

February 4, 2025

Via Federal eRulemaking Portal

Consuela Benjamin
Regulation Development Coordinator
Office of Regulation Policy & Management
Office of General Counsel
Department of Veterans Affairs
810 Vermont Ave. NW
Washington, DC 20420

RE: VA Proposed Rule, “Amendments to the Program of Comprehensive Assistance for Family Caregivers,” RIN 2900-AR96

Dear Ms. Benjamin:

I am a scholar at the Ethics and Public Policy Center (EPPC), director of EPPC’s Administrative State Accountability Project (ASAP), and a former attorney at the Equal Employment Opportunity Commission. I write in response to the Department of Veterans Affairs’ (VA) proposed rule, “Amendments to the Program of Comprehensive Assistance for Family Caregivers.”¹ The proposed rule would revise regulations that govern VA’s Program of Comprehensive Assistance for Family Caregivers (PCAFC), “including, but not limited to, removing, adding, and revising definitions; revising criteria related to eligibility, revocations, and discharges; revising certain processes related to reassessments and the timing of reassessments; and relaxing in-home visits during emergencies.”²

I wish to call the VA’s attention to its proposed technical edits that would “remove and replace gender specific language throughout part 71 with gender-neutral language.”³ Specifically, the VA proposes to:

- Revise the definition of *personal care services* to replace the language “his or her” with the word “their” in § 71.15;
- Remove the language “he or she” and add in its place, the language “the veteran or servicemember” in § 71.20 introductory text, and paragraphs (a), (b), and (c); and
- Remove the language “his or her” and add, in its place, the word “their” in § 71.45(b)(3)(i).⁴

The VA explains that these edits “have no substantive impact as they are grammatical and technical corrections” and that the goal of these edits is to bring the VA’s regulations in alignment with Biden

¹ 89 Fed. Reg. 97404 (Dec. 6, 2024), <https://www.federalregister.gov/documents/2024/12/06/2024-28079/amendments-to-the-program-of-comprehensive-assistance-for-family-caregivers>.

² *Id.* at 97404.

³ *Id.* at 97450.

⁴ *Id.*

Executive Order 13988, “Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation” (Jan. 20, 2021).⁵

After the proposed rule was published in the Federal Register on December 6, 2024, Biden Executive Order 13988 was revoked by President Trump on January 20, 2025, when he issued Executive Order 14148, “Initial Rescission of Harmful Executive Orders and Actions.”⁶ As such, there is no longer a legal basis for the VA’s proposed edits.

Further, the proposed edits may run afoul of President Trump’s January 20, 2025, Executive Order, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”⁷ I direct you to the following aspects of the President’s executive order:

- Section 2(f) recognizes that “Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.”
- Section 2(g) recognizes that “‘Gender identity’ reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.”
- Section 3(a) instructs the Secretary of HHS to “provide to the U.S. Government, external partners, and the public clear guidance expanding on the sex-based definitions set forth in this order.”
- Section 3(b) states that federal agencies “shall enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes.”
- Section 3(c) states that “[w]hen administering or enforcing sex-based distinctions,” federal agencies “shall use the term ‘sex’ and not ‘gender’ in all applicable Federal policies and documents.”
- Section 3(f) instructs the Attorney General to “immediately issue guidance to agencies to correct the misapplication of the Supreme Court’s decision in *Bostock v. Clayton County* (2020) to sex-based distinctions in agency activities.”⁸

To my knowledge, neither the HHS guidance (described in Section 3(a)) nor the DOJ guidance (described in Section 3(f)) have been issued. As the VA reviews the proposed edits, the agency should look for those forthcoming guidance documents and take them into account.

In sum, I encourage the VA to review the President’s executive orders mentioned above, along with any guidance or other relevant documents issued pursuant to the President’s executive orders, as it considers its proposal to remove gender-specific language. Because the edits are merely “grammatical and technical

⁵ *Id.*

⁶ 90 Fed. Reg. 8237 (Jan. 28, 2025), <https://www.federalregister.gov/documents/2025/01/28/2025-01901/initial-rescissions-of-harmful-executive-orders-and-actions>.

⁷ 90 Fed. Reg. 8615 (Jan. 30, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02090/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal>.

⁸ *Id.* at 8615-8616.

corrections” without “substantive impact,” they provide minimal, if any, benefits, and there would be no harm in rejecting them.

Conclusion

For the reasons stated above, I urge the VA to evaluate its proposed rule, and specifically its proposal to use gender-neutral language throughout part 71, in light of President Trump’s executive orders. I hope this public comment helps the VA better carry out its important responsibilities and ensure its actions and policies reflect the President’s priorities and directives.

Sincerely,

Rachel N. Morrison, J.D.
Fellow and Director
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