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Kristy N. Kamarck
Congressional Research Service

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What are the Department of Defense (DOD) Policies on Transgender Service?

Abstract

[Excerpt] On July 13, 2015, Secretary of Defense Ashton Carter announced that DOD will review its policies on transgender service. As part of this announcement he issued two directives:

- 1. DOD will create a working group composed of military and civilian personnel to study the policy and readiness implications of allowing transgender persons to serve openly.
- 2. The decision authority for administrative discharges for those diagnosed with gender dysphoria or who identify themselves as transgender will be the Under Secretary of Defense for Personnel and Readiness.

Keywords

Department of Defense, transgender service, personnel policy

Comments

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What are the Department of Defense (DOD) Policies on Transgender Service?

Kristy N. Kamarck, Analyst in Military Manpower (kkamarck@crs.loc.gov, 7-7783)

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Background

On July 13, 2015, [Secretary of Defense Ashton Carter announced](#) that DOD will review its policies on transgender service. As part of this announcement he issued two directives:

- 1. DOD will create a working group composed of military and civilian personnel to study the policy and readiness implications of allowing transgender persons to serve openly.
- 2. The decision authority for administrative discharges for those diagnosed with gender dysphoria or who identify themselves as transgender will be the Under Secretary of Defense for Personnel and Readiness.

Secretary Carter also emphasized that the working group will "start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective, practical impediments are identified."

The word "transgender" does not appear in the United States Code, the Code of Federal Regulations, or in any DOD issuances. However, the term "transgender" is typically applied to individuals who do not identify or conform to their physical gender at birth and may include, but is not limited to, those who self-identify as transgender, transsexual, gender-queer, gender nonconforming, or cross-gender. For the purpose of diagnosis, the [American Psychiatric Association classifies this condition as "gender dysphoria."](#)

DOD currently treats the physical and psychological aspects of transgender conditions as disqualifying conditions for new personnel accessions and for the discharge of existing servicemembers.

Current DOD policies:

- Prohibit the appointment, enlistment, or induction of those with a "current or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias," or those with "history of major abnormalities or defects of the genitalia including but not limited to change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis;"
- Allow servicemembers to be [separated administratively](#) on the basis of a diagnosis of a mental disorder. Mental disorders are further defined by military department regulations to

include, "[psychosexual, transsexual, and gender identity conditions to include...change of sex or a current attempt to change sex.](#)"

The first policy effectively bans entry into service of those who have undergone sex reassignment surgery and those who have a psychiatric history of the conditions listed above. In the case of military discharges, while DOD policies *allow* for an existing servicemember to be administratively separated for mental disorders, they do not *require* that the servicemember be separated. The [DOD policy authorizes the discharge of the servicemember](#) only if a mental health provider's diagnosis "concludes that the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired." Under the Secretary of Defense's new directive, the decision to administratively separate transgender servicemembers will be elevated to the Under Secretary of Defense for Personnel and Readiness.

What are Some Implications of Change for DOD and Issues for Congress?

In prior legal challenges to the military discharge policy, DOD has argued that the medical needs of transgender servicemembers would impact military readiness and deployability. However, not all transgender individuals have the same level of medical requirements. If the DOD were to make policy changes to allow the open service of transgender individuals, considerations may vary for individuals who:

- 1. self-identify as a different gender and would like to be recognized as their chosen gender, but do not choose to undergo hormone therapy or surgery,
- 2. are undergoing or would like to undergo hormone therapy without surgery, and
- 3. have had or wish to have gender reassignment surgery.

In all cases the DOD might need to consider administrative questions such as, the type of uniform worn, the gender listed on the individual's military I.D., and duty and berthing assignments. If the individual is undergoing hormone therapy, another consideration might be the physical fitness testing and standards that apply as currently these vary by gender.

In cases where medical treatments are required, the DOD might need to review [military health insurance \(TRICARE\) benefits](#) that currently do not cover treatments or surgery related to transsexualism or gender dysphoria to determine whether these treatments should be covered.

Another consideration might be how to treat transgender women who may be serving in combat occupations and units that are currently closed to women. While DOD is not required by law to obtain congressional review or approval for changes to transgender policies, the military departments are required by law ([10 U.S.C. §652](#)) to notify Congress of changes that would open any new military career designators to women. Congress then has a 30-day (continuous in-session) review period upon receiving notification of the changes before DOD can implement them. (For more information please see CRS Report R42075, [Women in Combat: Issues for Congress](#), by Kristy N. Kamarck)

DOD's working group is expected to complete their review and studies within the next six months.