

United States Senate

WASHINGTON, DC 20510

March 28, 2024

The Honorable Denis R. McDonough
Secretary
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonough,

In June 2021, the Department of Veterans Affairs (VA) announced that it would provide health-care coverage for gender-affirming surgery for transgender veterans.¹ Nearly three years later, VA has made no progress on this important policy change, leaving transgender veterans in limbo and without access to life-saving care. We urge you to take immediate actions to remove restrictions on, and provide coverage for, gender-affirming surgery at VA to ensure transgender veterans have access to comprehensive health care services.

There are an estimated 150,000 living transgender veterans, 10,000 of whom already receive gender-affirming care at VA.² An estimated 4,000 veterans would be interested in gender-affirming surgeries.³ And while VA is already able to offer other types of gender-affirming care, including pre- and post-operative care for gender-affirming surgery, it does not cover surgery.⁴

In 2021, during Pride Month, VA announced that it would begin the rulemaking process necessary to make the policy change.⁵ This was welcome news. Gender-affirming surgery has been shown to have tremendous benefits. Gender-affirming surgery has been associated with reduced gender dysphoria, improved quality of life, and decreased anxiety, depression, and suicidal ideation.⁶ This is especially critical given the higher rates of suicide among veterans

¹ Annie Karni, *V.A. Plans to Offer Gender Confirmation Surgeries for Transgender Veterans*, NY Times (July 9, 2021), <https://www.nytimes.com/2021/06/20/us/politics/veterans-transgender-surgery.html>.

² Pat Eaton-Robb, *Transgender veterans sue to have gender-affirming surgery covered by Department of Veteran Affairs*, AP News (Jan. 25, 2024), <https://apnews.com/article/transgender-veterans-surgery-va-c9b3d09154d748bb0c5faa72eba278d0>.

³ Leo Shane III, *VA again delays decision on transgender surgery options*, Military Times (Feb. 26, 2024), <https://www.militarytimes.com/veterans/2024/02/26/va-again-delays-decision-on-transgender-surgery-options/>.

⁴ Rebecca Kheel, *Yearslong Delay in Covering Transgender Surgeries Prompts Lawsuit Against VA*, Military.com (Jan. 25, 2024), <https://www.military.com/daily-news/2024/01/25/transgender-veterans-sue-va-over-delay-covering-surgeries-biden-administration-promised-2-years-ago.html>.

⁵ Remarks by Secretary Denis R. McDonough, Orland's VA Healthcare System's 11th Annual Pride Month Celebration (June 19, 2021), https://www.va.gov/opa/speeches/2021/06_19_2021.asp.

⁶ Gender Affirmation Surgery, Cleveland Clinic (last reviewed Dec. 13, 2023), <https://my.clevelandclinic.org/health/procedures/gender-affirmation-surgery>; Anthony N. Almazan AN & Alex S. Keuroghlian, *Association Between Gender-Affirming Surgeries and Mental Health Outcomes*, JAMA Surgery. (Apr.

compared to civilians, which is only compounded for transgender veterans. Veterans are 50 percent more likely to die by suicide than their civilian peers, but transgender veterans are 20 times more likely to die by suicide than their cisgender veteran peers.⁷ In 2021, you acknowledged that “we’re making these changes not only because they’re the right thing to do, but because they can save lives.”⁸

This announcement has been followed by delay after delay. In 2021, VA predicted the policy would take two years to implement. But, by June 2023, VA had not published proposed regulations to remove the restrictions on gender-affirming surgery. At the time, the policy was held at your desk as you were “not yet ready” to begin the regulatory rulemaking process.⁹

According to a recent lawsuit filed by the Transgender American Veterans Association, VA has taken some steps towards implementing the new policy, including conducting a cost-benefit analysis and receiving public comment.¹⁰ But in February 2024, in response to the lawsuit, VA stated that it had not yet decided “how and when it might ultimately provide gender affirming surgery”.¹¹ You have also previously indicated that it could take several more months before the rulemaking process is initiated.¹² Each delay means veterans who have served their country are forced to wait even longer to receive the health care they deserve.

Not only do delays negatively impact the mental and physical wellbeing of transgender veterans, they can be financially burdensome. For veterans who cannot wait for VA coverage of their surgeries because of their gender dysphoria or suicidal ideation, they are forced to pay out-of-pocket, amounts that can reach tens of thousands of dollars for care they were promised would be made available to them.¹³ With surgeries costing as much as \$10,000 to \$130,000 through civilian health care,¹⁴ medically necessary, life-saving gender affirming surgeries are out of reach

28, 2021), <https://jamanetwork.com/journals/jamasurgery/fullarticle/2779429>.

⁷ John R. Blosnich et al., *Prevalence of gender identity disorder and suicide risk among transgender veterans utilizing veterans health administration care*, *Am. J. Pub. Health* (Oct. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780758/>.

⁸ Rebecca Kheel, *No Timeline for Trans Vet Surgeries, VA Says 2 Years After Announcing Coverage*, *Military.com* (June 9, 2023), <https://www.military.com/daily-news/2023/06/09/va-said-it-would-cover-trans-surgery-two-years-later-it-still-doesnt.html>.

⁹ Patricia Kime, *New VA Gender Affirmation Surgery Policy Sitting on Secretary's Desk* (June 27, 2023), <https://www.military.com/daily-news/2023/06/27/new-gender-affirmation-surgery-policy-sitting-secretarys-desk.html>.

¹⁰ Linda F. Hersey, *Transgender veterans sue VA to cover gender-affirming surgeries*, *Stars and Stripes* (Jan. 25, 2024), <https://www.stripes.com/veterans/2024-01-25/veterans-affairs-transgender-surgery-lawsuit-12794371.html/>.

¹¹ *Id.*

¹² Leo Shane III, *VA again delays decision on transgender surgery options*, *Military Times* (Feb. 26, 2024), <https://www.militarytimes.com/veterans/2024/02/26/va-again-delays-decision-on-transgender-surgery-options/>.

¹³ Rebecca Kheel, *The VA Said It Would Cover Gender Affirmation Surgeries. Trans Vets Are Still Waiting*, *Military.com* (Dec. 20, 2021), <https://www.military.com/daily-news/2021/12/20/va-said-it-would-cover-gender-affirmation-surgeries-trans-vets-are-still-waiting.html>; Billy Jean Louis, *Maryland trans veterans seek VA coverage for surgery, but agency still drafting proposed rules* (Nov. 11, 2021), <https://www.baltimoresun.com/2021/11/11/maryland-trans-veterans-seek-va-coverage-for-surgery-but-agency-still-drafting-proposed-rules/>.

¹⁴ Mariel Padilla, *Trans veterans were promised access to gender-affirming surgeries — but it never happened*, *19th News* (Jan. 25, 2024), <https://19thnews.org/2024/01/trans-veterans-lawsuit-gender-affirming-care/>; Linda F. Hersey,

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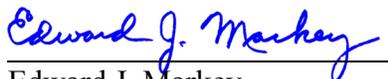
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for many. Not only are veterans spending tens of thousands of dollars on surgery, they are losing the opportunity to use those funds for education, housing, travel, or other medical expenses.¹⁵

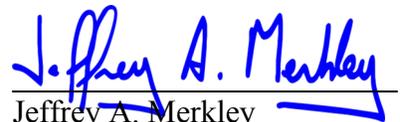
We recognize the steps that VA has already taken to improve health care for LGBTQ veterans, particularly transgender veterans.¹⁶ But amid a flood of discrimination and anti-LGBTQ legislation,¹⁷ this rulemaking would be a lifeline. VA must ensure transgender veterans have access to the *full* spectrum of health care services for their transition and well-being. In that spirit, we urge you to take immediate steps to initiate a rulemaking to ensure access to gender-affirming surgery for transgender veterans.

Thank you for your consideration.

Sincerely,



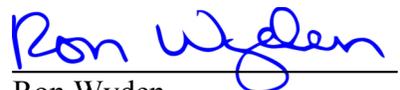
Edward J. Markey
United States Senator



Jeffrey A. Merkley
United States Senator



Elizabeth Warren
United States Senator



Ron Wyden
United States Senator

Transgender veterans sue VA to cover gender-affirming surgeries, Stars and Stripes (Jan. 25, 2024), <https://www.stripes.com/veterans/2024-01-25/veterans-affairs-transgender-surgery-lawsuit-12794371.html/>.

¹⁵ Kheel, *supra* note 16.

¹⁶ Kheel, *supra* note 5; Press release, *Recognizing gender identity improves health care experience*, Dep't of Veterans Affairs (Jan. 12, 2022), <https://news.va.gov/press-room/va-health-records-now-display-gender-identity/>.

¹⁷ *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, ACLU (last updated Mar. 15, 2024), <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024>.

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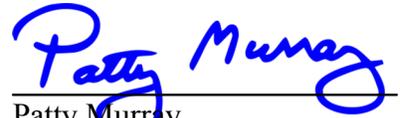
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