

Congress of the United States
Washington, DC 20515

September 12, 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 as members of the Congressional LGBT Equality Caucus Transgender Equality Task Force to urge the Department of Veterans Affairs (VA) to move swiftly to ensure access to medically necessary surgical care for transgender veterans.

We commend the Department for considering a repeal of the current blanket exclusion in its Spring 2016 Regulatory Agenda (RIN: 2900-AP69). We urge you to move forward with publishing a proposed rule to remove the arbitrary and outdated restriction that prohibits VA from providing medical services to treat gender dysphoria. Your attention to this issue is especially urgent given the Obama Administration's forward thinking policy changes to lift policies that discriminate against LGBT people across the federal government.

It is our understanding that under current VA regulations (38 C.F.R. § 17.38(c)(4)), VHA is prohibited from covering transition-related surgeries for transgender veterans, without regard to medical necessity. We also understand that this rule runs counter to steps being taken by OPM, HHS/OCR, CMS, and DOD to eliminate blanket exclusions for surgical care for the treatment of gender dysphoria. The experience of states and employers,¹ and a significant body of research, demonstrates that providing surgical care for gender dysphoria based on individual medical necessity has extremely little to no net cost, and potentially provides long-term savings to government as a result of preventing future medical and mental health care costs (such as treatment of suicide attempts).² Both HHS³ and Department of Labor (DOL)⁴ echoed these findings in final regulations, finding a de minimis cost impact.

¹ See, e.g., Or. Health Review Comm'n, Value-based Benefits Subcommittee, <http://www.oregon.gov/oha/herc/CommitteeMeetingMaterials/VbBS%20Materials%206-12-2014.pdf> (June 12, 2014) (estimating a 0.003% increase in non-administrative costs for Oregon Medicaid, before accounting for cost savings); Jody L. Herman, Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefit Plans: Findings from a Survey of Employers (2013) (finding "zero or very low costs [and] low utilization by employees," with employers reporting costs were "negligible," "minimal," or 0.004% of health care expenditures, and reviewing similar findings on municipal and university employee coverage), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>; Cal. Dep't of Ins., Economic Impact Assessment: Gender Nondiscrimination in Health Insurance (2012) (concluding cost impacts for California health plans are "very insignificant" and likely to offset by savings).

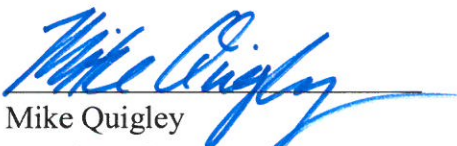
² William V. Padula et al., Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis, 31 JOURNAL OF GENERAL INTERNAL MEDICINE 394 (2015) (finding that the cost of covering transition-related procedures is about \$0.016 per plan member per month).

As you know, the existing regulation was adopted in 1999 and is not required by any statute. This exclusion denies transgender veterans critically important medical care currently available to VA employees, Medicare beneficiaries and, most recently, active duty military service members. This blanket exclusion, without regard to medical necessity, discriminates against transgender veterans in violation of Section 1557 of the Affordable Care Act, which applies to "any program or activity that is administered by an Executive Agency."⁵


This past year has proved historic for transgender equality and visibility. At no other time in our nation's history has the transgender community better or more publicly advocated for full inclusion throughout all parts of society and equal protection under the law. We've made significant gains, yet more work remains to be done and call on you to continue moving towards VA adoption of the proposed rule to permit surgical care for transgender veterans.

Our veterans earn the benefits provided to them through dedicated service to the protection of our country. It is our collective responsibility to ensure that *all* of our veterans are able to access the healthcare they have dutifully earned. We look forward to and eagerly await your response.

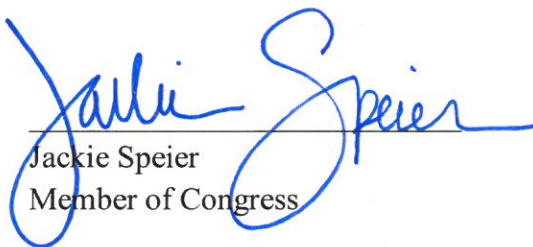
Sincerely,



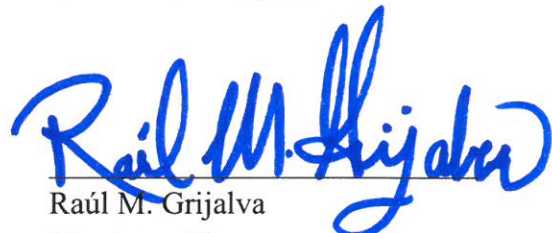
Mike Quigley
Member of Congress



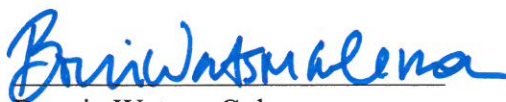
Michael M. Honda
Member of Congress



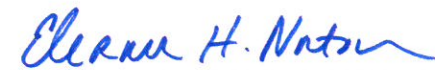
Jackie Speier
Member of Congress



Raúl M. Grijalva
Member of Congress



Bonnie Watson Coleman
Member of Congress



Eleanor Holmes Norton
Member of Congress

³ In the preamble to its final regulation on Section 1557 of the ACA, HHS stated: "Based on the [existing research], we estimate that providing transgender individuals nondiscriminatory insurance coverage and treatment will impact a very small segment of the population due to the fact that the number of transgender individuals (and particularly those who seek surgical procedures in connection with their gender transition) in the general population is small, and consequently will have de minimis impact on the overall cost of care and on health insurance premiums." *Nondiscrimination in Health Programs and Activities; Final Rule*, 81 Fed. Reg. 31375, 31457 (May 18, 2016).

⁴ In the preamble to its final regulation on sex discrimination by federal contractors, DOL OFFCP also said that the rule required the elimination of trans gender exclusions. Both DOL and HHS consulted the same body of research, and concluded: "OFCCP determines that the cost of adding nondiscriminatory health-care benefits is most likely to be de minimis." 81 Fed. Reg. 39107, 39148 (June 15, 2016).

⁵ 42 U.S. Code § 18116.

CC: Dr. Michael Kauth
Dr. Jillian Shipherd