Congressional Research Service
Informing the legislative debate since 1914

INSIGHT

FY2024 NDAA: TRICARE Coverage of Gender Affirming Care

July 20, 2023

Background

The Department of Defense (DOD) administers a statutory health entitlement (under Chapter 55 of Title 10, *U.S. Code*), through the Military Health System (MHS). The MHS offers health care benefits and services through its TRICARE program to approximately 9.6 million beneficiaries composed of servicemembers, military retirees, and dependent family members. Congress often specifies certain TRICARE coverage parameters (e.g., how health care services may be delivered, and whether beneficiaries may be subject to cost-sharing requirements) through the annual National Defense Authorization Act (NDAA).

During ongoing deliberations on the fiscal year (FY) 2024 NDAA, Congress has expressed interest in TRICARE coverage policies for gender-affirming care. Defense Health Agency (DHA) Procedural Instruction 6025.21 defines gender-affirming care as "clinical services that support an individual's physical and [behavioral health] as they define, explore, and align with their gender identity." Gender-affirming care includes non-surgical care (e.g., hormone therapy and psychotherapy) and surgical care (e.g., gender-affirming surgery).

The TRICARE Policy Manual stipulates that "medically or psychologically necessary and appropriate medical care (as defined in 32 CFR 199.2), including non-surgical treatments for [gender dysphoria], are covered [for all beneficiaries] when provided by a TRICARE-authorized provider." For hormone therapy, a beneficiary diagnosed with gender dysphoria must also meet the eligibility criteria outlined in the Endocrine Society's clinical practice guideline for treatment of gender dysphoria. Under 10 U.S.C. §1079(a)(11)), TRICARE is explicitly prohibited from covering gender-affirming *surgical* care for beneficiaries except to treat individuals with an intersex condition due to congenital malformations or chromosomal abnormalities.

This statutory prohibition applies only to health care services covered by the TRICARE program for beneficiaries; DOD may pay for gender-affirming surgical care through the Supplemental Health Care Program (SHCP) for "active duty members of the uniformed services." SHCP is authorized under 10 U.S.C. §1074(c), 32 C.F.R. §199.16, Health Affairs Policy 12-002, and the TRICARE Operations

Congressional Research Service
https://crsreports.congress.gov
IN12203

Manual. The DHA Director may consider requests from the military services to use SHCP funds to "lawfully cover otherwise non-covered services for Service members in circumstances that will enable them to return to full duty/worldwide deployable status, or to reach their maximum rehabilitative potential." Typically, DHA uses SHCP to pay for non-covered services (e.g., certain emerging medical therapies and services, fertility services, or unique rehabilitative services).

DHA policy outlines the process for providing gender-affirming surgical care to an active duty servicemember diagnosed with gender dysphoria, which includes requirements for the servicemember to obtain endorsements from their respective transgender care team and their chain of command prior to being authorized care.

Table 1 lists gender-affirming care-related provisions included in the House-passed (H.R. 2670) and Senate Armed Services Committee (SASC)-reported (S. 2226) versions of the FY2024 NDAA.

Table 1. FY2024 NDAA Legislative Proposals

House-passed H.R. 2670	Senate Armed Services Committee-reported S. 2226
H.Amdt. 223 would amend Chapter 55 of Title 10, *U.S. Code*, to prohibit DOD from providing or paying for gender-affirming surgical care and hormone treatment for all beneficiaries.	No similar provision.
H.Amdt. 224 would prohibit an Exceptional Family Member Program from providing "gender transition procedures" or providing referrals for "gender transition services" to a minor dependent child. The provision would also prohibit the approval of a change of duty station due to a minor dependent child having a lack of access to gender transition services.	No similar provision.

Source: CRS analysis of legislation on Congress.gov.

Note: On July 13, 2023, the House of Representatives voted to incorporate the House Amendments listed in the table above. At the time of this publication, an engrossed version of H.R. 2670 is not yet available.

Discussion

The number of TRICARE beneficiaries who identify as transgender and have sought or received gender-affirming care is unclear, though some estimates of transgender servicemembers have been reported over the past several years. In 2016, the RAND Corporation estimated that approximately 1,320 to 6,630 of the 1.3 million active duty servicemembers identified as transgender. The report also estimated the potential cost to expanding TRICARE coverage to include gender-affirming surgical care for active duty servicemembers, which ranged between $2.4 million and $8.4 million annually. Between January 1, 2016 and May 14, 2021, DOD reportedly spent approximately $15 million to provide gender-affirming care (surgical and non-surgical care) to 1,892 servicemembers.

Congress continues to debate whether federal health programs, like TRICARE, should cover gender-affirming care and related support services. Certain observers argue that federal taxpayer funds should not be used to pay for gender-affirming care that they perceive as "costly and controversial" and that such care could impact a servicemember's ability to be "combat-ready" or "deployable." Other observers argue that there is a "growing consensus" among medical experts that gender-affirming care is medically necessary and that health payers should ensure coverage of these services.

The House-passed bill includes two related provisions that were incorporated as floor amendments on July 13, 2023. The SASC-reported bill has no similar provisions. H.Amdt. 223, incorporated in

H.R. 2670, would amend Chapter 55 of Title 10, *U.S. Code*, by adding a new section that prohibits DOD from providing or paying for gender-affirming surgical care and hormone treatment used to treat gender dysphoria under TRICARE and SHCP.

In certain instances, a dependent family member diagnosed with a "current and chronic" mental health condition requiring "inpatient or intensive (i.e., greater than one visit monthly for more than 6 months) outpatient mental health service" may access additional family support services through the Exceptional Family Member Program (EFMP). Dependent family members diagnosed with gender dysphoria, as a mental health condition categorized by the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), could also be eligible to enroll in EFMP.

DOD policy also allows EFMP-enrolled servicemembers to request a reassignment to another duty station before meeting the minimum time-on-station requirement, and to be afforded certain housing flexibilities during their relocation to another duty station. H.Amdt. 224, incorporated in H.R. 2670, would prohibit EFMP from providing or making referrals for a minor dependent child to obtain "gender transition procedures, including surgery or medication." The provision would also prohibit the military services from approving a servicemember's request for early reassignment to another duty station due to a minor dependent child having lack of access to gender transition services.

Author Information

Bryce H. P. Mendez
Specialist in Defense Health Care Policy

Disclaimer