August 29, 2025

Attn: Steven Lieberman, Acting Under Secretary of Health
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Submitted Electronically via Regulations.gov

Re: RIN 2900-AS31, Reproductive Health Services

I. Introduction

The Center for Reproductive Rights ("Center") respectfully submits the following comment in strong opposition to the Proposed Rule of the Department of Veterans Affairs ("VA" or "the Department") to amend its medical benefits to ban abortion counseling and abortion care in instances of rape, incest, and health emergencies for veterans and their qualified beneficiaries under the Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA") program, RIN 2900-AS31 ("Proposed Rule").[1]

Since 1992, the Center has used the power of law to advance reproductive rights as fundamental human rights worldwide. Our litigation and advocacy over the past 33 years have expanded access to reproductive health care around the nation and the world. We have played a key role in securing legal victories in the United States, Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to lifesaving obstetric care, contraception, safe abortion services, and comprehensive sexuality information. We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every person is free to decide whether or when to have children and whether to get married; where access to quality reproductive health care is guaranteed; and where everyone can make these decisions free from coercion or discrimination. Additionally, the Center has been a part of the fight for expanded reproductive health care access for veterans, servicemembers, and their dependents for years and has led coalition work, Congressional engagement, and administrative advocacy to push for elimination of the longstanding VA abortion ban.

As an organization committed to advancing policies that uphold reproductive rights as fundamental human rights, including the right to available, high quality, accessible, acceptable reproductive health care,[2] we strongly oppose this Proposed Rule. If finalized as drafted, the Proposed Rule would be a violation of the Administrative Procedure Act ("APA") and undoubtedly result in dangerous and reckless consequences for veterans and their loved ones. For

[1] Reproductive Health Services Proposed Rule; 90 Fed. Reg. 36415 (proposed Aug. 4, 2025) [hereinafter "Proposed Rule"].
[2] Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 14: The right to the highest attainable standard of health (Art. 12), (22nd Sess., 2000), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 80, para.12 (a)-(d), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); ESCR Committee, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016).

these reasons, we urge the Department to rescind the Proposed Rule and issue a final rule that provides abortion counseling and care for veterans and their qualified beneficiaries free from restrictions.

II. The legislative and regulatory history of veterans' health care does not support the promulgation of this Proposed Rule.

a. The legislative history of veterans' health care does not support completely banning abortion counseling and severely limiting abortion access.

In 1992, Congress passed the Veterans Health Care Act ("VHCA"), which expressly banned "infertility services, abortions, or pregnancy care (including prenatal and delivery care)."[3] The VHCA included exceptions only for pregnancy-related complications, or complications that had been exacerbated by service-related conditions.[4] Four years later, Congress passed the Veterans Health Care Eligibility Reform Act of 1996 ("VHCERA") which granted the VA broad rulemaking authority to "furnish hospital care and medical services…which the Secretary determines to be needed."[5] VHCERA handed the VA broad authority to add new health care services and support for veterans and has been interpreted to supersede the 1992 law. For example, in 1999, using its power under VHCERA, the VA promulgated a medical benefits package for veterans that included pregnancy and delivery services and certain infertility care, later adding some limited IVF services.[6] This legislative and regulatory history shows that the VA has historically considered the needs of its veteran population in deciding to provide services that had previously been excluded or banned. Specifically, the population of women veterans rose from approximately 1.1 million in 1980 to approximately 1.2 million in 1990 and then to approximately 1.6 million in 2000.[7] This rise in the number of veterans necessitated a review of the types of medical services that might be needed by the veteran population.[8] Similarly, as outlined in detail below, recent changes in the medical systems and health care access around the country necessitate the availability of abortion counseling and abortion care at the VA.

b. The actions taken under the 2022 Interim Final Rule and the resulting 2024 Final Rule were important to ensure necessary medical services for veterans and their families.

The Supreme Court's decision to overturn *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization* ("*Dobbs"*) unleashed chaos in our medical systems as state after state banned abortion in quick succession, leaving large swaths of the country without access to abortion care.[9] Currently, 19 states have completely banned or severely restricted abortion

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[3] Veterans Health Care Act of 1992, H.R. 5193, 102nd Cong. § 106(a)(3) (1992).
[4] *Id.*
[5] 38 U.S.C. § 1710(a)(1).
[6] 38 CFR § 17.38 (c)(1)(1999).
[7] *Women Veterans: Past, Present, and Future*, U.S. DEP'T OF VETERANS AFF. (Sept. 2007), https://www.va.gov/womenvet/docs/womenvet_history.pdf.
[8] 64 Fed. Reg. 54207 (1999).
[9] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 302 (2022); *After Roe Fell*, CTR. FOR REPROD. RTS., https://reproductiverights.org/maps/abortion-laws-by-state/ (last visited Aug. 29, 2025) [hereinafter *After Roe Fell*].

access.[10] This has resulted in over 400,000 women veterans now living in states that severely restrict or ban abortion, putting the health and lives of them and their families at risk.[11]

In 2022, the Biden administration recognized the public health crisis accelerated by the *Dobbs* decision and understood the impact this decision would have on the veteran community. The VA under the Biden administration recognized that veterans have specific health care needs and face increased health risks during pregnancy due to a variety of factors including service-related injuries and trauma.[12] As a result, in 2022, the VA issued an Interim Final Rule ("IFR") under the "good cause" exception of the Administrative Procedure Act ("APA") that lifted the VA ban on abortion counseling and carved out exceptions to the abortion ban in cases of rape, incest, or where the health or life of the pregnant person was endangered.[13]

The Biden administration used its authority under VHCERA to provide essential abortion care free from medically unnecessary administrative barriers, such as a physician certification requirement, for veterans and their families. By creating the life and health exception for veterans, the 2022 IFR addressed the unique health risks of veterans and deferred to the judgment of health care providers to allow them to provide the care they deemed necessary for their patients. Within the first year of the 2022 IFR, the VA provided 88 abortions, indicating the success of the 2022 IFR by providing needed abortion coverage and counseling for veterans and their beneficiaries.

III. The Proposed Rule is illegal because it violates the Administrative Procedure Act.

The Departments' authority to promulgate rules is not limitless. Rulemaking must be guided by the underlying statute, the APA, and a balancing of interests. Despite the vast and well-documented evidence of the harms that result from abortion bans, the Department issued this Proposed Rule on August 4, 2025, banning abortion counseling and care in VA facilities with only a narrow lifesaving exception, and did so without following APA requirements.[14] Under the APA, a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[15] If finalized as proposed, the Department's rule would substantively violate the APA, making it arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

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[10] *After Roe Fell*.
[11] *State Abortion Vans Harm More than 15 Million Women of Color*, NAT'L P'SHIP FOR WOMEN AND FAMILIES Jun. 2023, https://nationalpartnership.org/report/state-abortion-bans-harm-woc/.
[12] *Jonathan G Shaw* et al., *Post-traumatic Stress Disorder and Antepartum Complications: A Novel Risk Factor for Gestational Diabetes and Preeclampsia,* PAEDIATRIC AND PERINATAL EPIDEMIOLOGY (Mar 22, 2017), https://pubmed.ncbi.nlm.nih.gov/28328031/; Kristin M Mattocks et al., *Pregnancy and Mental Health Among Women Veterans Returning from Iraq and Afghanistan*, J. OF WOMEN'S HEALTH (Nov. 27, 2010), https://www.liebertpub.com/doi/10.1089/jwh.2009.1892.
[13] 87 Fed. Reg. 55296 (Sept. 9, 2022).
[14] Proposed Rule, *supra* n.1 at 36417.
[15] 5 U.S.C. § 706(2)(A).

a. The Proposed Rule is arbitrary and capricious.

The arbitrary and capricious standard of the APA "requires that agency action be reasonable and reasonably explained[,]"[16] and is only satisfied if "the Secretary examine[s] the relevant data and articulate[s] a satisfactory explanation for his decision, including a rational connection between the facts found and the choice made."[17] Regulations lacking this rational connection violate the APA. If the Proposed Rule is finalized as currently drafted, it will violate the APA for being arbitrary and capricious because it (1) is not reasonably explained by underlying facts and data, (2) fails to provide reasoned explanation for overriding the Department's 2022 IFR and 2024 Final Rule regarding reproductive health services, (3) fails to provide reasoned explanation for why only physicians can certify an exception, and (4) fails to provide a reasoned explanation for distinguishing between the benefits provided under the veterans' benefits package and under CHAMPVA.

i. The Proposed Rule is not reasonably explained by underlying facts and data.

The most recent data on demand for abortion care in the United States indicates that veterans and CHAMPVA beneficiaries need greater access to care at VA facilities, not less. The VA hosts one of the largest integrated health care systems in the United States, serving over 9 million veterans.[18] Women veterans are also the fastest-growing cohort of that population,[19] and women of reproductive age (between ages 18-44) are the fastest growing subset of new VA users.[20] Additionally, veterans already face unique health risks that can increase during pregnancy, making abortion care often essential to their health and wellbeing. For example, veterans of reproductive age have high rates of chronic physical and mental health conditions[21] that may make it dangerous to continue a pregnancy,[22] including conditions like severe hypertension and chronic renal disease.[23] Many veterans also experience severe post-traumatic stress disorder ("PTSD"), which can be exacerbated by pregnancy[24] and may require abortion care to preserve the health or life of the veteran. Notably, PTSD is common among survivors of military sexual trauma, which is highly prevalent in the military. One in

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[16] *Fed. Commc'ns Comm'n v. Prometheus Radio Proj.*, 592 U.S. 414, 423 (2021).
[17] *Dep't of Comm. v. New York*, 588 U.S. 752, 773 (2019) (internal quotation marks omitted).
[18] *Veterans Health Administration*, U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/health/aboutVHA.asp (last updated Jan 20, 2025).
[19] *Facts and Statistics: Women Veterans Health Care,* U.S. DEP'T OF VETERANS AFFS., https://www.womenshealth.va.gov/materials-and-resources/facts-and-statistics.asp (last updated May 9, 2025).
[20] Friedman S.A., et. al., *New Women Veterans in the VHA: A longitudinal profile,* JACOBS INST. OF WOMEN'S HEALTH, available at https://pubmed.ncbi.nlm.nih.gov/21724129/.
[21] *Jonathan G Shaw* et al., *Post-traumatic Stress Disorder and Antepartum Complications: A Novel Risk Factor for Gestational Diabetes and Preeclampsia*, *PAEDIATRIC AND PERINATAL EPIDEMIOLOGY* (Mar 22, 2017), https://pubmed.ncbi.nlm.nih.gov/28328031/.
[22] Joan L Combellick et al., *Severe Maternal Morbidity Among a Cohort of Post-9/11 Women Veterans*, J. OF WOMEN'S HEALTH (Jan. 6, 2020), https://pubmed.ncbi.nlm.nih.gov/31905319/.
[23] D C Jones & J P Hayslett, *Outcome of Pregnancy in Women With Moderate or Severe Renal Insufficiency*, THE NEW ENGLAND J. OF MEDICINE (Jul. 26, 1996), https://pubmed.ncbi.nlm.nih.gov/8657238/.
[24] Kristin M Mattocks et al., *Pregnancy and Mental Health Among Women Veterans Returning from Iraq and Afghanistan*, J. OF WOMEN'S HEALTH (Nov. 27, 2010), https://www.liebertpub.com/doi/10.1089/jwh.2009.1892.

three women veterans report having experienced military sexual trauma, including sexual assault, during their service.[25]

Now, in the aftermath of the Supreme Court's decision in *Dobbs* to overturn nearly 50 years of precedent protecting abortion access, 19 states have completely banned or severely restricted abortion access.[26] As a result, many veterans must travel long distances at great expense to access care, if they are able to access care at all.[27] In addition, in certain areas, the heightened demand resulting from patients traveling from out of state has resulted in significantly increased wait times[28] and, in some cases, patients being turned away altogether.[29] Yet, the Department's Proposed Rule is unmoored from this reality. By banning abortion counseling and denying abortion coverage in cases of rape, incest, and health emergencies, the Department's Proposed Rule openly disregards the specific health care needs of veterans and the risks they face when abortion access is not available. The Department's failure to consider the relevant data and articulate a satisfactory explanation for the action it is taking will make the Proposed Rule, if finalized, arbitrary and capricious.

ii. The Proposed Rule fails to provide reasoned explanation for overriding the Department's 2022 IFR and 2024 Final Rule regarding reproductive health services.

In addition to ignoring the relevant facts and data in its Proposed Rule, the Department also fails to provide reasoned explanation for overriding the 2022 IFR and 2024 Final Rule regarding reproductive health services. A federal agency cannot abandon its own prior regulations when political winds change—the APA demands more. To disregard a prior policy, a department must provide a "reasoned explanation" for the departure and "of course the agency must show that there are good reasons for the new policy."[30] In its justification for the Proposed Rule, the Department writes that "claims in the prior administration's rule that abortions throughout pregnancy are needed to save the lives of pregnant women are incorrect. The lives of pregnant women will continue to be protected without regard for the previous administration's

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[25] *PTSD: National Center for PTSD*, U.S. DEP'T OF VETERANS AFF., https://www.ptsd.va.gov/professional/treat/type/sexual_trauma_military.asp#:~:text=These%20data%20reveal%20that%20when,of%20service%20have%20experienced%20MST (last visited Aug. 18, 2025).
[26] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 302 (2022); *After Roe Fell*, CTR. FOR REPROD. RTS., https://reproductiverights.org/maps/abortion-laws-by-state/ (last visited Aug. 29, 2025).
[27] *Bad Medicine: How Political Agenda is Undermining Abortion Care and Access in Oklahoma*, NAT'L P'SHIP FOR WOMEN & FAMS. (2019), https://www.nationalpartnership.org/our-work/repro/reports/bad-medicine-oklahoma.html.
[28] Margot Sanger-Katz, Claire Cain Miller & Josh Katz, *Interstate Abortion Travel Is Already Straining Parts of the System,* N.Y. TIMES, (Sept. 19, 2022), https://www.nytimes.com/2022/07/23/upshot/abortion-interstate-travel-appointments.html.
[29] Marty Schladen, *Affidavits: More Pregnant Minors Who Were Raped Denied Ohio Abortions,* OHIO CAPITAL J. (Sept. 22, 2022), https://ohiocapitaljournal.com/2022/09/22/affidavits-more-pregnant-minors-who-were-raped-denied-ohio-abortions/ (quoting Allegra Pierce, a medical assistant at Preterm-Cleveland, saying that "[e]ven those patients who are able to travel out of state often have a hard time getting an appointment due to increasingly long wait times at clinics in states where abortion is still legal."); Laura Hancock, *Hamilton County Judge Immediately Halts Enforcement of Ohio's Fetal 'Heartbeat' Abortion Law for 14 Days; Abortion Now Legal Until 22 Weeks,* Cleveland.com (Sept. 14, 2022), https://www.cleveland.com/news/2022/09/ohio-judge-halts-enforcement-of-fetal-heartbeat-abortion-law-for-14-days.html.
[30] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

rule."[31] This logic unreasonably ignores the previous administration's action in issuing an IFR under the good cause exception of the APA in response to the reproductive health crisis created by the *Dobbs* decision.[32] Further, the Department erroneously claims that the lives of women veterans will be protected without acknowledging abortion as lifesaving care or providing any explanation for removing the previous administration's exceptions for abortion counseling and abortion care in cases of rape, incest, or health emergencies.[33] As discussed in more detail in Section IV below, the Proposed Rule will detrimentally impact the health and well-being of millions of veterans and family members across the country by denying pregnant people essential health care.

The Department's justification for replacing the prior administration's 2022 IFR and 2024 Final Rule also relies on misleading, rather than reasoned, explanation. In the rationale for the Proposed Rule, the Department writes that the previous administration "created a purported Federal entitlement to abortion for veterans" and "in doing so, the administration predicted a high demand for VA abortions that never materialized."[34] This preamble statement fails to account for the abortion counseling services that were available to veterans under the previous administration that the Department now proposes banning without reason. Further, relying on the justification that less abortion services were provided than originally expected does not discount the importance of such care for those veterans who were able to receive it and certainly does not provide good reason for banning the care or counseling altogether. The Department's failure to provide a reasoned explanation for abandoning the prior administration's policy will not only harm the veterans in need of this essential care but also makes the Proposed Rule arbitrary and capricious under the APA.

iii. The Proposed Rule fails to provide reasoned explanation for why only physicians can certify an exception for abortions to save the life of the pregnant person.

The Proposed Rule purports to provide one narrow exception for CHAMPVA beneficiaries to the outright prohibition of abortion care in order to save the life of the pregnant person "when a physician certifies that the life of the mother would be endangered if the fetus were carried to term."[35] This exception is extremely narrow, medically unnecessary, and adds an administrative burden and barrier to patients who are trying to access lifesaving care, making it nearly impossible for this exception to function practically for patients who need time-sensitive services. The Proposed Rule provides no reasoned explanation for this administrative burden or for limiting which type of health care professional can provide this certification. Specifically, the Proposed Rule provides no explanation for why this medically unnecessary administrative burden was introduced.

The Proposed Rule also fails to provide an explanation for why it must be a physician, and not other competent health care providers within the VA system, including but not limited to

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[31] Proposed Rule, *supra* n.1 at 36416.
[32] 87 Fed. Reg. 55287, 55288 (Sept. 9, 2022).
[33] *Id*. at 55296.
[34] Proposed Rule, *supra* n.1 at 36416.
[35] *Id*.

physicians' assistants ("PAs") and nurse practitioners ("NPs"), who must provide this certification. These qualified advanced practice health care professionals can make such determinations as required in the lifesaving exception based on their experience and the unique patient and clinical situation to make reasonable, evidence-based decisions about when to intervene to provide lifesaving care. To that end, many veterans accessing health care through the VA are often interacting with PAs and NPs as they "attend about 30% of all VHA primary care encounters" and the VHA "relies on NPs and PAs to provide over one quarter of primary care visits, and…these visits are similar to those of physicians with regard to patient and encounter characteristics."[36] For the narrow exception in the Proposed Rule to be practicable, veterans and their loved ones must be able to receive lifesaving care from the health care professionals they regularly interact with, like NPs, PAs, and other qualified providers. However, as discussed in the next subsection and Section V, the exception as written does not actually apply to veterans.

As supported by the American College of Obstetricians and Gynecologists ("ACOG"), health care professionals, not limited to physicians, must be able to assess the unique patient and clinical situation in front of them and make reasonable, evidence-based decisions about when to intervene.[37] As such, the Proposed Rule introduces an administrative burden in an arbitrary and capricious manner, without any reasoned explanation for why this exception is so narrowly construed such that it is not an exception at all.

iv. The Proposed Rule fails to provide a reasoned explanation for distinguishing between the exceptions provided under the benefits package and under CHAMPVA.

In its amendment to the medical benefits package, the Department fails to include any language referring to an exception for veterans, but directly provides a lifesaving exception in its amendment to the benefits for CHAMPVA beneficiaries.[38] As discussed in further detail in Section V, the Department writes that "for the avoidance of any doubt, the proposed rule would make clear that the exclusion for abortion does not apply 'when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.'"[39] However, the Proposed Rule fails to actually include this exception in operative language as preamble text is not binding under the APA.[40] In addition, in the Department's Federal Regulatory Impact analysis, the VA writes "VA would exclude abortions and abortion counseling from the medical benefits package and would exclude abortions, except when a physician certifies that the life of the mother would

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[36] Perri A Morgan, et al., *Characteristics of Primary Care Office Visits to Nurse Practitioners Physician Assistants, and Physicians in the United States Veterans Health Administration Facilities, 2005-2010: A Retrospection Cross-Sectional Analysis*, HUMAN RESOURCES OF HEALTH (2012), available at https://pmc.ncbi.nlm.nih.gov/articles/PMC3541159/.

[37] *Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions*, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (Aug. 15, 2022), https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions.

[38] Proposed Rule, *supra* n.1 at 36417.

[39] *Id*. at 36416.

[40] *See NRDC v. EPA*, 559 F.3d 561, 564-65 (D.C. Cir. 2009).

be endangered if the fetus were carried to term, and abortion counseling from CHAMPVA."[41] By making this exception explicit for CHAMPVA beneficiaries and failing to do the same for veterans, the Department's rule, if finalized as proposed, will be arbitrary and capricious for failing to provide reasoned explanation for indiscriminately determining where the lifesaving exception applies.

b. The Proposed Rule is an abuse of discretion and is not in accordance with law.

The Department's decision to ban abortion counseling and abortion care except for a narrow lifesaving exception is not in accordance with the law, highlights an abuse of discretion on behalf of the Secretary, and, if finalized, would violate the APA.

In explaining the reasoning behind the Proposed Rule, the Department writes that

> "considerations about whether abortion is 'needed' for purposes of VA-provided services necessarily involves the question of whether taxpayers should pay for abortion. For nearly fifty years, and across a slew of Federal programs, including Medicaid, the Child Health Insurance Program, TriCare, Federal Employee Health Benefits Program, and others, Congress has consistently drawn a bright line between elective abortion and health care services that taxpayers would support."[42]

This is a misleading interpretation, conflating the medical need for emergency abortion care with a political question about funding; there is no history to suggest that taxpayer funding has been the basis in determining health care that has traditionally been provided by the VA, and the VA's determination should be based on addressing and solving health care access issues for veterans and their families. Additionally, the fact that funding questions do not determine coverage for any other VA services proves that the administration's reasoning is arbitrary and capricious.

The Department's reasoning also misinterprets and misapplies the law regarding federal funding for abortion care. The Department alludes to the Hyde Amendment as it tries to anchor this Proposed Rule to other Federal programs. But importantly, the Hyde Amendment itself does not, and never has, applied to the Department. Congress could easily attach such a rider to VA funding but has intentionally chosen not to, including in the 119th Congress, when a Senator introduced an amendment that would have applied language similar to the Hyde Amendment to VA funding but it failed.[43] Further, even if the Hyde Amendment did apply to the Department, it would not preclude the Department from providing abortion care as the Hyde Amendment provides broader exceptions than those in the Proposed Rule. If adopted as written, the Department's Proposed Rule would be a new, harmful, and arbitrary departure from the law and federal policy on abortion care. For these reasons, if the Proposed Rule is finalized, it will clearly

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[41] *Regulatory Impact Analysis for RIN 2900-AS31(P), Reproductive health Services,* U.S. DEPT' OF VETERANS AFF. (July 30, 2025), https://www.regulations.gov/document/VA-2025-VHA-0073-0001 [hereinafter "FRIA"].
[42] Proposed Rule, *supra* n.1 at 36416.
[43] *See* H.R. 3944, 119th Cong., S. Amdt. 2970 (2025).

not be in accordance with existing law and will represent an abuse of discretion on the Secretary's behalf.

Additionally, the Proposed Rule runs afoul to the legislative intent of VHCERA, making it not in accordance with law, and if finalized, a violation of the APA. In the House Veterans' Affairs Committee Report accompanying VHCERA, the Committee wrote as background that "[w]hile the new standard is a simple one, more importantly, it would employ a clinically appropriate 'need for care' test, thereby ensuring that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished."[44] Congressional intent behind VHCERA was to leave health care decision-making between providers and their patients, yet the Department's Proposed Rule is antithetical to this legislative intention, as articulated in further detail in Section IV, making it contrary to law and in violation of the APA, if finalized.

c. The 30-day comment period is insufficient and inadequate.

Public participation is an essential part of the federal government's regulatory process. Under the APA, agencies are required to provide interested persons with a meaningful opportunity to comment on a proposed rule. Executive Order 12866, which provides for presidential review of agency rulemaking states that the public's opportunity to comment "in most cases should include a comment period of not less than 60 days."[45] Additionally, one of the ways that the public submits comments is through the General Services Administration's Regulations.gov website. However, a comment submission feature, which was relied upon by the public and advocacy organizations since 2020, was suddenly removed in the middle of the comment period for this Proposed Rule without adequate notice or reasoning, severely impinging on the public's ability to comment.[46] This is, at minimum, a violation of the spirit of the APA to permit the public a meaningful opportunity to comment. As such, the VA is arbitrarily removing the health care benefits for veterans and their families through a rushed, insufficient, and inadequate comment process.

IV. This new rule is effectively a new federal abortion ban and will detrimentally impact the health and well-being of millions across the country by denying pregnant people essential health care.

a. If finalized, this Proposed Rule would completely ban abortion counseling for veterans and their families and almost entirely restrict abortion care, creating one of the strictest abortion bans in the country.

Most abortions are already banned through the VA, including under the 2022 IFR and the 2024 Final Rule. The exceptions outlined in the Biden administration's rules provided veterans and their families with limited access to important, necessary reproductive health care in

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[44] H.R. Rep. No. 104-690, at 4 (1996) (emphasis added).
[45] Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993).
[46] Matthew Gault, *The Government Just Made it Harder for The Public to Comment on Regulations*, 404 MEDIA, Aug. 18, 2025, https://www.404media.co/the-government-just-made-it-harder-for-the-public-to-comment-on-regulations/.

alignment with other federal programs. In contrast, the new Proposed Rule goes far beyond previous federal law and policy by completely banning abortion counseling for veterans and their loved ones as well as abortion care in instances of rape, incest, or in health emergencies. If finalized, the Proposed Rule would be one of the strictest abortion bans in the country because its restrictions would apply to all VA health care facilities across the United States, even in states that protect the right to abortion.

Eliminating the existing exception for an abortion to protect the pregnant patient's health and leaving only an exception for when the pregnant patient's life is endangered will lead to serious and extreme health consequences for those who are unable to obtain health-preserving abortion care. We have seen after *Dobbs* that when states allow only lifesaving abortions, providers do not know how close to death the patient must be before they are permitted to intervene with abortion care.[47]

Health care providers are not trained to draw a line between care that is needed to save a patient's life versus preserve their health, including to prevent serious organ damage. Instead, they are trained to provide the appropriate care that preserves patient health, keeping them from reaching a point at which their life is endangered. If a provider delays abortion care because they cannot yet say that the patient's *life* is in danger—even though their *health* clearly is in danger—the patient's condition can deteriorate quickly to the point that it is too late, and the patient can die or suffer serious, long-term harm due to the delay.[48] For example, because both diabetes and pregnancy place stress on the patient's kidneys, if a diabetic patient continues a pregnancy, they may risk losing kidney function, which could lead to a need for dialysis or transplant.[49] Although many diabetic patients are able to continue a pregnancy under the care of a maternal fetal medicine specialist, it is crucial for abortion to be an option available to the patient, especially if the patient begins to lose kidney function, to preserve their health and avoid long-term, irreparable kidney damage. As another example, hyperemesis gravidarum is a pregnancy complication, which involves profound nausea and vomiting, and may result in significant weight loss and electrolyte abnormalities. Sometimes, by the time it is diagnosed, there is evidence of malnutrition.[50] Although most patients respond to various medical treatments, some cases may require central line placement and total parenteral nutrition, which carry a risk of infection and sepsis, and can cause organ damage, a shortened lifespan, and, in rare cases, death. The patient could also have long-term digestive issues and could develop chronic renal insufficiency. It is critical that abortion be a treatment option available for providers to treat patients with hyperemesis gravidarum who do not respond to other medical treatments. For those

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[47] *See e.g., Medical Emergency Exceptions to State Abortion Bans: Adkins v. State of Idaho,* CTR. FOR REPROD. RTS., https://reproductiverights.org/case/emergency-exceptions-abortion-bans-idaho-tennessee-oklahoma/adkins-v-state-of-idaho/ (last accessed Aug. 29, 2025).

[48] *See generally*, *Adkins v. Idaho*, Case No. CV01-23-14744, Idaho Dist. Ct. 4th Jud. Dist., Findings of Fact and Conclusions of Law, Apr. 11, 2025, available at https://reproductiverights.org/wp-content/uploads/2025/04/Findings-of-Fact-and-Conclusions-of-Law_Adkins-v-Idaho_4-11-25.pdf (last accessed Aug. 29, 2025).

[49] *See generally*, Katherine Rizzolo, Allison Faucett, Jessica Kendrick, *Implications of Antiabortion Laws on Patients with Kidney Disease in Pregnancy*, CLIN. J. AM. SOC. NEPHROL., 18(2):276-278, Feb. 1, 2023, available at https://pmc.ncbi.nlm.nih.gov/articles/PMC10103201/.

[50] *See generally*, Kulachanya Suwanwongse, Nehad Shabarek, *Missed Abortion Presented with Worsening Hyperemesis Gravidarum,* CUREUS, 12(4), Apr. 1, 2020, available at https://pmc.ncbi.nlm.nih.gov/articles/PMC7195207/.

patients, many providers may not consider the patient's life to be in danger in the short term, but their health is clearly endangered.

These are just two examples of the many conditions where the line between life endangerment and health endangerment may be extremely difficult to draw, and where different providers might draw such a line at different points. Preserving a health exception would allow providers to avoid having to draw such a line and put their patients at risk of serious health consequences. Providers should be able to practice as they were trained and to treat their patients according to the medical standard of care.

For veterans living in the 12 states with total abortion bans in the wake of the *Dobbs* decision, the Proposed Rule closes off what may be their only opportunity to access urgently needed abortion care. Across the country, pregnant people in states with abortion bans are being forced to either wait until they are near death to receive care or are turned away altogether.[51] Since *Dobbs*, there have been numerous reports of delays and denials of pregnancy-related care in emergency rooms in states with abortion bans, even for care that is legal under state law.[52]

Specifically, the rule claims that "[n]o State law prohibits treatment for ectopic pregnancies or miscarriages to save the life of a mother."[53] That is divorced from real-life context.[54] Nationwide, ectopic pregnancy is the leading cause of maternal mortality in the first trimester, accounting for up to 10% of all pregnancy-related deaths.[55] However, when facing cases of ectopic pregnancies, due to fear of prosecution, providers are delaying care, forcing patients to wait days or weeks and to undergo additional testing to confirm and reconfirm the diagnosis to ensure the treatment would not be considered a prohibited abortion. Such delays in care can threaten patients' lives, since ectopic pregnancy is one of many pregnancy complications that is life-threatening and requires immediate treatment. Specifically, in Texas, although abortion is generally illegal in the state, providing an abortion in cases of ectopic pregnancies is explicitly allowed under state law. In 2022, most pregnancy-related deaths in Texas were due to hemorrhage, and the most common cause of hemorrhage was ruptured ectopic pregnancy.[56] However, even when patients' lives and health are endangered, doctors and hospitals in Texas have been fearful of providing abortion care because of the risk of serious criminal and civil penalties. Under the state's abortion bans, doctors face up to 99 years in

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[51] *See e.g., Adkins*, *supra* n.47, 48.
[52] *Center Files Complaints Against Texas Hospitals for Denying Women Emergency Care for Life-Threatening Ectopic Pregnancies,* CTR. FOR REPROD. RTS., Aug. 12, 2024, https://reproductiverights.org/texas-emtala-complaints-ectopic-pregnancies/[hereinafter "Ectopic Pregnancies"].
[53] Proposed Rule, *supra* n.1 at 36416.
[54] Ectopic Pregnancies, *supra* n. 52.
[55] Kellie Mullany, *et. al.*, *Overview of ectopic pregnancy diagnosis, management, and innovation*, WOMEN'S HEALTH (LOND.), Jan. - Dec. 2023, available at https://pmc.ncbi.nlm.nih.gov/articles/PMC10071153/#:~:text=The%20current%20standard%20for%20ectopic,protein%20A%20specifically%20showing%20promise.
[56] *Texas Maternal and Morbidity Review Committee and Department of State Health Services Joint Biennial Report*, TEXAS DEP'T OF STATE HEALTH SERVS. AND TEXAS MATERNAL MORTALITY AND MORBIDITY REVIEW COMM., available at https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/2022-MMMRC-DSHS-Joint-Biennial-Report.pdf.

prison, loss of medical license, and at least $100,000 in fines for providing care.[57] As a result, two of the Center's clients—Kyleigh Thurman and Kelsie Norris-De La Cruz—who had tubal ectopic pregnancies, were refused emergency treatment, and nearly died and suffered permanent damage to their reproductive organs.

This Proposed Rule relies on inaccurate assumptions about medical care to create a very narrow medical exception to further an ideological policy goal which in reality drastically limits patient access to lifesaving care. It would force veterans and their families to endure the risks associated with pregnancy, without considering the unique health needs of veterans, and force many who may need abortion care inside the VA health care system to travel to another state, delay care, or carry an unwanted pregnancy to term.

b. The impact of the rule on veterans and their families will be devastating.

The Proposed Rule has the potential to affect hundreds of thousands of veterans and eligible family members who receive care at VA. The VA is the largest integrated health care system in the United States: over nine million veterans receive their health care from the VA, and more than two million women veterans live in the U.S. today. Women veterans of reproductive age (between ages 18-44) are also the fastest growing subset of new VA users.[58] This group is expected to grow by more than half in the next twenty years.[59] Notably, more than 400,000 women veterans live in states with total abortion bans or severe restrictions.[60] Last year, enrollment of women veterans in VA health care increased in every state, and four of the six most concentrated states were Texas, Florida, Georgia, and North Carolina—all states with severe abortion bans.[61] Research also estimates that the veteran community includes more than 11,000 transgender men, in addition to non-binary veterans and veterans who identify with a different gender, who may need access to abortion care and counseling.[62] If these veterans and their families cannot access abortion care at a VA facility, they might be forced to pay for abortion care out of pocket, navigate the private health care system, endure significantly

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[57] *Texas Abortion Ban Emergency Exceptions Case, Zurawski v. State of Texas,* CTR. FOR REPROD. RTS., https://reproductiverights.org/case/zurawski-v-texas-abortion-emergency-exceptions/zurawski-v-texas/ (last accessed Aug. 29, 2025).

[58] *Veterans Health Administration*, U.S. DEP'T OF VETERANS AFF., https://www.va.gov/health/aboutVHA.asp (last visited July 15, 2025).

[59] *Id*.

[60] *Issue Brief: State Abortion Bans Harm More Than 15 Million Women of Color*, NAT'L P'SHIP FOR WOMEN & FAMS, Jun. 2023, https://nationalpartnership.org/report/state-abortion-bans-harm-woc/.

[61] *More Than 50,000 Women Veterans Enrolled in VA Health Care Over Past 365 Days, Marking the Largest Enrollment Year Ever for Women Veterans*, U.S. DEP'T OF VETERANS AFF, Jun. 12, 2024, https://news.va.gov/press-room/50k-women-veterans-enrolled-in-va-healthcare-over-past-365-day/.

[62] Gary J. Gates and Jody L. Herman, *Transgender Military Service in the United States*, THE WILLIAMS INST., May 2014, available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf; *Facts and Statistics: Women Are the Fastest Growing Group in the Veteran Population*, U.S. DEP'T OF VETERANS AFF, https://www.womenshealth.va.gov/materials-and-resources/facts-and-statistics.asp (last accessed Aug. 28, 2025).

increased wait times to access care, and seek a provider other than their own trusted VA provider; emergency pregnancy care would be nearly impossible.[63]

Each year in the United States, about 700 people die during pregnancy or in the year after. Another 60,000 people each year have unexpected outcomes of labor and delivery with serious short or long-term health consequences. Notably, women veterans are more likely to be Black, compared to the general population, which has serious implications for maternal health disparities among veterans. Black and Indigenous women are at a greater risk of pregnancy-related complications and death, multiple times greater than the risk for white women. As a result, the impact of this Proposed Rule on the pregnant veteran population is more acute.

On paper, the Proposed Rule purportedly returns VA policy to its pre-2022 status quo; however, its impact is far more dramatic in the aftermath of the *Dobbs* decision. Now, VA health care centers in states where abortion is protected will no longer be able to provide abortion care, even though abortion is legal in those states outside of VA walls. In those states where abortion is restricted or banned, for some veterans in the limited circumstances allowed under the 2022 IFR and 2024 Final Rule, the VA was the only place to obtain necessary abortion care or counseling. Additionally, for pregnant veterans who may need an abortion due to rape, incest, or to preserve their health or life, this Proposed Rule deals a devastating blow to accessing the comprehensive, coordinated reproductive health care they need and deserve. As a result, veterans in every state might be forced to travel and pay enormous out of pocket costs to access the care they need, if they are able to obtain it at all, which may be a particularly high burden for the veteran population, as discussed in more detail in subsection d below.

c. The abortion counseling ban severely impedes the patient-provider relationship and removes the ability for patients to get reasonable, informed medical care.

Pregnancy options counseling is an important service for many people when they first discover their pregnancy, and we strongly oppose the Proposed Rule's complete ban on abortion counseling for veterans and CHAMPVA beneficiaries. Leading medical associations such as ACOG and the American Medical Association have stated that medical ethics require health care providers to ensure there is informed consent, including by informing patients about all of their pregnancy options.[64] Informed consent requires providers to disclose relevant and medically

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[63] NAT'L P'SHIP FOR WOMEN & FAMS., *Bad Medicine: How Political Agenda is Undermining Abortion Care and Access in Oklahoma* (2019), https://www.nationalpartnership.org/our-work/repro/reports/bad-medicine-oklahoma.html; Margot Sanger-Katz, Claire Cain Miller & Josh Katz, *Interstate Abortion Travel Is Already Straining Parts of the System,* N.Y. Times, (Sept. 19, 2022), https://www.nytimes.com/2022/07/23/upshot/abortion-interstate-travel-appointments.html; Marty Schladen, *Affidavits: More Pregnant Minors Who Were Raped Denied Ohio Abortions,* Ohio Capital Journal, (Sept. 22, 2022), https://ohiocapitaljournal.com/2022/09/22/affidavits-more-pregnant-minors-who-were-raped-denied-ohio-abortions/ (quoting Allegra Pierce, a medical assistant at Preterm-Cleveland, saying that "[e]ven those patients who are able to travel out of state often have a hard time getting an appointment due to increasingly long wait times at clinics in states where abortion is still legal."); Laura Hancock, *Hamilton County Judge Immediately Halts Enforcement of Ohio's Fetal 'Heartbeat' Abortion Law for 14 Days; Abortion Now Legal Until 22 Weeks,* Cleveland.com (Sept. 14, 2022).

[64] *See e.g.*, AMERICAN COLLEGE OF PHYSICIANS, *ETHICS MANUAL* (7th Ed. 2019), https://www.acponline.org/clinical-information/medical-ethics-and-professionalism/acp-ethics-manual-seventh-edition-a-comprehensive-medical-ethics-resource/acp-ethics-manual-seventh-edition#informed ("The ethical duty to disclose relevant information

accurate information about treatment choices and alternatives so that patients can competently and voluntarily make decisions about their medical treatment or refuse treatment altogether.[65] Informed consent is a necessary principle of the patient-provider relationship as well as the patient-centered decision-making intended to help balance the power dynamics between health care providers and patients. It also ensures patients have full autonomy over what will happen to their bodies. Accordingly, the VA's proposal to ban abortion counseling requires providers to violate the standards of medical ethics and the integrity of the patient-provider relationship.

Further, the Proposed Rule's narrow lifesaving exception is seemingly contradictory to a complete ban on abortion counseling. By forbidding abortion counseling in any circumstance, providers will not be able to comprehensively advise their patients, even when a lifesaving abortion is needed. The ban on abortion counseling creates an unworkable and confusing situation for providers, essentially nullifying the Department's lifesaving exception if a provider is not able to discuss such care.

d. This Proposed Rule exacerbates the unique health issues that pregnant veterans face, causing disproportionate harm to those who have served our country.

The VA serves a particularly vulnerable population that is at risk for adverse pregnancy outcomes due to PTSD, military sexual trauma, and other socioeconomic reasons.

Regarding socioeconomic status, according to the VA, in the 4 years between 2020 and 2024 the unemployment rate for enrollees in the Veterans Health Administration health care system was nearly double that of both civilians and veterans, generally.[66] Additionally, the unemployment rate is highest among female enrollees at 9.3 percent, and rural enrollees have a higher unemployment rate than urban enrollees at 8.7 and 7.3 percent, respectively.[67] Further, 53% of enrollees made an income of less than $75,000 per year.[68] As such, cost impacts of changes in health care access may be felt acutely by veterans.

Veterans of reproductive age have high rates of chronic medical and mental health conditions, including PTSD, that may increase pregnancy risks, including conditions like severe

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about human reproduction to the patient may conflict with the physician's personal moral standards on abortion, sterilization, contraception, or other reproductive services. A physician who objects to these services is not obligated to recommend, perform, or prescribe them. However, the physician has a duty to inform the patient about care options and alternatives, or refer the patient for such information, so that the patient's rights are not constrained. Physicians unable to provide such information should transfer care as long as the health of the patient is not compromised."); AMERICAN NURSES ASSOCIATION, *CODE OF ETHICS FOR NURSES WITH INTERPRETIVE STATEMENTS, Sec. 1.4* (2025) ("Recipients of care have the moral and legal right to determine what will be done with and to their own person; to be given accurate, complete, and understandable information in a manner that facilitates an informed decision[.]").

[65] *See* AMERICAN MEDICAL ASSOCIATION, *CODE OF MEDICAL ETHICS OPINION 2.1.1: INFORMED CONSENT*, https://www.ama-assn.org/delivering-care/informed-consent ("Informed consent to medical treatment is fundamental in both ethics and law. Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care.").

[66] *2024 Survey of Veteran Enrollees' Health and Use of Health Care*, U.S. DEP'T OF VETERANS AFFAIRS, Jan. 2024, pg. 22, available at https://www.va.gov/VHASTRATEGY/SOE2024/SOE24.pdf.

[67] *Id.*

[68] *Id.* at 23.

hypertension and chronic renal disease. In particular, PTSD affects about one in every twenty reproductive-aged individuals that are capable of pregnancy,[69] but this number is much higher for pregnant veterans, impacting 13 to 21 percent of pregnant veterans in the VA health care system.[70] In 2017, the VA's Office of Research and Development reported that PTSD may be a risk factor for both gestational diabetes and pre-eclampsia, common pregnancy complications that can lead to serious health effects for both parent and child if left untreated.[71]

Moreover, PTSD is common among survivors of sexual trauma, which is highly prevalent in the military. One in three women veterans report having experienced military sexual trauma, including sexual assault, during their service. Veterans who have experienced sexual trauma, which is reported by veterans at a higher rate than the general population, may experience serious traumatic stress when forced to carry an unwanted pregnancy, in addition to compounding mental health conditions existing prior to pregnancy, like PTSD.[72] Relatedly, survivors of sexual assault will also no longer be able to access abortion counseling or abortion care at VA facilities. This decision to strip survivors of their rights is especially cruel when considering the high rates of assault, harassment, discrimination, and erasure in the military.

There are serious health and socioeconomic consequences for patients who are denied access to abortion care, particularly for those who are denied a wanted abortion. A groundbreaking, multi-year study of pregnant people seeking abortion care, led by Diana Foster Green and her team of researchers at the University of California, San Francisco, found that participants who were denied wanted abortions and forced to give birth had statistically poorer long-term health outcomes than those who accessed abortions.[73] Participants denied abortion services were more likely to experience serious complications that generally occur at the end of pregnancy, including eclampsia and death; more likely to stay tethered to abusive partners; more likely to suffer anxiety and loss of self-esteem in the short term; and less likely to have aspirational life plans for the coming year.[74] In contrast, study participants who received a wanted abortion were not only less likely to experience serious health problems than those denied a wanted abortion, but were also 50 percent more likely to set an aspirational plan and achieve it—such as finishing their education, getting a better job, giving a good life to their children, and being more financially stable.[75]

There are also serious consequences for patients who face delays in obtaining an abortion, which are intensified for those who rely on VA for their care. As delays increase, the

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[69] Tristan Horrom, *Gestational Diabetes and Preeclampsia Rates Higher in Women with PTSD*, US DEPT. OF VETERANS AFFS. (Apr. 26, 2017), https://www.research.va.gov/currents/0417-pregnancy.cfm.
[70] *Id*.
[71] *Id.* Gestational diabetes alone increases the risk for pre-eclampsia in pregnant individuals, while pre-eclampsia is the leading cause of maternal mortality and of medically induced preterm delivery.
[72] Grace Keegan, et al., *Trauma of abortion restrictions and forced pregnancy: urgent implications for acute care surgeons*, TRAUMA SURGERY & ACUTE CARE OPEN (Nov. 22, 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9896239/.
[73] *Turnaway Study*, ADVANCING NEW STANDARDS IN REPROD. HEALTH, https://www.ansirh.org/research/turnaway-study.
[74] *Id.*
[75] Ushma Upadhyay et al., *The Effect of Abortion on Having and Achieving Aspirational One-year Plans*, 15 BMC WOMEN'S HEALTH 1, 1-10 (2015), https://bmcwomenshealth.biomedcentral.com/articles/10.1186/s12905-015-0259-1.

logistical burdens multiply. VA's Proposed Rule will force veterans and CHAMPVA beneficiaries to seek abortion care outside the VA system, pay for their care out of pocket, and navigate the private health care system and maze of state abortion restrictions on their own. When a veteran or CHAMPVA beneficiary is turned away from VA without a referral, they must find a willing provider to access the health care they need. This requires spending significant time researching available providers outside the VA health care system. In areas with a limited number of health care providers, or in states that have implemented an abortion ban following the Supreme Court's decision in *Dobbs*, a veteran may need to travel long distances to access care, and incur expenses for travel, overnight stays and childcare, in addition to taking extra time off of work for the new appointment. The added time and expense fall most heavily on low-income veterans, those most likely relying exclusively on the VA for health care as noted above, and those without the job flexibility to take paid sick time.

For veterans and civilians alike, delays have the effect of increasing the cost of an abortion. Abortion in the first trimester is substantially less expensive than in the second trimester: the median price of a procedural abortion at ten weeks is $508, while the cost rises to $1,195 at week 20.[76] The rising cost of abortion as gestational age increases poses a profound challenge to the affordability of the procedure, as one patient explained: "I knew the longer it took, the more money it would cost . . . We are living paycheck to paycheck as it is, and if I [had] gone one week sooner, it would have been $100 less."[77] Moreover, delays raise the cost of each step of obtaining an abortion—not just the cost of the procedure. For example, one recent study found that Utah's mandatory waiting period caused 47 percent of patients having an abortion to miss an extra day of work.[78] More than 60 percent were negatively affected in other ways, including increased transportation costs, lost wages by a family member or friend, or being required to disclose the abortion to someone whom they otherwise would not have told.[79] And because many clinics do not offer second-trimester abortions, a person who has been delayed into the second trimester will typically be required to travel farther to obtain an abortion, thereby making them more likely to incur additional travel and related costs, such as lost wages and costs for child care.[80] As a result, health care denials resulting in delayed care often significantly drive up the cost of care for a person seeking an abortion, or make accessing care impossible altogether.

The Department's Regulatory Impact Analysis underestimates the cost to society because it fails to capture the impacts detailed above.[81] The VA's proposed prohibition on abortion care and counseling will compound obstacles for veterans when trying to access abortion, by denying

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[76] Rachel K. Jones et al*., Differences in Abortion Service Delivery in Hostile, Middle-Ground and Supportive States in 2014,* 28 WOMEN'S HEALTH ISSUES 212, 212-218 (2018), https://www.whijournal.com/article/S1049-3867(17)30536-4/fulltext.

[77] Sarah C.M. Roberts et al., *Utah's 72-Hour Waiting Period for Abortion: Experiences Among a Clinic-Based Sample of Women*, 48 PERSPS. ON SEXUAL & REPROD. HEALTH 179, 184 (2016).

[78] Jessica N. Sanders et al., *The Longest Wait: Examining the Impact of Utah's 72-Hour Waiting Period for Abortion*, 26 WOMEN'S HEALTH ISSUES 483, 485 (2016).

[79] *Id.*; Deborah Karasek et al., *Abortion Patients' Experience and Perceptions of Waiting Periods: Survey Evidence Before Arizona's Two-Visit 24-hour Mandatory Waiting Period Law*, 26 WOMEN'S HEALTH ISSUES 60, 60-66 (2016).

[80] Rachel K. Jones & Jenna Jerman, *How Far Did US Women Travel for Abortion Services in 2008*?, 22 J. WOMEN'S HEALTH 706, 706-13 (2013).

[81] FRIA *supra* n.41 at 2-5.

them care and information from the providers they trust. The unique health care needs of this population underscore the significant impact the Proposed Rule will have on exacerbating the poor health care outcomes for veterans and their families.

V. The VA's lifesaving exception is vague, unclear, and unworkable.

As currently written, the Proposed Rule does not provide a lifesaving exception to the Department's abortion ban for veterans. The exception is only described in the preamble text of the Proposed Rule and is only explicitly written as an amendment for CHAMPVA beneficiaries.[82] Although "preamble statements may in some unique cases constitute binding, final agency action susceptible to judicial review, this is not the norm."[83] If finalized as currently drafted, this Proposed Rule will not include a legally binding exception for lifesaving abortion care for veterans, and even if incorporated into the regulatory text, the exception would make it nearly impossible for veterans to actually obtain this lifesaving care.

The Proposed Rule's amendments to the medical benefits package for veterans does not align with the preamble text. As currently written, the Proposed Rule amends the medical benefits package to completely ban "abortions and abortion counseling."[84] However, in its proposed text to amend the benefits, limitations, and exclusions of medical care for CHAMPVA beneficiaries, the department explicitly bans abortion counseling and "abortions, except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term."[85] This exception is only extended to veterans in the preamble of the Proposed Rule where the Department writes "[f]or the avoidance of doubt, the [P]roposed [R]ule would make clear that the exclusion for abortion does not apply 'when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.'"[86] Writing this explanation in the preamble is insufficient in actually providing a lifesaving exception for veterans, as courts are unlikely to believe that "the statements in the preamble amoun[t] to final agency action."[87]

Additionally, the language for the CHAMPVA lifesaving exception creates unacceptable obstacles that thwart the purpose of the exception, which is to enhance needed care. By making it so that a pregnant veteran in a life-threatening circumstance will only be allowed abortion care "when a physician certifies that the life of the mother would be endangered," the VA is creating insurmountable administrative barriers to obtaining this care. When a pregnant person is in a circumstance where they need lifesaving abortion care, it can be a matter of seconds between life and death.[88] Requiring additional paperwork and physician sign-off in a life-threatening situation inherently makes this a futile exception. As articulated above through examples in Texas, even when a medical exception might be explicitly written into law, in practice it results in providers unable to recommend and sign-off on lifesaving, medically necessary treatment for fear of

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[82] Proposed Rule, *supra* n.1 at 36416-17.
[83] *NRDC v. EPA*, 559 F.3d 561, 564-65 (D.C. Cir. 2009).
[84] Proposed Rule, *supra* n.1 at 36417.
[85] *Id*.
[86] *Id.* at 36416.
[87] *NRDC v. EPA*, 559 F.3d 561, 565 (D.C. Cir. 2009).
[88] Michigan Advance, *Mid-Michigan Woman Shares Her Story of Life-Saving Abortion in Hertel Congressional Campaign Ad*, THE GANDER (Sept. 20, 2024), https://gandernewsroom.com/2024/09/20/mid-michigan-woman-shares-her-story-of-life-saving-abortion-in-hertel-congressional-campaign-ad/.

prosecution. Additionally, a physician certification requirement will complicate payment because it will add another layer of unnecessary documentation, further discouraging VA facilities from providing even lifesaving abortion care. Moreover, the Department might contest the physician's judgment for political reasons, leaving them both uncompensated and in legal jeopardy. As such, this very narrow exception is neither real nor practical. It is well documented that exceptions to abortion bans do not work,[89] and by limiting abortion care to a narrow lifesaving exception riddled with administrative burden, the Department is effectively proposing a complete abortion ban.

Although the Department argues that the VA has always provided abortion care in lifesaving circumstances, this is demonstrably false. In the preamble to the Proposed Rule, the Department tries to paint the history of the VA as having always provided abortion care "to pregnant women in life-threatening circumstances, including treatment for ectopic pregnancies or miscarriages, which were covered under the VA's medical benefits package prior to the 2022 IFR." However, as is well demonstrated by the legislative history, the 1999 medical benefits package as promulgated by the VA has never provided for abortion care, even in lifesaving circumstances, until the previous administration's 2022 IFR and 2024 Final Rule.[90] To ensure that veterans have access to the essential lifesaving care they deserve, the Department must continue the precedent set in the 2022 IFR and 2024 Final Rule by making abortion care freely accessible.

VI. Conclusion

For the reasons set forth above, we urge VA to withdraw the Proposed Rule and ensure the final rule provides access to abortion care and counseling free from any restrictions. The Department has issued this Proposed Rule in violation of the APA and, if finalized, it will undoubtedly exacerbate the dangerous impacts of the Supreme Court's *Dobbs* decision on the veteran and civilian communities. To ban abortion counseling and care with only a narrow and unworkable lifesaving exception would be to fail the veterans who have risked their lives to serve our country.

For additional information about the issues raised in this letter, please contact Liz McCaman Taylor, Senior Federal Policy Counsel, at ltaylor@reprorights.org.

Signed,
Center for Reproductive Rights

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[89] *Medical Exceptions to State Abortion Bans*, CTR. FOR REPROD. RTS (Mar. 6, 2023), https://reproductiverights.org/case/state-abortion-bans-medical-exceptions/; *The Plaintiffs and Their Stories: Zurawski v. State of Texas*, CTR. FOR REPROD. RTS (Nov. 14, 2023), https://reproductiverights.org/zurawski-v-texas-plaintiffs-stories-remarks/.
[90] 87 Fed. Reg. 55287, 55288 (Sept. 9, 2022).