



May 14th, 2012

Director, Regulations and Management (02REG)
Department of Veterans Affairs
810 Vermont Ave, NW, Room 1068
Washington, DC 20420

RE: RIN 2900-AN92 Vet Center Services, Readjustment Counseling Services for Veterans' and Servicemembers' Immediate Families

Dear Director:

Family Equality Council supports and advocates for the one million parents who are lesbian, gay, bisexual, and transgender (LGBT) raising two million children across the country. On behalf of the undersigned organizations, we would like to thank the Department of Veterans Affairs for its commitment to LGBT community: establishing the LGBT program under the Office of Diversity and Inclusion; adding explicit prohibitions against employment discrimination on the basis of sexual orientation, gender identity, pregnancy, and parental status; providing patient visitation rights for LGBT family members, including same-sex couples; and providing transgender-inclusive health benefits to all veterans. The Department's ongoing commitment to equity and dignity for all veterans should stand as an example to providers across the country.

We would also like to thank you for the opportunity to comment on the proposed regulations governing readjustment counseling for veterans, servicemembers, and their immediate families. There are an estimated one million gay and lesbian veterans in the United States.¹ In addition, there are approximately 48,000 lesbian, gay, and bisexual servicemembers on active duty, with another 22,000 on standby and in retired reserve forces.² Many of these LGBT active duty servicemembers, retired reservists, and veterans are raising children, while many other veterans and service members were raised by LGBT parents. Family law differs from state to state, however, meaning many veterans or servicemembers may be unable to create legal ties to their children or parents.

The proposed regulations to be located at 38 CFR §17.2000 would expand the readjustment counseling offered by the Vet Centers to veterans and the immediate family members of veterans and service members without the previous limitations that restricted counseling to those who served in Operation Iraqi Freedom and Operation Enduring Freedom. We applaud the Department for taking this step: it is clear that Congress intended readjustment counseling to be available to all servicemembers, veterans,

¹ Gay J. Gates, *Gay Veterans Top One Million*, the Urban Institute (July 2003), available at <http://www.urban.org/url.cfm?ID=900642>.

² Gary J. Gates, *Lesbian, gay, and bisexual men and women in the US military: Updated estimates*, the Williams Institute (May 2010), available at [http://www3.law.ucla.edu/williamsinstitute/pdf/GLBmilitaryUpdate\(2\).pdf](http://www3.law.ucla.edu/williamsinstitute/pdf/GLBmilitaryUpdate(2).pdf). The number of transgender servicemembers is difficult to calculate for various reasons, including the Department of Defense's policy on transgender service.

and their families. The new regulations, however, may still restrict some family members from accessing appropriate counseling.

We encourage the Department of Veterans Affairs to interpret “immediate family” to include *all* immediate family members, including a veteran or servicemember’s parents or children with whom they may not share a legal or biological relationship. There is no statutory or regulatory definition of “immediate family” for purposes of readjustment counseling.³ The statute defines eligible individuals as “(1) the members of the immediate family or the legal guardian of a veteran; . . . or (3) the individual in whose household such veteran certifies an intention to live.”⁴ This broad definition is clearly intended to ensure that all individuals who are in need of counseling can access necessary services.

In the majority of states across the country, same-sex parents cannot both create legal relationships with their children. This leaves the children and the parents vulnerable to legal and economic hardship and often prevents otherwise qualified individuals from accessing necessary services and programs, such as readjustment counseling. In order to ensure that all servicemembers, veterans, and their immediate families can access necessary care, we recommend that Department issue a clarification or administrative opinion stating that all spouses, domestic partners, children (including those for whom the veteran stood *in loco parentis*⁵), and parents (including those who stood *in loco parentis* to the veteran), regardless of their legally recognized relationship to the veteran, fall within the definition of “immediate family” and may access appropriate counseling.

Under this interpretation, parents of veterans who raised their child but lack a legal or biological relationship to that veteran will still be able to access readjustment counseling and likewise for children raised by veterans who were never able to adopt their child in their home state. This clarification will serve as an instruction to Department employees administering the counseling programs and as notice to veterans, servicemembers, and their families that they are indeed eligible for these crucial services.

This interpretation should cover all counseling services provided by Vet Centers, including readjustment and bereavement counseling, as governed by 38 USC § 1782 and 38 USC § 1783.⁶ Without a limiting statutory or regulatory definition, this interpretation is a simple fix that would benefit the lives of thousands of veterans, servicemembers, and their families.

On behalf of the undersigned organizations, we thank you in advance and look forward to working with you in bettering the lives of LGBT veterans. If you have any questions or concerns, please contact Emily Hecht-McGowan, Family Equality Council’s Director of Public Policy, at ehecht@familyequality.org or 202-496-1285.

³ See 38 USCS § 1782. Counseling, training, and mental health services for immediate family members and caregivers.

⁴ *Id.*

⁵ *In loco parentis* means “in the place of a parent” and has been interpreted by the Department of Labor to include parents who have or had day-to-day care of a child, but may still lack a legal or biological relationship to that child. See Administrator’s Interpretation No. 2010-03, United States Department of Labor, Wage and Hour Division (June 22, 2010).

⁶ 38 USC §1783. Deaths in active service (refers to 38 USC § 1782 for eligibility for bereavement counseling).

Thank you,

A handwritten signature in cursive script that reads "Jennifer Chrisler".

Jennifer Chrisler
Executive Director
Family Equality Council

American Civil Liberties Union

National Center for Lesbian Rights

National Center for Transgender Equality

National Coalition for LGBT Health

National Gay & Lesbian Chamber of Commerce

National Gay and Lesbian Task Force

PFLAG National (Parents, Families and Friends of Lesbians and Gays)

Services and Advocacy for GLBT Elders (SAGE)

The Trevor Project

Barbara E. Warren, Psy.D. Director, LGBT Health Services, Beth Israel Medical Center