

Strategies for Addressing the Needs of LGBTQ+ Veterans

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- Mallory Andrews, Staff Attorney, Legal Aid Foundation of Los Angeles
- Bryan Ellicott-Cook, Program Manager, SAGEVets

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Today's Presenters

- Aaron Tax, Managing Director of Government Affairs & Policy Advocacy, SAGE
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Legal Aid Foundation of Los Angeles



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Key Lessons

- The effects of discriminatory policies impact LGBTQ+ Veterans to this day
- Discharge upgrades are one way to increase access to critical benefits for LGBTQ+ veterans
- Providing culturally-competent and trauma-informed services is imperative to serving the LGBTQ+ veteran community

Introduction



Aaron Tax

Managing Director of Government Affairs and Policy Advocacy
(he/him)

Don't Ask, Don't Tell (DADT)

- 10 USC Section 654
- Homosexual Conduct Policy
- Barred:
 - Statements
 - Acts
 - Marriage

Legal Effects of DADT

Bad Papers

- Between 1980 and the repeal of Don't Ask, Don't Tell in 2011, at least 32,837 service members were discharged due to their sexual orientation
- More than 2,000 of them received a General, Other than Honorable, or unknown/uncharacterized discharge
- These less-than-Honorable discharges impact the benefits a Veteran is entitled to

Effect on Benefits

- Entitlement to VA benefits and/or VA healthcare requires a discharge that is honorable for VA purposes
- Veterans with discharges deemed dishonorable are ineligible for healthcare, compensation for injuries, veterans' pension, and other benefits

Benefits Eligibility

Eligible	May be eligible	Ineligible
<ul style="list-style-type: none">▪ Honorable▪ General <p>Service members with a General discharge are eligible for all VA benefits except the GI Bill.</p>	<ul style="list-style-type: none">▪ Other than Honorable▪ Bad Conduct <p>The VA must conduct a “character of discharge” review of the service member’s record, determining whether their service was overall “honorable.”</p>	<ul style="list-style-type: none">▪ Dishonorable▪ Statutory or regulatory bar (such as a general court martial)

Benefits Available

- GI Bill
- Compensation benefits for those injured in service
- Pension benefits for wartime veterans
- Healthcare
- HUD-VASH vouchers
- Some housing programs
- Veteran Readiness and Employment (formerly VocRehab)
- And more!

Discharge Upgrades

Applying for an Upgrade

- A Veteran with a less than honorable discharge can apply for a discharge upgrade
- An upgraded discharge may grant eligibility for VA benefits
- There are two different board levels with a separate application form, process, and requirements
- Each branch has its own review boards and the processing time varies among them

Deadlines to Apply

Discharge Review Board

- Must apply within 15 years from the date of discharge

Board for Correction of Military/Naval Records

- Must apply within 3 years of discovery of the error or injustice
- Or, must apply within 3 years to appeal a DRB decision
- The Board can waive the deadline “in the interest of justice”

Considerations

- A Discharge Review Board considers two basic issues: “equity” (fairness) and “propriety” (legal error)
- The BCMR and BCNR considers the same concepts under “injustice” and “error”
- A punitive discharge can only be upgraded based on “clemency”
 - Includes Bad Conduct, Dishonorable, or other discharge imposed after a court-martial
 - Clemency asks the Board for lenience based on your positive post-service conduct or other factors

The Stanley Memo

- The Department of Defense issued guidance to the Boards in the Stanley memo
- The memo instructs the Boards to upgrade a discharge to honorable with a narrative reason of “secretarial authority” when:
 - The original discharge was based solely on DADT or similar policy prior to DADT
 - There were no aggravating factors such as misconduct

DOD Review

On September 20, 2023, the Department of Defense announced it will proactively review military records of Veterans whose military records indicate that their administrative separation was the result of their sexual orientation and who received a less than honorable discharge

Recover Pride in Service Act

- Proposed on February 20, 2024 (not yet passed)
- Requires upgrade to honorable for all discharges based on sexual orientation
- Service members must be informed of their right to an upgrade
- Eliminates the 3-year deadline
- Requires all discharge upgrades to be granted within 5 years after enactment

Pension and Compensation

Non-Service Connected Pension

Pension is a means-tested benefit for wartime veterans. It requires:

- Service prior to September 8, 1980: 90 days of active duty
- Service after September 7, 1980: 24 months of active duty (or the full period called to active duty)
- At least one day of service during a wartime period
- Age of 65 or older OR total and permanent disability
- Income under the maximum annual pension rate
 - In 2024, the MAPR is \$16,551

Additional Allowances

Aid and Attendance

- You need assistance with the activities of daily living
- You spend a large portion of your day in bed due to illness
- You are in a nursing home due to effects of a disability
- You have very limited vision
- MAPR: \$27,609

Housebound

- You spend most of your time in your home because of a permanent disability
- MAPR: \$20,226
- You cannot receive both benefits at the same time.

Service-Connected Compensation

- These benefits compensate Veterans who were injured during their military service.
 - Service on active duty, active duty for training, or inactive duty for training
 - An injury or incident of illness during such service
 - A current medical condition
 - A link between the condition and the in-service injury or incident
- The injury or illness must occur during service – it does not have to be related to military duties.

Military Sexual Trauma

- Veterans who were sexually harassed or assaulted – including harassment for their sexual orientation or identity – may be eligible for compensation if they experience post-traumatic stress disorder.
- The VA has more liberal rules for veterans who experienced military sexual trauma, removing the requirement that a Veteran “prove” the stressor occurred during service. Instead, the VA will consider “markers” of trauma.

Total Disability/Individual Unemployability (TDIU)

- TDIU allows for Veterans with less than 100% disability rating to be compensated at the 100% rate if they:
 - Are unable to work because of their service-connected conditions
 - Have at least one service-connected condition rated at 60% OR a combined rating of 70% with at least one condition rated at 40%
- Veterans at retirement age are still eligible for TDIU.

The Lasting Impact

Access to Care

- A 2007 study of LGBTQ Veterans found that some “hesitated to use these organizations [federal vet facilities] out of fear of needing to return to the roles they were forced to play in the military”
- “We still have the instinct to hide our sexual orientation on military facilities”
- “I try not to hide who I am, however, when around straight vets, I tend to play the part again. I do not feel that organizations like VA or VFW would be supportive in a time of need”

Garland, Kimberly J., “An Exploratory Study of Lesbian, Gay, Bisexual, and Transgender Veterans of Recent U.S. Conflicts” (2007). Masters Thesis, Smith College, Northampton, MA. <https://scholarworks.smith.edu/theses/411>

VA Responses

- There is an LGBTQ+ Veteran Care Coordinator (LGBTQ+ VCC) in every VA health care system
- VA records allow for birth sex as well as “Self-Identified Gender Identity”
- VA employees must use a veteran's chosen name

LAFLA's Veterans Justice Center

- The Veterans Justice Center (VJC) is the oldest free legal services program for veterans in Los Angeles County
- We have an inclusive and expansive approach to our services and assist all individuals who served in the U.S. military regardless of length of service, era, or discharge status
- Applicants are not asked if they are a “Veteran” – they are asked if they have ever served in the U.S. military, which has increased our reach to those who do not identify as a “Veteran”
- Once identified, applicants are automatically assigned to VJC for comprehensive intake

Holistic Services

- VJC conducts a holistic assessment of each Veteran regardless of their presenting legal issue(s) to ensure that we capture and assist with as many legal issues as possible
- We assist with: housing, VA benefits, military discharge upgrades, character of discharge determinations, criminal record expungement, citation defense, and family law
- We provide services to family members of Veterans
- If we cannot assist with an issue, we ensure that at minimum clients receive information and an appropriate referral

Inclusive and Trauma-Informed Care

- Our intake process asks all potential clients about both their legal name and preferred/chosen name to ensure we correctly address our clients throughout our services
- Veterans who experienced trauma are given a choice of advocates to ensure they can feel as comfortable as possible sharing the necessary details of their experience
- Clients control the pace of these conversations
- Advocates allow for the format the client determines is best (in person vs. by phone vs. written correspondence)

Veterans of Color Advocacy Project

- VJC leverages pro bono support to expand our services to veterans through our Veterans of Color Advocacy Project (VOCAP)
- This is the nation's first program dedicated to Veterans of color seeking to remove criminal justice barriers
- VOCAP provides full scope legal representation to veterans through the criminal record clearing process and beyond
- Pro bono attorneys and law students assist with preparing pleadings and drafting declarations at bi-monthly virtual clinics, then represent veterans at their expungement hearings

Community Partnerships to Expand Outreach

- Community Engagement Reintegration Services (CERS) with the West Los Angeles VAMC
- Peer Support Specialists with the Homeless Virtual Health Resource Center – Greater Los Angeles Healthcare System
- Primary Care Physician Team – Greater Los Angeles Healthcare System
- HUD-VASH programs at the West Los Angeles and Long Beach VAMCs
- Outpatient facilities, care centers, and housing projects throughout Southern California
- Salvation Army Bell Shelter
- Veteran Peer Access Network (VPAN)
- U.S. Vets and Supportive Services for Veteran Families (SSVF)

Increased Funding to Expand Services

- Legal Services Corporation: funded by the federal budget and allows LAFLA to serve low-income residents at or below 200% of federal poverty level
- California State Bar Legal Services Trust Fund Programs: Interest on Lawyers Trust Account (IOLTA): allows us to serve veterans above 200% FPL if they receive service-connected compensation
- Supportive Services for Veteran Families: via a partnership with U.S. Vets Inglewood
- Pro Bono Innovation Fund: special funding from LSC for projects that incorporate the use of pro bono volunteers

Accessing Services

- Five community offices throughout Los Angeles County
- Phone intake: 800-399-4529
- Online application: www.lafla.org/get-help/
- Direct referrals from community partners
- Community clinics and outreach events



Fighting for Justice Since 1929

SAGEVets

A Community Based Approach to Serving LGBTQ+ Vets

Meet the SAGEVets Team

- Bryan Ellicott-Cook (He/They)
 - Program Manager
- Arnold Lewis (He/Him)
 - Program Coordinator

Who is SAGE and SAGEServes

- Founded in New York City in 1978, SAGE is the nation's largest and oldest organization dedicated to improving the lives of LGBTQ+ elders.
- SAGEServes, a division of SAGE, offers services and programs throughout New York and South Florida. These include specialized programming for homebound elders, LGBTQ+ veterans, caregivers, and older people living with HIV/AIDS.
- Our SAGE Centers offer a diverse selection of virtual and in-person social activities and programs, and our Care Management Team provides holistic coordinated care for LGBTQ+ elders and those who care for them.

Who Does SAGEVets Serve?

- LGBTQ+ Veterans
- Age 50+
- New York State residents

Restoring Equal Rights to LGBTQ+ Veterans

- As of June 1, 2020, the New York State Department of Veterans Services is accepting applications for restoration of New York State benefits. Any individual with prior military service who was discharged under conditions that were other-than-honorable (OTH) or general under honorable conditions may apply for restoration of New York State veterans' benefits if the discharge resulted from:
 - Sexual Orientation
 - Military Sexual Trauma (MST)
 - Post Traumatic Stress Disorder (PTSD)
 - Traumatic Brain Injury (TBI)

What Does Restoration of Honor Act Provide?

- New York offers special benefits for service members, Veterans, and their families including property tax exemptions, New York National Guard tuition assistance, Veteran and dependent education assistance, compensation for state active duty, employment assistance, civil service preference, special vehicle license plates, hunting/fishing license benefits, and New York State Parks privileges.
- Eligibility for some benefits may depend on residency, military component, and Veteran disability status.

What Veterans Benefits Do I Get with an Other–Than–Honorable Discharge? Pt 1

- Honorable military service entitles Veterans to certain benefits
- Many Veterans have been given the wrong discharge type despite having served honorably.
- As many as 100,000 Veterans were given other-than-honorable (OTH) discharge status due to their sexual orientation, and thousands victims of military sexual trauma (MST) have been improperly discharged after filing complaints.

What Veterans Benefits Do I Get with an Other–Than–Honorable Discharge? Pt 2

- Other-than-honorable discharge
 - May be eligible for VA benefits such as disability compensation, pension benefits, and home loan benefits.
- The character of discharge determination process can take as long as a year. During this time, the VA will seek to determine whether your service was ‘honorable for VA purposes.’
- If your character of discharge determination finds that your service was ‘other than dishonorable,’ you could be granted certain VA benefits assuming you meet the other eligibility requirements.

What are the Needs of LGBTQ+ Veterans who are Older Adults?

- Culturally Competent Healthcare and Training
- Physical & Mental Health Support
- Social Support Networks
- Legal Protections
- Transition Support
- Family and Relationship Support
- Education and Training
- Accessible and Inclusive Facilities
- Advocacy and Policy Reform

SAGEVets Services and Programming

- VA Benefit Registration
- Legal advice and counsel and/or representation regarding discharge status upgrades
- Case Management Assistance



SAGEVets Programs

- Veterans Day Parade
- Veterans Yoga w/
Veterans Yoga Project
- Weekly Virtual Support
Group
- Trips and More



Questions?

Contact Us

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.