



DEPARTMENT OF VETERANS AFFAIRS

8230-01

38 CFR Part 9

RIN 2900-AO20

Servicemembers' Group Life Insurance Traumatic Injury Protection Program—  
Genitourinary Losses

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule that amends the regulations governing the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program by adding certain genitourinary (GU) system losses to the TSGLI Schedule of Losses and defining terms relevant to these new losses. This amendment is necessary to make qualifying GU losses a basis for paying GU-injured Servicemembers TSGLI benefits. The intended effect is to expand the list of losses for which TSGLI payments can be made.

DATES: Effective Date: This interim final rule is effective [Insert date of publication in FEDERAL REGISTER]. Comments must be received on or before [Insert date 60 days after publication in FEDERAL REGISTER].

Applicability Date: VA will apply this rule to injuries incurred on or after October 7, 2001.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO20 - Servicemembers' Group Life Insurance Traumatic Injury Protection Program-- Genitourinary Losses." Copies of comments received will be available for public inspection in the Office of Regulations Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments are available to view online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Monica Keitt, Attorney/Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842-2000, ext. 2905. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Congress established the Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program to provide financial assistance to severely injured Servicemembers who suffer a traumatic injury directly resulting in a TSGLI scheduled loss. See

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, sec. 1032, 119 Stat. 231, 257. Until now, injuries to the genitourinary (GU) system were not specifically included in the TSGLI Schedule of Losses at 38 CFR 9.20(f), although Servicemembers who sustain GU system injuries often are eligible for TSGLI payments for other losses under the Schedule incurred as a result of the same traumatic event that caused the GU loss. For example, a Servicemember who suffers GU injuries may be eligible for a TSGLI payment if hospitalized for 15 consecutive days. 38 CFR 9.20(f)(20).

A recent Department of Defense (DoD) report showed that, from 2009 to 2010, the proportion of war casualties who arrived at Landstuhl Regional Medical Center in Germany suffering from GU injuries increased from 4.8 percent to 9.1 percent. DoD also found that approximately 570 Servicemembers sustained GU injuries involving the genitalia between October 7, 2001, and May 2, 2011. Joint Theater Trauma Registry Ad Hoc Report for October 7, 2001, to May 2, 2011, Institute for Surgical Research (May 5, 2011). In addition, the United States Army Institute of Surgical Research at Fort Sam Houston found that 5 percent of Servicemembers on the Joint Theater Trauma Registry who were admitted as a result of trauma in overseas contingency operations between October 2001 and January 2008 had one or more GU injuries. Faye B. Serkin et al., Combat Urologic Trauma In US Military Overseas Contingency Operations, 69 J. Trauma Suppl. 1 S175 (2010). Recent consultation with medical experts at the National Naval Medical Center (NNMC) in Bethesda, Maryland, and Brooke Army Medical

Center (BAMC) in San Antonio, Texas, where many injured Servicemembers are treated, revealed that there has been a recent increase in the number of GU injuries experienced by Servicemembers. As a result, the Secretary of Veterans Affairs has decided to add certain GU system losses to the TSGLI Schedule of Losses for which a TSGLI benefit is payable.

In the TSGLI Schedule of Losses codified at 38 CFR 9.20(f), VA is redesignating current paragraphs (19) and (20) as paragraphs (20) and (21), respectively, and adding GU system losses as the new paragraph (19). The medical experts report that, generally, GU injuries treated at NNMCC and BAMC involve severe damage to the perineum consisting of complete loss of the genitalia or significant damage resulting in partial or complete loss of GU functional capacity. The NNMCC and BAMC medical experts also stated that erectile dysfunction is common in male Servicemembers whom they have treated following severe GU injuries. BAMC specialists noted that the majority of the recent GU injuries treated at their facility are the result of dismounted complex blast injuries, which have increased recently because military personnel in combat zones are now conducting more walking patrols, which place them outside the protection of their armored vehicles. VA is therefore adding anatomical loss and loss of use of the penis as a scheduled loss for which \$50,000 in TSGLI benefits is payable.

VA is defining “anatomical loss of the penis” in new § 9.20(e)(6)(xxi) as amputation of the glans penis or any portion of the shaft of the penis above the glans penis (i.e., closer to the body), or damage to the glans penis or shaft of the

penis that requires reconstructive surgery. Because this definition and other definitions of anatomical loss of GU organs include the word “amputation,” we are revising the definition of “amputation” in § 9.20(e)(6)(xx) to apply to genital organs as well as to limbs. VA is defining “permanent loss of use of the penis” in new § 9.20(e)(6)(xxii) to mean damage to the glans penis or shaft of the penis that results in complete loss of the ability to perform sexual intercourse that is reasonably certain to continue throughout the lifetime of the member.

VA is also adding to the Schedule of Losses in paragraph (f)(19) anatomical loss of one testicle, for which \$25,000 in TSGLI benefits is payable, and anatomical loss of both testicles, for which \$50,000 in TSGLI benefits is payable. The term “anatomical loss of the testicle(s)” is defined in new § 9.20(e)(6)(xxiii) as the amputation of, or damage to, one or both testicles that requires testicular salvage, reconstructive surgery, or both.

The medical experts also advised that female Servicemembers may experience anatomical loss or functional impairment of the external genitalia due to a traumatic injury. VA is therefore adding to the Schedule of Losses in § 9.20(f)(19) anatomical loss of the vulva, uterus, or vaginal canal and permanent loss of use of the vulva or vaginal canal. A TSGLI benefit of \$50,000 is payable for either the anatomical loss of the vulva, uterus, or vaginal canal or for permanent loss of use of the vulva or vaginal canal. New § 9.20(e)(6)(xxv) defines “anatomical loss of the vulva, uterus, or vaginal canal” as the complete or partial amputation of the vulva, uterus, or vaginal canal or damage to the vulva, uterus, or vaginal canal that requires reconstructive surgery. VA defines

“permanent loss of use of the vulva or vaginal canal” in new § 9.20(e)(6)(xxvi) as damage to the vulva or vaginal canal that results in complete loss of the ability to perform sexual intercourse that is reasonably certain to continue throughout the lifetime of the member.

VA is also adding anatomical loss of one or both ovaries to the TSGLI Schedule of Losses in paragraph (f)(19), for which TSGLI benefits of \$25,000 and \$50,000 are payable, respectively. The term “anatomical loss of the ovary(ies)” is defined in new § 9.20(e)(6)(xxvii) as the amputation of one or both ovaries or damage to one or both ovaries that requires ovarian salvage, reconstructive surgery, or both.

According to the NNMC and BAMC physicians, traumatic GU injuries may involve functional loss of the testicles or ovaries that requires hormonal replacement therapy in lieu of surgical removal. As a result, VA is adding permanent loss of use of both testicles to paragraph (f)(19) in the TSGLI Schedule of Losses, for which \$50,000 in TSGLI benefits is payable. The term “permanent loss of use of both testicles” is defined in new § 9.20(e)(6)(xxiv) as damage to both testicles resulting in the need for hormonal replacement therapy that is medically required and reasonably certain to continue throughout the lifetime of the member. In addition, VA is adding permanent loss of use of both ovaries to paragraph (f)(19) in the TSGLI Schedule of Losses, for which \$50,000 in TSGLI benefits is payable. The term “permanent loss of use of both ovaries” is defined in new § 9.20(e)(6)(xxviii) as damage to both ovaries resulting in the

need for hormonal replacement therapy that is medically required and reasonably certain to continue throughout the lifetime of the member.

Finally, many of the reported GU injuries often require permanent urinary diversion (i.e., catheterization), reconstructive surgery, or long-term rehabilitation to restore GU functional capacity, even though no anatomical loss is involved. If there is functional loss of both kidneys, hemodialysis is required, even if urinary diversion is not a factor. VA is therefore adding total and permanent loss of urinary system function to paragraph (f)(19) in the TSGLI Schedule of Losses, for which \$50,000 in TSGLI benefits is payable. The term “total and permanent loss of urinary system function” is defined in new § 9.20(e)(6)(xxix) as damage to the urethra, ureter(s), both kidneys, bladder, or urethral sphincter muscle(s) that requires permanent urinary diversion and/or hemodialysis, either of which is reasonably certain to continue throughout the lifetime of the member.

GU losses may be combined with each other, but the maximum benefit for GU losses may not exceed \$50,000, as stated in Note 1 of new § 9.20(f)(19). The GU losses are added as paragraph (19) of the TSGLI Schedule of Losses and thus can be combined with other TSGLI losses listed in § 9.20(f)(1) through (18), as explained in Note 2 of new § 9.20(f)(19). The total TSGLI payment received for all TSGLI losses, including those in combination with the new GU losses, that result from a single traumatic event may not exceed \$100,000, as stated in Note 2 of § 9.20(f)(19). See 38 CFR 9.20(e)(5)(i). As a result of this amendment, the references to “(18)” in the first two paragraphs of § 9.20(f) are

replaced with “(19),” and the reference to “(f)(19) through (20)” is replaced with “(f)(20) through (21)”.

When Congress created the TSGLI program in 2005, it authorized TSGLI payments for losses resulting from traumatic injuries sustained between October 7, 2001, and December 1, 2005, if the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. Public Law 109-13, sec. 1032(c)(1), 119 Stat. at 259. In 2006, Congress limited such retroactive application to injuries incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom. Veterans’ Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109-233, sec. 501(b), 120 Stat. 397, 414. In 2010, Congress eliminated the requirement that a loss directly resulting from traumatic injury had to be incurred in such theaters of operations or in such operations in order to qualify for retroactive benefits. Veterans’ Benefits Act of 2010, Public Law 111-275, sec. 408, 124 Stat. 2864, 2881. We therefore make this rule applicable to GU losses resulting from a traumatic injury incurred on or after October 7, 2001, regardless of whether the traumatic event occurred in those operations.

#### Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior notice and public comment with respect to this rule, which modifies the TSGLI program in a manner advantageous to Servicemembers. The Secretary finds



that it is impracticable to delay this regulation for the purpose of soliciting public comments because Servicemembers who suffer these GU injuries and their families need the TSGLI payment as soon as possible to reduce the financial burden related to the Servicemembers' injuries. As the number of GU injuries continues to increase due to more ground troop patrols in high risk areas, the number of potential Servicemembers that may need assistance under this rule will also increase. For this reason, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary of Veterans Affairs will consider and address comments that are received within 60 days of the date this interim final rule is published in the Federal Register. For the same reasons, the Secretary of Veterans Affairs finds there is good cause for dispensing with a delayed effective date for this rule.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments or on the private sector.

#### Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

## Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" requiring review by the Office of Management and Budget (OMB) as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and has determined that it is not a significant regulatory action under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This interim final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance Program number and title for this regulation is 64.103, Life Insurance for Veterans.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 27, 2011, for publication.

List of Subjects in Part 9

Life insurance, Military personnel, Veterans.

Dated: November 29, 2011

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Robert C. McFetridge,  
Director of Regulation Policy and Management,  
Office of the General Counsel,  
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 9 as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

2. Section 9.20 is amended by:

- a. Revising paragraph (e)(6)(xx);
- b. Adding paragraphs (e)(6)(xxi) through (xxix);
- c. Redesignating paragraphs (f)(19) and (f)(20) as paragraphs (f)(20) and (f)(21), respectively;
- d. Adding new paragraph (f)(19);
- e. The two introductory paragraphs in the table in paragraph (f) are revised.

The revision and additions reads as follows:

§ 9.20 Traumatic injury protection.

*	*	*	*	*
(e)	*	*	*	*
(6)	*	*	*	*

(xx) The term amputation means the severance or removal of a limb or genital organ or part of a limb or genital organ resulting from trauma or surgery. With regard to limbs an amputation above a joint means a severance or removal that is closer to the body than the specified joint is.

(xxi) The term anatomical loss of the penis is defined as amputation of the glans penis or any portion of the shaft of the penis above the glans penis (i.e. closer to the body) or damage to the glans penis or shaft of the penis that requires reconstructive surgery.

(xxii) The term permanent loss of use of the penis is defined as damage to the glans penis or shaft of the penis that results in complete loss of the ability to perform sexual intercourse that is reasonably certain to continue throughout the lifetime of the member.

(xxiii) The term anatomical loss of the testicle(s) is defined as the amputation of, or damage to, one or both testicles that requires testicular salvage, reconstructive surgery, or both.

(xxiv) The term permanent loss of use of both testicles is defined as damage to both testicles resulting in the need for hormonal replacement therapy that is medically required and reasonably certain to continue throughout the lifetime of the member.

(xxv) The term anatomical loss of the vulva, uterus, or vaginal canal is defined as the complete or partial amputation of the vulva, uterus, or vaginal canal or damage to the vulva, uterus, or vaginal canal that requires reconstructive surgery.

(xxvi) The term permanent loss of use of the vulva or vaginal canal is defined as damage to the vulva or vaginal canal that results in complete loss of the ability to perform sexual intercourse that is reasonably certain to continue throughout the lifetime of the member.

(xxvii) The term anatomical loss of the ovary(ies) is defined as the amputation of one or both ovaries or damage to one or both ovaries that requires ovarian salvage, reconstructive surgery, or both.

(xxviii) The term permanent loss of use of both ovaries is defined as damage to both ovaries resulting in the need for hormonal replacement therapy that is medically required and reasonably certain to continue throughout the lifetime of the member.

(xxix) The term total and permanent loss of urinary system function is defined as damage to the urethra, ureter(s), both kidneys, bladder, or urethral sphincter muscle(s) that requires urinary diversion and/or hemodialysis, either of which is reasonably certain to continue throughout the lifetime of the member.

(f) \* \* \*

<p><b>For losses listed in paragraphs (f)(1) through (19) of this section, multiple losses resulting from a single traumatic event may be combined for purposes of a single payment (except where noted otherwise); however, the total payment amount may not exceed \$100,000 for losses resulting from a single traumatic event.</b></p> <p><b>Payments for losses listed in paragraphs (f)(20) through (21) of this section may not be made in addition to payments for losses under paragraphs (f)(1) through (19)—only the higher amount will be paid. The total payment amount may not exceed \$100,000 for losses resulting from a single traumatic event.</b></p>	
<p><b>If the loss is—</b></p>	<p><b>Then the</b></p>

	<b>amount payable for the loss is—</b>
<b>(19) Genitourinary Losses</b>	
▪ <b>Anatomical loss of the penis</b>	\$50,000
▪ <b>Permanent loss of use of the penis</b>	\$50,000
▪ <b>Anatomical loss of one testicle</b>	\$25,000
▪ <b>Anatomical loss of both testicles</b>	\$50,000
▪ <b>Permanent loss of use of both testicles</b>	\$50,000
▪ <b>Anatomical loss of the vulva, uterus, or vaginal canal</b>	\$50,000
▪ <b>Permanent loss of use of the vulva or vaginal canal</b>	\$50,000
▪ <b>Anatomical loss of one ovary</b>	\$25,000
▪ <b>Anatomical loss of both ovaries</b>	\$50,000
▪ <b>Permanent loss of use of both ovaries</b>	\$50,000
▪ <b>Total and permanent loss of urinary system function</b>	\$50,000
<p><b>Note 1:</b> Losses due to genitourinary injuries may be combined with each other, but the maximum benefit for genitourinary losses may not exceed \$50,000.</p> <p><b>Note 2:</b> Any genitourinary loss may be combined with other injuries listed in § 9.20(f)(1) through (18) and treated as one loss, provided that all losses are the result of a single traumatic event. However, the</p>	



<i>total payment may not exceed \$100,000.</i>	
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