Administration is prohibited from covering transition-related surgeries for transgender veterans, without regard to medical necessity. However, the understanding of the medical community regarding the healthcare needs of transgender people has advanced significantly since this regulation was adopted more than fifteen years ago, and today it is inconsistent with basic standards of medical care. Furthermore, it is out of step with efforts undertaken by the Office of Personnel Management, the Department of Health and Human Services (HHS), the Centers for Medicare and Medicaid Services and the Department of Defense to eliminate blanket exclusions for surgical care for the treatment of gender dysphoria. In addition, an increasing number of state and local governments and private sector employers have taken steps to ensure this care is available and their experience demonstrates that there is little to no net cost in doing so. Both HHS and the Department of Labor have recognized this de minimis fiscal impact in findings in final regulations prohibiting such exclusions for Marketplace health plans and for employee plans of federal contractors.²

¹ Department of Veteran's Affairs Spring 2016 Regulatory Agenda (RIN: 2900-AP69).

² *Nondiscrimination in Health Programs and Activities; Final Rule*, 81 Fed. Reg. 31375, 31457 (May 18, 2016); *Discrimination on the Basis of Sex; Final Rule*, 81 Fed. Reg. 39107, 39148 (June 15, 2016).

This exclusion denies transgender veterans critically important medical care currently available to VA civilian employees, Medicare beneficiaries and active duty service members. It is also in contravention of the requirements of Section 1557 of the Affordable Care Act, which bars discrimination based on sex in healthcare programs and applies to programs administered by Executive Branch agencies.

Our veterans, through proud service and sacrifice for their country, have earned our respect, admiration and every one of the benefits provided to them through the Department. They all deserve access to medically necessary care through the VA and it is imperative that you act swiftly to remove the outdated and unjustified exclusion that denies many transgender veterans the treatment that they need. We look forward to your response.


Sincerely,

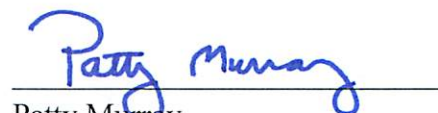

Tammy Baldwin
United States Senator



Sherrod Brown
United States Senator


Jeffrey A. Merkley
United States Senator


Al Franken
United States Senator


Bernard Sanders
United States Senator

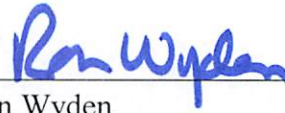

Patty Murray
United States Senator


Barbara Boxer
United States Senator

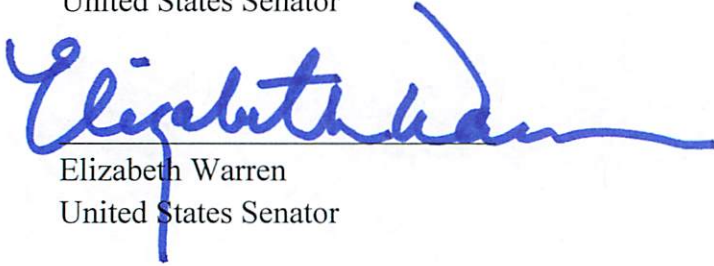

Edward J. Markey
United States Senator



Richard J. Durbin
United States Senator



Ron Wyden
United States Senator



Elizabeth Warren
United States Senator

CC: Drs. Michael Kauth and Jillian Shipherd, Co-Directors, Lesbian, Gay, Bisexual, and Transgender (LGBT) Program, Office of Patient Care Services, Veterans Health Administration