

MEMORANDUM

National Organization for Women Foundation

To: National Organization for Women Foundation Board Members

From: Jan Erickson, Director, NOW Foundation Programs

Date: March 4, 2024

Gender Affirming Care for Transgender Veterans – The VA Responds

On January 25th, the Transgender American Veterans Association (TAVA) and Yale Law School Veterans Legal Services Clinic filed a federal lawsuit against the U.S. Department of Veterans Affairs (VA) seeking an order that the VA act on TAVA's 2016 rulemaking petition for gender-confirmation surgery. The National Organization for Women Foundation signed on to an amicus brief in the case.

TAVA reports that it has been nearly eight years since the association submitted its rulemaking petition asking the VA to provide this essential and lifesaving medical care, and more than two years since Secretary Denis R. McDonough pledged to make this care available, the VA has failed to act. The VA's delay endangers the health and well-being of many of the nation's 163,000 transgender veterans. It also violates the VA's legal obligations, TAVA notes.

A press release submitted on January 24 explains more about the lawsuit:

This lawsuit, filed in the U.S. Court of Appeals for the Federal Circuit, follows a demand letter TAVA sent the VA on Transgender Day of Remembrance, November 20, 2023. TAVA warned the VA then that if it did not grant or deny TAVA's petition within 30 days, TAVA would file suit. The VA responded with a letter that recycled the same language it has been using since 2021, affirming its plan to provide gender-confirmation surgery someday—but declining to decide the petition.

“VA's failure to provide gender-confirmation surgery has been more dangerous for me than my time in the service,” said Natalie Kastner, a TAVA member who cannot receive this surgery through the VA. “Without VA coverage for this surgery, I was financially out of options. I tried to perform my own gender-affirming surgery at home, without any medical training. Were it not for emergency room care, I would have lost my life. I was told that the VA would take care of me because I was willing to risk my life for this country. Instead, I was safer in the service than I am now.”

TAVA's lawsuit cites myriad evidence that gender-confirmation surgery dramatically reduces the risks of suicidal ideation, depression, and psychological distress for transgender people who live with gender dysphoria. These risks are especially acute for transgender veterans, as veterans already exhibit disproportionately high rates of suicide and depression. Medical professionals, scientific researchers, veterans service organizations, civil rights groups, former military officials, and political figures in both local and federal governments have urged the VA to

provide adequate gender-affirming care, which includes gender-confirmation surgery.
[2024.01.25+Final+Press+Release.pdf \(squarespace.com\)](#)

On February 22, the Veterans Administration filed its response to Transgender American Veteran's Association's petition for a writ of mandamus in the Federal Circuit. The case is now moot because the VA denied TAVA's petition for rulemaking. Secretary McDonough states that the VA is not yet ready to initiate a rulemaking procedure addressing the specific regulatory changes proposed in the TAVA petition.

The response continued,

Secretary McDonough believes that transgender Veterans deserve world-class care and benefits, and that Gender Affirming Care should be available to any Veteran who needs it. While VA remains committed to providing care to transgender Veterans, VA is not ready at this time to initiate this a rulemaking addressing the specific regulatory changes proposed in the petition. The secretary indicated that the VA is collecting data and conducting analyses to produce estimates of the need by veterans who may become eligible for hospital care (care (including mental health services and counseling), medical services, and nursing home care for any illness under recent major expansions of VA care. While this is underway, the VA will continue providing other types of Gender Affirming Care to veterans.

The Transgender American Veterans Association will be considering other possible avenues that may prompt the Veterans Administration to take expedited action to make care available.