

KNOW YOUR RIGHTS: MILITARY

SAME-SEX RELATIONSHIP RECOGNITION

I'M SERVING ACTIVE DUTY IN THE MILITARY. IS MY SAME-SEX SPOUSE ENTITLED TO SPOUSAL BENEFITS?

Yes. As of September 3, 2013, service members' same-sex spouses and family members are entitled to all benefits, as long as service member-sponsors provide a valid marriage certificate.¹ For those married before June 26, 2013, your family's entitlements to programs such as TRICARE enrollment, basic allowance for housing (BAH) and family separation allowance are retroactive to June 26th, 2013, which is when the U.S. Supreme Court struck down Section 3 of the Defense of Marriage Act. However, you won't be able to claim entitlements dating all the way back to the date of your marriage. For those members married after June 26, 2013, entitlements begin at the date of marriage.²

HOW DO I REGISTER FOR SPOUSAL BENEFITS?

The Defense Enrollment Eligibility Reporting System (DEERS) manages military family benefits. The service member needs to go to a DoD ID Card issuing facility with a marriage license and the proper identification documents.³ You can see a list of required documents here:

<http://www.dmdc.osd.mil/rsl/html/RequiredDocuments.html>

I AM A RETIRED MILITARY SERVICE MEMBER. IS MY SAME-SEX SPOUSE ENTITLED TO BENEFITS?

If you were married to your spouse on or before June 26, 2013, you may now fall under spouse coverage in the Survivor Benefit Plan (SBP). **You must take action by June 25, 2014** to secure or decline those benefits. Visit www.dfas.mil/retiredmilitary/provide/sbp.html as soon as possible.

If you have gotten married since June 26, 2013, you must express any SBP eligibility changes within a year of your marriage. Any claims to SBP coverage before June 26, 2013 are not valid because the Defense of Marriage Act (DOMA) was still in place.⁴

If you and your spouse were married as a different-sex couple and one of you has since transitioned, your marriage is still valid regardless of where you live. However, some couples have had difficulty correcting records in the DEERS system when one partner is transgender and the marriage license originated in a state that does not recognize same-sex marriages. If you run into this situation, please contact ACLU-NM.

¹ Defense Manpower Data Center (DMDC), "Department of Defense ID Card Issuance Process" <http://www.dmdc.osd.mil/rsl/html/RequiredDocuments.html>

² "DOD Announces Same-Sex Spouse Benefit, August 14, 2013," Release No: 581-13

³ Defense Manpower Data Center (DMDC), "Department of Defense ID Card Issuance Process"

⁴ "Extending Survivor Benefit Plan Coverage to Same-Sex Spouses of Military Members and Retirees", September 5, 2013, Assistant Secretary of Defense

I'M STATIONED IN A NON-MARRIAGE STATE, WHERE MY PARTNER AND I ARE NOT ABLE TO GET MARRIED. WE WANT TO GET MARRIED, BUT WOULD NEED TO TRAVEL. DOES THE MILITARY MAKE ALLOWANCES FOR THIS?

In August 2013, the Department of Defense announced a policy authorizing a "non-chargeable marriage leave" when a service member is part of a same-sex couple that wants to get married but lives more than 100 miles from a marriage jurisdiction. Eligible service members assigned within the Continental U.S. may be granted up to 7 days, and those outside of the Continental U.S. may be granted up to 10 days.⁵

I GOT MARRIED IN NEW MEXICO, BUT AM STATIONED IN A NON-MARRIAGE STATE. WILL MY SAME-SEX SPOUSE BE ELIGIBLE FOR MILITARY BENEFITS?

Yes. As of August 2013, the Department of Defense will honor marriages valid in the place that they took place, regardless of whether your marriage is respected in that state where you live.⁶

WHAT DOES THIS MEAN FOR DOMESTIC PARTNERSHIP BENEFITS?

As of August 13, 2013 same-sex couples must obtain a valid marriage license to be entitled to military benefits.⁷ For a few months in 2013, same-sex domestic partners of military members and their children became eligible for certain benefits, however due to the DOMA decision, the Secretary of Defense announced that the extension of military benefits to same-sex domestic partners was no longer necessary.

DON'T ASK, DON'T TELL

I WAS DISCHARGED DISHONORABLY UNDER DON'T ASK DON'T TELL. CAN I CHANGE MY DISCHARGE CHARACTERIZATION?

Service members discharged under DADT generally received discharges that were Honorable or General Under Honorable Conditions. However, some service members were given Other Than Honorable (OTH) characterizations for acts such as kissing goodbye on base, holding hands in public, or attempting to marry their partner. This discharge can have devastating consequences, such as limiting access to the GI Bill or the VA. In addition, even those who were given Honorable discharges under DADT may have negative reentry codes that can be seen by prospective employers.⁸

Former service members may apply with the Discharge Review Boards (DRBs) to change their discharge. These review boards can make changes "on the basis of propriety and equity", and are supposed to take into

⁵ MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS CHIEFS OF THE MILITARY SERVICES, "Department of Defense Instruction 1327.06, "Leave and Liberty Policy and Procedures," June 16 2009, Jessica Wright August 13 2013 <http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf>

⁶ "Memorandum for Secretaries of the Military Departments Chiefs of the Military Services," Subject: Extending Benefits to Same-Sex Spouses of Military Members, Chuck Hagel, August 13 2013 <http://www.defense.gov/home/features/2013/docs/Extending-Benefits-to-Same-Sex-Spouses-of-Military-Members.pdf>

⁷ Memorandum for Secretaries of the Military Departments Under-Secretary of Defense for Personnel and Readiness. "Extending Benefits to the Same-Sex Spouses of Military Members" August 13 2013

⁸ Freedom to Serve, 31-32

account instances when “policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a Service-wide basis.”⁹

Please be aware that changing one’s discharge characterization is extremely burdensome, time consuming and often difficult to achieve. Those interested in applying for discharge review may contact OutServeSLDN: <https://secure.sldn.org/page/s/vetdischargechanges>.

You will need copies of your complete service record, including your DD214 and any other forms related to your discharge.

TRANS* MILITARY RIGHTS

CAN I JOIN THE MILITARY IF I’M TRANSGENDER?

There are major barriers that often prevent transgender individuals from enlisting or serving in the military. Potential service members must undergo a physical examination, and any history of genital surgery may result in a disqualification. Additionally, the military considers identifying as transgender to be a disqualifying psychiatric condition.¹⁰ While an individual may request a medical waiver of disqualifying condition from the Department of Defense, there is no reported case of a waiver being granted to a transgender service member.¹¹

WHAT WOULD HAPPEN IF A SERVICE MEMBER COMES OUT AS TRANSGENDER WHILE SERVING IN THE MILITARY?

The service member will likely be separated from the military. Identifying as transgender is considered a disqualifying psychiatric condition. Thus, even if a service member did not begin to transition, that service member could face separation if their superiors discover that the service member has gender dysphoria.

A transgender service member who decides to transition while in the military would also likely face separation. Any transition-related medical care would likely be discovered during the service member’s regularly scheduled physical exam. Each service has strict regulations regarding members seeking health care outside of the military, including reporting requirements. Failure to abide by these regulations could place a member at risk for criminal action under the Uniform Code of Military Justice (UCMJ).¹² Additionally,

⁹ Department of Defense Instruction 1332.28 E4.1 (April 4, 2004), pg 8, 10-11
<http://www.dtic.mil/whs/directives/corres/pdf/133228p.pdf>

¹⁰ DEP’T OF DEFENSE INSTRUCTION 6130.03, Medical Standards for Appointment, Enlistment, or Induction in the Military Services, ¶¶ E4.14(e) and E4.15(l) (2010).

¹¹ REPORT OF THE TRANSGENDER MILITARY SERVICE COMMISSION, Palm Center, Dr. Joycelyn Elders, MD, former US Surgeon General, RADM Alan M. Steinman, MD, USPHS/USCG (Ret.), March 2014, see page 8
<http://www.palmcenter.org/files/Transgender%20Military%20Service%20Report.pdf>

¹² The Air Force requires that service members notify the servicing MTF within three days of seeking civilian medical care. See AFI 41-210, Patient Administration Functions, ¶ 3.9.1. Service members in the Army must obtain approval prior to seeking civilian medical care except in emergency situations or when stationed abroad. See AR 40-400, Patient Administration, ¶ 10-6. Specific reporting requirements for the Navy and Marine Corps are listed in AVMED P-117, Manual of the Medical Department.

wearing clothes that the military does not view as gender appropriate could potentially be considered “cross-dressing” resulting in discipline or even criminal prosecution.¹³

WHAT HAPPENS IF I AM SEPARATED FOR BEING TRANSGENDER?

According to SLDN’s Freedom to Serve Manual¹⁴:

“Discharges for ‘sexual gender and identity disorders’ are classified as administrative rather than medical, despite the inclusion of this category under medical regulation. As a result, transgender service members may be faced with lack of access to VA health facilities. ‘Sexual gender and identity disorders’ do not qualify for disability under DoD regulations.¹⁵

Transgender service members may be discharged for reasons other than simply being medically diagnosed as transgender. For example, some who may be disqualified for a medical issue unrelated to Gender Identity Disorder may undergo medical instead of administrative discharge. Additionally, discharges based on violations of conduct regulations (UCMJ infractions) may carry more punitive results.

Most of SLDN’s transgender clients have been discharged honorably, though other than honorable or dishonorable discharges may be possible depending on the case (e.g., violations of conduct regulations). Discharged veterans seeking to upgrade their discharge characterization or to change their narrative reason for discharge may contact SLDN for assistance.”¹⁶

I’M CURRENTLY IN THE INACTIVE RESERVE MILITARY (IRR). IS IT OKAY TO TRANSITION?

Transgender inactive reserve members may have to halt this process if recalled in order to complete their active service requirement. These individuals may also be rendered medically disqualified for continued service upon medical examination prior to serving in active duty. ¹⁷

I’M A TRANSGENDER VETERAN. WHAT MEDICAL CARE CAN I RECEIVE FROM THE U.S. DEPARTMENT OF VETERAN AFFAIRS (VA)?

The Veterans Health Administration (VHA) Directive establishes policies and implements health care services for veterans enrolled in the Department of Veteran Affairs (VA) healthcare system. The VA is *not* permitted to cover sex reassignment surgery (SRS) or gender confirmation surgery. ¹⁸ However, the VA *will*

¹³ While the UCMJ does not address the issue of “cross-dressing” explicitly, in *U.S. v. Davis*, the United States Court of Military Appeals held that cross-dressing may qualify “as a disorder or neglect to the prejudice of good order and discipline” or as being of a nature to bring discredit upon the armed forces” in violation of UCMJ Art 134. *United States v. Davis*, 26 MJ 445 (CMA 1998).

¹⁴ “Freedom to Serve: The Definitive Guide to LGBT Military Service” SLDN , July 27, 2010 http://sldn.3cdn.net/5d4dd958a62981cff8_v5m6bw1gx.pdf

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ VHA DIRECTIVE 2013-003 February 8, 2013, “PROVIDING HEALTH CARE FOR TRANSGENDER AND INTERSEX VETERANS” http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863; The Directive defines SRS as including any of a variety of surgical procedures (including vaginoplasty and breast augmentation in MtF transsexuals and mastectomy and phalloplasty in FtM transsexuals) done simultaneously or sequentially with the explicit goal of transitioning from one sex to another. This term includes surgical revision of a previous sex reassignment surgery for cosmetic purposes.

provide all medically-necessary, transition-related medical and mental healthcare to transgender patients, including hormone therapy, preoperative evaluation, post-operative long-term care, and gender-appropriate medical care (e.g. Mammograms for transgender women, pap smears for transgender men).¹⁹

DOES THE VA'S BAN ON TRANSITION-RELATED SURGERY INCLUDE SURGERY RELATED TO INTERSEX CONDITIONS?

No. A 2013 Directive from the Veteran Health Administration (VHA) clearly states that "Intersex veterans in need of surgery to correct inborn conditions related to reproductive or sexual anatomy or to correct a functional defect" can be treated through the VA.²⁰

DO I NEED TO BE DIAGNOSED WITH GENDER DYSPHORIA IN ORDER TO RECEIVE CARE CONSISTENT WITH MY GENDER IDENTITY FROM THE VA?

No—a diagnosis of gender dysphoria or gender identity disorder (GID) is not a pre-condition for receiving gender-appropriate care. However, like with any other care from the VA, the patient will need a VA physician to state that the specific care is medically necessary for that patient.²¹

WILL THE VA ACKNOWLEDGE MY PROPER GENDER?

VHA directives indicate that transgender patients are to be addressed and referred in a manner consistent with their gender identity, and that "room assignments and access to any facilities for which gender is normally a consideration (e.g. restrooms) will give preference to the self-identified gender, irrespective of appearance and/or surgical history, in a manner that respects the privacy needs of transgender and non-transgender patients alike."²²

HOW DO I CHANGE MY GENDER MARKER IN THE COMPUTERIZED PATIENT RECORD SYSTEM (CPRS)?

According to the VHA directive, you must make a request to the facility Privacy Officer and provide the following required documentation:

- **One of the following is required as supporting documentation:**
 1. Legal documentation (i.e., amended birth certificate or court order);
 2. Passport; or,
 3. A signed original statement on office letterhead, from a licensed physician. (Sex reassignment surgery is not a prerequisite for amendment of gender/sex in the Veteran's record.)

If you are using a physician's statement as your document, there are very specific instructions on what language and information must be included. You can find those requirements on pages A-7 and A-8 of the

¹⁹ *Id.*

²⁰ *Id. Id.*

²¹ *Id. Id.*

²² *Id. Id.*

VHA Directive, which can be found online here:

http://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863²³

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²³ Id., A-6 through A-7