No. _______

United States Court of Appeals for the Federal Circuit

MINORITY VETERANS OF AMERICA,

Petitioner,

v.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

PETITION FOR REVIEW PURSUANT TO 38 U.S.C. § 502

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Pursuant to 38 U.S.C. § 502 and Federal Circuit Rule 15(f), Minority Veterans of America ("MVA") petitions this Court for review of the final rule promulgated by the U.S. Department of Veterans Affairs on December 31, 2025, which reinstates a near-total ban on abortion care and abortion counseling. *See* Reproductive Health Services, 90 Fed. Reg. 61310 (Dec. 31, 2025) (the "2025 Final Rule" or the "Rule").

I. INTRODUCTION

Military service members undertake significant personal sacrifices—including risks to their lives and health, immense physical and mental strain, and time away from their loved ones—to serve and protect our country. When those individuals return home from service, our Nation promises to provide them and their families with quality, comprehensive, and equitable health care as befits those profound sacrifices.

The decision by the U.S. Department of Veterans Affairs ("VA") to eliminate abortion care and abortion counseling from the health care provided to veterans and their families is a betrayal of this promise. This essential medical care is particularly important for veterans and their families, yet VA has imposed a ban on abortion services that is the strictest in the entire federal government.

VA's decision to impose the strictest federal abortion ban is a stunning reversal of the evidence-based findings it made only a few years ago when it authorized care for veterans enrolled in VA health care and their family members

enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA"). Specifically, in 2022, VA lifted its prior categorical exclusions, and instead allowed for abortion counseling and permitted abortion care when the pregnancy was the result of rape or incest or would endanger the life or health of the pregnant person. *See* Reproductive Health Services, 87 Fed. Reg. 55287 (Sept. 9, 2022), *finalized without changes*, 89 Fed. Reg. 15451 (Mar. 4, 2024) (the "2022 Rule"). In promulgating the 2022 Rule, VA determined that access to abortion counseling and abortion care was necessary to ensure that veterans and covered beneficiaries who receive care from VA could access life- and health-preserving medical care.

Although veterans, like all people, deserve access to abortion care in *all* circumstances, the 2022 Rule was a critical step toward fulfilling the government's commitment to providing veterans and their families with the highest caliber health care. Access to even the limited abortion care provided by the 2022 Rule had been crucial for the health, autonomy, and equality of veterans and their family members, especially those who live in states with restrictive abortion laws or who have become pregnant as a result of sexual violence. Likewise, access to abortion counseling has helped ensure that veterans and their family members can get advice, receive information, and discuss their various options to make fully informed health care decisions. Providing the full array of pregnancy options counseling, including

abortion counseling, is necessary to support veteran health and well-being given the unique health challenges veterans face, including high rates of chronic medical and mental health conditions that can be exacerbated by pregnancy.

Nevertheless, in 2025, VA reversed course. Despite the submission of thousands of comments from veterans, health care providers, advocacy organizations, and other members of the public expressing opposition to VA's proposal to cut these critical health care services (including Minority Veterans of America), VA issued the Final Rule at the end of 2025. As described herein, that Rule violates the Administrative Procedure Act ("APA") in several respects. First, the Rule's ban on abortion care is an abuse of discretion because it relies on a purported statutory "restriction" that is not applicable, and in any event has been superseded. Second, the Rule's ban on abortion care is arbitrary and capricious because VA failed to provide any explanation—let alone a reasoned explanation—for disregarding its previous factual findings addressing veterans' need for abortion care, and because VA failed to address significant comments. Finally, the Rule's ban on abortion counseling is also arbitrary and capricious because VA similarly failed to explain its about-face with respect to abortion counseling and failed to address significant comments. MVA urges this Court to hold unlawful and set aside the 2025 Final Rule.

II. JURISDICTION

This Court has jurisdiction over this petition pursuant to 38 U.S.C. § 502, which vests this Court with exclusive jurisdiction to review direct challenges to actions taken by VA "to which section 552(a)(1) or 553 of title 5 (or both) refers." *Id.* The 2025 Final Rule at issue here falls within the scope of that jurisdictional grant because it constitutes a "substantive rule[] of general applicability adopted as authorized by law" and/or an "amendment, revision, or repeal" thereof, 5 U.S.C. § 552(a)(1)(D)–(E); and was published in the Federal Register, *id.* § 553(b).

III. BACKGROUND

A. VA's Provision of Medical Care

VA, through the Veterans Health Administration ("VHA"), provides "a complete medical and hospital service for the medical care and treatment of veterans." *Id.* § 7301. VHA provides this care by: (1) operating health care facilities, *see, e.g.*, *id.* § 1703; and (2) administering a system of annual enrollment of patients eligible to receive the care provided at such facilities, *see id.* § 1705. VHA is the largest integrated health care system in the country, providing care at 1,380 health care facilities across all 50 states and serving over nine million enrolled veterans each year.[1]

[1] *See About Us – Veterans Health Administration*, U.S. Dep't of Veterans Affairs, https://perma.cc/WC8C-2NDJ (last visited May 15, 2026).

Congress provided VA with general treatment authority to furnish "hospital care and medical services which the Secretary determines to be needed" to veterans who meet a specific list of eligibility criteria. *Id.* § 1710(a)(1)–(3). "Medical services" includes, in relevant part, "medical examination, treatment," "[s]urgical services," and "[p]reventive health services." *Id.* § 1701(6).

The VA Secretary has determined by regulation what care is "needed" by VHA enrollees since 1999, when Congress first mandated that VA implement a national enrollment system to manage VA's delivery of medical services. *See* Enrollment—Provision of Hospital and Outpatient Care to Veterans, 64 Fed. Reg. 54207 (Oct. 6, 1999) (implementing the Veterans' Health Care Eligibility Reform Act of 1996, Pub. L. No. 104–262, 110 Stat. 3177 (the "1996 Act")). This collection of services is called the "Medical Benefits Package." 38 C.F.R. § 17.38.

Care is included in the Medical Benefits Package "if it is determined by appropriate health care professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.'' *Id.* § 17.38(b); *see also* Enrollment, 64 Fed. Reg. at 54210. To that end, the Medical Benefits Package consists of a wide range of basic and preventive care, including inpatient and outpatient medical, surgical, and mental health care, prescription drugs, emergency care, and periodic medical exams. 38 C.F.R. § 17.38(a).

Congress has also authorized VA to provide medical care to the spouses and dependents of veterans who meet certain eligibility criteria. Under this program, known as CHAMPVA, VA must provide medical care "in the same or similar manner and subject to the same or similar limitations as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces." 38 U.S.C. § 1781(a)–(b); *see also* 10 U.S.C. § 1077 (detailing the types of health care that may be provided to dependents of uniformed servicemembers).

B. 2022 Rule Authorizing VA Abortion Services in Certain Circumstances

Before September 2022, VA regulations excluded abortion care and abortion counseling from both the Medical Benefits Package and the services provided by CHAMPVA, except that CHAMPVA covered abortions when the life of the pregnant person would be endangered if the pregnancy were carried to term. *See* 2025 Final Rule, 90 Fed. Reg. at 61311.

On September 9, 2022, the Secretary issued an interim final rule that amended those restrictions to provide coverage for: (1) abortions when the life or health of the pregnant veteran or beneficiary would be endangered if the pregnancy were carried to term, or if the pregnancy is the result of rape or incest; and (2) abortion counseling for both veterans and beneficiaries. *See* 2022 Rule, 87 Fed. Reg. 55287; 38 C.F.R. §§ 17.38(c)(1), 17.272(a)(64) (2023). Against the backdrop of rapidly diminishing access to abortion in states across the country, the Secretary determined that abortion

care in these circumstances was necessary to protect the lives and health of veterans and CHAMPVA beneficiaries, relying on evidence that abortion is sometimes the only medical intervention that can preserve a patient's health or save their life, as well as evidence of the severe health consequences associated with being forced to carry a pregnancy to term that is the result of rape or incest. 2022 Rule, 87 Fed. Reg. at 55287–88, 55291–92. The Secretary further determined that abortion counseling was needed to ensure that veterans and their beneficiaries could make informed decisions about their health care. *Id.* at 55292–93.

Following the 2022 Rule, the Department of Justice's Office of Legal Counsel ("OLC") issued an opinion addressing, among other things, VA's authority to provide abortion care. *See* Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services, 46 Op. O.L.C. __ (Sept. 21, 2022). OLC confirmed that the Secretary had "broad discretion" to determine what care was "needed" as part of the Medical Benefits Package. *Id.* at 9. It also confirmed that Section 106 of the Veterans Health Care Act of 1992, Pub. L. No. 102–585, § 106 ("Section 106"), did not "prohibit VA from providing abortion care under its general treatment authority." *Id.* at 7–8. Section 106 previously excluded VA from providing "abortions," but its restrictions are limited to care provided "under [that] section." *Id.* at 7. OLC noted that VA had interpreted Section 106 in this way since 1993 and agreed with the 2022 Rule that

"Congress has legislated consistent with VA's interpretation, that section 106 has effectively been overtaken by subsequent legislation, and that VA no longer relies on section 106 to provide any services." *Id.* at 8.

The 2022 Rule went into effect immediately, to minimize the amount of time that veterans and eligible beneficiaries would potentially lack access to critical life- and health-preserving medical care, abortions in cases of rape or incest, and counseling. On March 4, 2024, VA finalized the 2022 Rule without changes. *See* Reproductive Health Services, 89 Fed. Reg. 15451 (Mar. 4, 2024).

C. December 2025 Final Rule Reinstating Abortion and Abortion Counseling Bans

On August 4, 2025, VA abruptly reversed course and issued a proposed rule to reinstate a near-total abortion ban in the Medical Benefits Package and CHAMVPA. *See* Reproductive Health Services, 90 Fed. Reg. 36415 (Aug. 4, 2025). Despite VA providing a short, 30-day public comment period, the public submitted more than 20,000 comments, a significant majority of which expressed grave concerns about the proposed rule.

Nonetheless, not even a full three months after the public comment period ended, and despite receiving over 20,000 comments, VA finalized the proposed rule without changes on December 31, 2025. *See* 2025 Final Rule, 90 Fed. Reg. 61310. In explaining its decision, VA relied heavily on a new OLC opinion—published only two weeks before the Final Rule—that overturned much of the previous OLC

opinion and determined that VA is prohibited from providing abortion under Section 106. *See* Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services, 49 Op. O.L.C. __ (Dec. 18, 2025); 2025 Final Rule, 90 Fed. Reg. at 61310–11. VA also concluded, without further explanation, that even if it had discretion to provide abortion notwithstanding Section 106, "the Secretary has determined that VA will not provide abortion or abortion counseling under that authority." 2025 Final Rule, 90 Fed. Reg. at 61311.

The Rule does purportedly permit abortion care when necessary to save the life of a pregnant patient. Relying on the OLC opinion, VA asserted in the preamble to the Rule that "procedures necessary to save the life of the pregnant veteran (such as treatment for ectopic pregnancies or miscarriages) are not considered 'abortions' within the meaning of section 106 and therefore remain permissible." *Id.* But while VA codified this exception in the regulatory text for CHAMPVA, *see, e.g.*, *id.* (prohibiting abortion "except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term") the 2025 Final Rule declined to codify that same exception for veterans under the Medical Benefits Package, despite multiple commenters objecting to the inconsistency.

For both veterans and CHAMPVA beneficiaries, the 2025 Final Rule bans abortion counseling. *Id.* at 61323. But unlike abortion care, the Rule does not identify any statutory barrier to the provision of abortion counseling (because none

has ever existed). The Final Rule summarily announced that "the Secretary has determined that abortion counseling is not needed or medically necessary and appropriate for those reasons stated in the proposed rule." *Id.*

IV. THE 2025 FINAL RULE VIOLATES THE APA

This Court reviews petitions under 38 U.S.C. § 502 "in accordance with the standard set forth in the Administrative Procedure Act . . . , 5 U.S.C. §§ 701–706." *Paralyzed Veterans of Am. v. Sec'y of Veterans Affs.*, 345 F.3d 1334, 1339 (Fed. Cir. 2003). Accordingly, this Court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Id.* (citing 5 U.S.C. § 706(2)). The 2025 Final Rule violates 38 U.S.C. § 502 and 5 U.S.C. § 706(2)(A) because it is an abuse of discretion and is arbitrary and capricious.

A. The 2025 Final Rule's Ban on Abortion Care Is an Abuse of Discretion Because It Relies on an Erroneous Interpretation of Law.

Central to the 2025 Final Rule is a flawed interpretation of VA's statutory authority to provide abortion care. The Rule claimed that VA possessed no authority to provide abortion care to veterans and CHAMPVA beneficiaries, based on Section 106. *See* 2025 Final Rule, 90 Fed. Reg. at 61311–12, 61315–16. But Section 106 only restricts medical care provided under a limited, and no longer applicable,

provision of VA's authority. Moreover, Congress has made clear that the 1996 Act supplants the landscape previously in place, and that Section 106 is no longer in effect.

Before 1996, veterans' health care was subject to a patchwork of eligibility criteria, and the only care available was hospital and outpatient care needed for the treatment of a disability. One of the governing provisions was Section 106, which gave VA discretion to provide pap smears, breast examinations, and "[g]eneral reproductive health care" for eligible veterans but restricted VA from offering "*under this section* infertility services, abortions, or pregnancy care (including prenatal and delivery care)[.]"[2] Pub. L. 102–585, § 106 (emphasis added).

The landscape of health care for veterans changed dramatically when Congress passed the 1996 Act. The Secretary now must "furnish hospital care and medical services which the Secretary determines to be needed" for certain eligible veterans. 38 U.S.C § 1710. The Secretary does so by promulgating the Medical Benefits Package, which incorporates care "needed to promote, preserve, or restore the health of the individual and . . . in accord with generally accepted standards of medical practice.'' 38 C.F.R. § 17.38(b).

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[2] Notably, Section 106 does not address abortion counseling, and neither the 2025 Final Rule nor the December 18, 2025 OLC opinion construe it to prohibit abortion counseling.

Section 106 no longer provides a legal barrier to care following the passage of the 1996 Act and the creation of the Medical Benefits Package. By its own terms, the restriction on "abortions" included in Section 106 applies only to care provided "under this section." Pub. L. 102–585, § 106. In passing the 1996 Act, Congress created separate authority for VA to provide medical care to veterans. Put differently, care provided under the 1996 Act (or any other statute authorizing medical care to veterans) is not subject to Section 106. Consistent with that approach, for decades VA has offered infertility, pregnancy, and delivery services under its authority from the 1996 Act, notwithstanding their exclusion in Section 106. *See* Enrollment, 64 Fed. Reg. at 54210 ("[W]e conclude that pregnancy and delivery services . . . should be included in the medical benefits package."); *id.* ("[W]e have determined that . . . infertility services . . . should not be excluded"). Congress has also ratified this approach. *See e.g.*, Deborah Sampson Act of 2020, Pub. L. No. 119–37 (2021) (expanding access to care for women veterans). VA's assertion that Section 106 prevents it from providing abortion care is incorrect and inconsistent with its approach to other care that was also excluded under Section 106.

Not only does the 1996 Act supply an independent grant of authority for providing abortion at VA, it also supersedes Section 106's restrictions. In passing the 1996 Act, Congress intended to "substitute a single, streamlined eligibility

provision—based on clinical need for care—for the complex array of disparate rules currently governing veterans' eligibility for hospital and outpatient care." H.R. Rep. No. 104-690, at 13 (1996). VA is no longer restricted by the jumble of provisions that existed before the 1996 Act. Instead, the only restriction on the authority of the Secretary in determining what care to provide is that the care is "needed to promote, preserve, or restore" the health of a veteran. *See* 38 C.F.R. § 17.38(b). Section 106 does not prevent VA from offering abortion care.

By relying on an erroneous interpretation of law, VA abused its discretion in promulgating the 2025 Final Rule.

B. The 2025 Final Rule's Ban on Abortion Care Is Arbitrary and Capricious.

VA not only implemented the 2025 Final Rule based on an erroneous interpretation of its statutory authority, thus abusing its discretion, but also asserted that it would decline to exercise its authority to provide abortions if it had such authority. 2025 Final Rule, 90 Fed. Reg. at 61311. As set forth above, VA *does* have statutory authority to provide abortions, and its decision not to exercise that authority is arbitrary and capricious. First, VA failed to provide a reasoned explanation for disregarding its prior factual findings. Second, VA failed to address serious problems that veterans, health care providers, and other concerned individuals raised in comments to the proposed rule.

1. *VA Failed to Provide a Reasoned Explanation for Disregarding Its Prior Factual Findings.*

In promulgating the 2022 Rule, VA previously found that abortions are needed care requiring coverage under the 1996 Act when the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term. *See* 2022 Rule, 87 Fed. Reg. at 55291. VA also found that abortions are "medically necessary and appropriate," 38 C.F.R. § 17.270(b), when the health of a pregnant CHAMPVA beneficiary would be endangered if the pregnancy were carried to term. *See* 2022 Rule, 87 Fed. Reg. at 55291–92. VA relied on abundant evidence for these determinations, including that a rise in maternal mortality rates was likely influenced by reduced access to reproductive health services through abortion restrictions and abortion clinic closures. *Id.* VA further cited the American College of Obstetricians and Gynecologists, among other major medical organizations, in noting that there are situations—including conditions such as severe preeclampsia or newly-diagnosed cancer that requires prompt treatment—in which pregnancy termination is the only medical intervention that can preserve a patient's life or health. *Id.* What's more, VA underscored that veterans are at greater risk than the general population because of veterans' high rates of chronic medical and mental health conditions that may increase the risks associated with pregnancy. *Id.*

The agency further found that the 2022 Rule would promote clarity and parity across agencies, as prior to the 2022 Rule, VA was the only federal agency without

an exception to its abortion ban in the cases of rape, incest, or life endangerment to the pregnant person. *Id.* at 55293. VA observed that it was "unconscionable" that, following their transition to civilian life, veterans would not have access to at least the same services they had through the Department of Defense. *Id.*

In the 2025 Final Rule, however, VA asserts that abortion is not needed or medically necessary care. Because the 2025 Final Rule "rests upon factual findings that contradict those which underlay [the agency's] prior policy," the agency must provide a detailed justification for the new policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). The 2025 Final Rule fails to provide any meaningful justification for the new policy. It does not contend with the agency's highly relevant prior findings. Indeed, the Rule cites no medical evidence whatsoever. VA's failure to address its previous factual findings renders the 2025 Final Rule arbitrary and capricious. *See id.* ("[I]t is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.").

2. *VA Failed to Address Significant Concerns Raised in Public Comments.*

The Rule is also arbitrary and capricious because VA failed to address the serious concerns raised by veterans, health care providers, and other concerned citizens in comments to the proposed rule.

For example, multiple commenters provided evidence that abortion care is needed health care, the denial of which can be devastating to people's lives, health, and economic security. 2025 Final Rule, 90 Fed. Reg. at 61312. In particular, commenters cited numerous studies indicating increased maternal and infant mortality rates or other worsened physical and mental health outcomes for pregnant people in states with restrictive abortion laws. *Id.* Commenters observed that abortion care is needed health care for veterans especially, due to the unique health risks they face stemming from their military service. *Id.*

Commenters also explained why the rule's prohibition on abortion even in cases of rape and incest would be especially harmful to women veterans due to prevalence of sexual trauma during military service. *Id.* at 61324. Commenters further noted that the prohibition on abortion in cases of rape and incest would be inconsistent with 38 U.S.C. § 1781(b), which requires the Secretary to provide medical care under CHAMPVA in the "same or similar manner and subject to the same or similar limitations as" TRICARE, which does include exceptions for rape and incest. 2025 Final Rule, 90 Fed. Reg. at 61320, 61322. The 2025 Final Rule acknowledged these concerns but summarily dismissed them, relying on a desire to return to the pre-September 2022 policy without explaining why the pre-September 2022 policy was superior, addressing why the commenters' concerns were

unavailing, or pointing to any comments providing support for the decision to change the policy. *Id.* This failure renders the Rule arbitrary and capricious.

In addition, the 2025 Final Rule failed to resolve the Rule's internal inconsistencies with respect to the purported life endangerment exception. Although the preamble to the proposed rule had stated that the 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,'" 2025 Proposed Rule, 90 Fed. Reg. at 36416, commenters noted that this exception was codified in the proposed regulatory text only for CHAMPVA but not for the Medical Benefits Package, 2925 Final Rule, 90 Fed. Reg. at 61313. Commenters noted that this discrepancy would sow confusion among providers and patients, leading to delayed care, denied care, and/or disparate care between veterans and CHAMPVA beneficiaries. *Id.* at 61319–20. VA failed to meaningfully address any of these concerns, again relying on the same refrain that this discrepancy existed in the pre-September 2022 policy. *Id.* This failure further renders the Rule arbitrary and capricious.

Finally, the Rule failed to address comments related to flaws in the Regulatory Impact Analysis ("RIA"). Commenters noted that, among other reasons, the RIA likely undercounted actual costs associated with the Rule, underestimated the likely increase in births, and relied on flawed assumptions about veterans' ability to access

abortion care outside VA. *Id.* at 61320. Rather than address any of these concerns, VA instead stated in conclusory fashion that its classifications of state restrictions "appropriately reflect[ed] the legal environment at the time the analysis was conducted," but failed to disclose the data on which it relied and acknowledged it did not monetize factors raised by commentors. *Id.* at 61321. This failure too was arbitrary and capricious.

C. The 2025 Final Rule's Ban on Abortion Counseling Is Arbitrary and Capricious.

The 2025 Final Rule's ban on abortion counseling is arbitrary and capricious because it fails to provide adequate reasoning for the VA's change in position and fails to adequately respond to comments.

1. VA Fails to Provide Any Reasoning, Let Alone Adequate Reasoning, for Changing Position on the Necessity of Abortion Counseling.

In promulgating the 2022 Rule, VA previously determined that abortion counseling is necessary care for veterans and CHAMPVA beneficiaries, concluding that abortion counseling serves three critical and connected purposes: first, to assist pregnant individuals in deciding about an unwanted pregnancy; second, to assist pregnant individuals in implementing their decision; and third, to allow pregnant individuals to control their future fertility. 2022 Rule, 87 Fed. Reg. at 55292. Furthermore, VA found that abortion counseling is necessary to enable beneficiaries to make "fully informed healthcare decisions." *Id*. at 55292–93.

In the 2025 Final Rule, VA reversed these earlier determinations and concluded, without any facts or evidence, that abortion counseling is no longer necessary. 2025 Final Rule, 90 Fed. Reg. at 61310, 61323. Notably, neither the Rule nor the OLC opinion on which it relies suggests that VA's provision of abortion counseling is restricted by Section 106 or any other law. 2025 Final Rule, 90 Fed. Reg. at 61323; Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services, 49 Op. O.L.C. __ (Dec. 18, 2025). VA provided no substantive reasoning for this change in position whatsoever; instead, the Rule merely states, "The Secretary has used his authority to determine that abortion counseling is not needed or medically necessary." 2025 Final Rule, 90 Fed. Reg. at 61323. Because the 2025 Final Rule's conclusion on abortion counseling contradicts the agency's prior policy, the agency must provide a reasoned explanation for its change in position. *See Fox Television Stations*, 556 U.S. at 515–16. But the 2025 Final Rule fails even to attempt to contend with the agency's highly relevant prior findings. Indeed, the Rule cites no evidence at all. VA's failure to address its previous factual findings renders the 2025 Final Rule arbitrary and capricious. *See id.*

2. *VA Failed to Address Significant Concerns Raised in Public Comments.*

VA also failed to address the serious concerns raised by veterans, health care providers, and others in comments to the proposed rule. As a threshold matter,

commenters raised significant concerns about VA's lack of definition for abortion counseling. Commenters noted that the absence of a definition would create significant uncertainty for providers about what care they can and cannot provide, and that such ambiguity would in turn chill providers' speech and arbitrarily restrict therapeutic dialogue. 2025 Final Rule, 90 Fed. Reg. at 61323.

Notwithstanding the lack of clarity surrounding VA's prohibition of abortion counseling, commenters raised substantial concerns about a blanket ban. For example, commenters objected to the Rule's interference with the doctor-patient relationship and medical ethics, noting that a blanket ban on abortion counseling would violate comprehensive patient-centered care, arbitrarily restrict providers and patients from engaging in open therapeutic dialogue, compromise informed consent, and foster mistrust and confusion by prohibiting providers from discussing all their patients' options. *Id.* Furthermore, commenters noted that the proposed rule failed to clarify how the ban on abortion counseling would interact with VA's stated intent to continue providing life-saving abortion care. Finally, as noted above, commenters raised concerns that a broadly worded abortion counseling ban would prohibit veterans, who face disproportionately high rates of sexual assault, from receiving comprehensive care.

VA failed to provide reasoned responses to any of these substantial comments in the 2025 Final Rule. *Id.* With respect to the lack of definition for abortion

counseling, the 2025 Final Rule explicitly refuses to adopt one, on the sole basis that VA did not have a definition previously. *Id.* And with respect to the myriad other concerns regarding the abortion counseling ban, the 2025 Final Rule summarily dismisses them, stating only that the Secretary has exercised his authority to determine that abortion counseling is not needed. *Id.* Merely stating that the agency considered the comments and declined to change the rule, however, is insufficient. *See Texas v. Biden*, 10 F.4th 538, 556 (5th Cir. 2021) ("Stating that a factor was considered . . . is not a substitute for considering it."). VA's failure to meaningfully consider and provide reasoned responses to these substantive comments renders the ban on abortion counseling arbitrary and capricious.

V. PETITIONER IS ADVERSELY AFFECTED

MVA is a 501(c)(3) non-profit corporation organized under the laws of the State of Washington with a principal place of business in Seattle, Washington. Decl. of Lindsay Church ("Church Decl."), ¶¶ 3–4.[3] MVA is a membership-based organization, composed of over 3,600 members across 49 states and the District of Columbia. *Id.* ¶¶ 5–6. MVA's mission is to create belonging and advance equity and justice for the nation's most marginalized and historically underserved veterans, including by ensuring that minority veterans receive comprehensive and equitable

[3] Attached as Exhibit B.

access to VA health care and benefits worthy of the profound sacrifices they have made in service to this country. *Id.* ¶¶ 7–11.

In this Petition, MVA represents the interests of its members, including veterans enrolled in VA health care who presently or in the future may need to seek abortion care or counseling. *Id.* ¶¶ 17–22. To establish associational standing, an association must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Nat'l Org. of Veterans' Advocates, Inc. v. Sec'y of Veterans Affrs.*, 981 F.3d 1360, 1368 (Fed. Cir. 2020) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

MVA satisfies all three requirements. First, some of its members would themselves have standing. MVA's members include veterans and beneficiaries who receive health care from VA. These members have been or will be adversely affected by the 2025 Final Rule due to the Rule's elimination of benefits previously available to them under the Medical Benefits Package or CHAMPVA.

For example, one of MVA's members, Member A,[4] is a veteran enrolled in VA health care and is currently pregnant in her first trimester. *See* Decl. of Member A, ¶¶ 1–2, 4–6.[5] She had not intended to become pregnant and had recently been advised by one of her doctors that she likely did not have the capacity to become pregnant naturally. *Id.* ¶ 7. Member A's pregnancy is already exacerbating existing health conditions, including by causing a flare-up of debilitating chronic pain that had previously been under control. *Id.* ¶¶ 14–16. Because of her age, history of pregnancy complications, current health conditions, and ongoing recovery from a recent surgery involving her reproductive organs, there is a substantial risk that Member A will need termination of the pregnancy to preserve her health. *Id.* ¶¶ 9–18. Due to the 2025 Final Rule, however, she is unable to obtain abortion counseling at VA and therefore is unable to discuss with VA providers the full range of options available to her during the course of her pregnancy. *Id.* ¶¶ 8, 18. Moreover, because of the 2025 Final Rule, VA providers will not be permitted to provide Member A an abortion, even if her health is at risk, unless a provider determines an abortion is necessary to save her life. *Id.* ¶¶ 8, 19. Member A is thus presently being subjected

[4] Member A is proceeding anonymously due to the significant privacy interests at stake, including disclosure of sensitive medical information and the risk of retaliation. *See* Decl. of Member A, ¶ 3.

[5] Attached as Exhibit C.

to reduced treatment options, increased medical risk, and significant psychological distress. *Id.* ¶¶ 5–19.

Second, this Petition is germane to MVA's purpose to ensure that veterans and their dependents can access comprehensive benefits and receive dignified treatment from VA. *See* Church Decl., ¶¶ 7–11. MVA submitted a public comment in opposition to the 2025 proposed rule to reinstate the restrictions on abortion and abortion counseling within VA.[6] *Id.* ¶ 16. Moreover, as recently as March 3, 2026, MVA submitted written testimony on the record for the House and Senate Committees on Veterans' Affairs identifying "comprehensive reproductive and family planning services, including abortion" as a legislative priority given the current administration's rollback of abortion access based on a misreading of the governing law.[7] *Id.* ¶ 13. In its testimony, MVA noted that the 2025 Final Rule "has already created fear and instability for the nearly 300,000 women and gender-diverse

[6] Minority Veterans of America, Comment on Proposed Rule: *Reproductive Health Services*, Docket No. VA-2025-VHA-0073, https://perma.cc/RB7X-3RCC (Sept. 3, 2025).

[7] Minority Veterans of America, *Legislative Priorities of Minority Veterans of America for the 119th Congress*, https://perma.cc/4TJB-R4KA (Mar. 3, 2026) (prepared by Lindsay Church, Exec. Dir. & Co-Founder, Lorry Fenner, Senior Policy Advisor, and Sharon Arana, Policy Analyst, Minority Veterans of America), https://perma.cc/4TJB-R4KA.

veterans of reproductive age who rely on VHA for care, and for CHAMPVA beneficiaries who have no alternative pathway to coverage."[8]

Third, the challenge to the 2025 Final Rule does not require participation of MVA's individual members. This Petition presents a pure question of law: whether VA's promulgation of the 2025 Final Rule is lawful under the procedural and substantive requirements set forth in the APA. The resolution of these questions does not require any individualized proof. *See Hunt*, 432 U.S. at 344; *E. Paralyzed Veterans Ass'n, Inc. v. Sec'y of Veterans Affrs.*, 257 F.3d 1352, 1356 (Fed. Cir. 2001).

VI. RELIEF SOUGHT

For the foregoing reasons, MVA requests that this Court hold unlawful and set aside the 2025 Final Rule in its entirety.

[8] *Id.* at 9–10.

Dated: May 15, 2026

Respectfully submitted,

/s/ Daralyn Durie

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*_pending admission_

EXHIBIT A

zone without permission of the COTP, HRCP, or designated representative.

(ii) *Requirements.* All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island must proceed with extreme caution and maintain a safe distance from construction equipment.

(5) *Zone 5, South Highway Bridge Trestle and South Island*—(i) *Location.* All waters, from surface to bottom, located within 300 feet from the east or west side of the Hampton Roads Bridge-Tunnel's south highway bridge trestle, including South Island, to the shore of the City of Norfolk.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. HRCP may establish and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island shall proceed with extreme caution and maintain a safe distance from construction equipment.

(6) *Zone 6, Willoughby Bay Bridge*—(i) *Location.* All waters, from surface to bottom, located along the Willoughby Bay Bridge highway trestle and extending 50 feet to the north side of the bridge and 300 feet to the south side of the bridge along the length of the highway trestle, from shore to shore within the City of Norfolk.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment.

(c) *General requirements.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (b) of this section unless authorized by the COTP, HRCP, or designated representative. If a vessel or person is notified by the COTP, HRCP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the HRCP designated representative, the on-site foreman, via phone at 7577036060 or VHF–FM channels 13 and 16. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, HRCP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law enforcement agency.

(e) *Enforcement period.* The safety zones in this section will be in effect from December 25, 2025 until December 20, 2030. If the Captain of the Port, Sector Virgina determines this rule, or any of the safety zones established by this rule are no longer necessary, we will provide notice by marine broadcasts and local notice to mariners that the rule, or individual safety zones established by the rule, are no longer subject to enforcement.

Peggy M. Britton,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2025–24070 Filed 12–30–25; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

[Docket No. VA–2025–VHA–0073]

RIN 2900–AS31

Reproductive Health Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, without changes, a proposed rule to reinstate the exclusions on abortions and abortion counseling from the medical benefits package, which were removed in 2022. Before 2022, these exclusions had been firmly in place since the medical benefits package was first established in 1999. VA is also adopting as final, without changes, the reinstatement of exclusions on abortion and abortion counseling for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) that were also removed in 2022. VA takes this action to ensure that VA provides only needed and medically necessary and appropriate care to our nation's heroes and CHAMPVA beneficiaries.

DATES: *Effective Date:* This rule is effective January 30, 2026.

FOR FURTHER INFORMATION CONTACT: John Figueroa, Senior Advisor to the Secretary of Veterans Affairs performing the duties of Under Secretary for Health, (202) 461–0373.

SUPPLEMENTARY INFORMATION: Today, VA finalizes its proposed rule published in the **Federal Register** (FR) on August 4, 2025. 90 FR 36415. In that proposed rule, VA proposed to return VA's medical benefits package and CHAMPVA coverage to where they were on September 8, 2022, before VA issued an interim final rule (IFR) that removed long-standing restrictions against abortions. Id.

As explained in the proposed rule, it was VA's long-standing interpretation that abortions were not "needed" under section 1710 of title 38 of the United States Code (U.S.C.) and thus were excluded from the medical benefits package for veterans. 90 FR 36416. This determination was accepted by every Secretary and Presidential administration for over 20 years. Id. This determination did not prohibit providing life-saving care to pregnant veterans. Id. Similarly, it was VA's long-standing interpretation that abortions were not medically necessary and appropriate for CHAMPVA beneficiaries except when a physician certifies that the life of the mother would be endangered if the child were carried to term. 90 FR 36416–36417.

Congress has never mandated or legislated that VA provide abortions. Instead, Congress gave the Secretary discretion to determine what care may be furnished to veterans (under 38 U.S.C. 1710) and CHAMPVA beneficiaries (under 38 U.S.C. 1781). If Congress intended for VA to provide abortions in a manner other than VA's long-standing regulatory position, it could have amended VA's authorities. However, it never has, even though Congress has done so for other Federal agencies.

Since publication of our proposed rule, the Department of Justice's Office of Legal Counsel (OLC) issued a formal opinion concluding that VA does not have statutory authority to provide abortion or abortion counseling under 38 U.S.C. 1710. See *Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services,* 49 Op. O.L.C._(Dec. 18. 2025) (hereinafter referred to as "DOJ Opinion"), *https://*

www.justice.gov/olc/media/1421726/dl?inline. The DOJ Opinion explains that section 106 of the Veterans Health Care Act of 1992 (VHCA), Public Law (Pub. L.) 102–585, expressly prohibits VA from furnishing abortion when providing hospital care and medical services under Chapter 17 of Title 38. Id.

The DOJ Opinion further clarifies that procedures necessary to save the life of the pregnant veteran (such as treatment for ectopic pregnancies or miscarriages) are not considered ''abortions'' within the meaning of section 106 and therefore remain permissible. VA has historically interpreted its authority in this manner, and the DOJ Opinion affirms that such life-saving care is consistent with federal law.

As a Federal agency, VA is bound by the DOJ Opinion and relies on it as the primary legal basis for this final rule. Accordingly, this rule reinstates the longstanding exclusion of abortion and abortion counseling from VA's medical benefits package and CHAMPVA coverage, consistent with the statutory limitations imposed by section 106.

In addition to section 106, VA previously relied on its discretionary authority under 38 U.S.C. 1710 and 1781 to justify the provision of abortion services. In light of the DOJ Opinion, VA now recognizes that this discretionary authority is constrained by section 106 and cannot be exercised to override the statutory prohibition. Nevertheless, VA addresses VA's discretionary authority as a supporting and additional rationale for this rulemaking. Even if such discretion were available, the Secretary has determined that VA will not provide abortion or abortion counseling under that authority.

If VA's authority under sections 1710 and 1781 remained the primary basis for this rule, the absence of clear congressional direction regarding abortion is particularly relevant in light of the major questions doctrine. That doctrine, as articulated in *West Virginia* v. *EPA,* 597 U.S. 697 (2022), instructs that agencies must identify clear statutory authority before regulating in areas of profound political consequence. Abortion is one of the most politically divisive and morally charged issues in American public life, a fact the Supreme Court recognized in *Dobbs* v. *Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022), which returned the issue to the people and their elected representatives. In this context, VA's decision to return to its prior regulatory position reflects a cautious and legally grounded exercise of discretion; not an expansion of authority. VA did not in its proposed rulemaking, does not now, and has never interpreted the regulatory bar against abortions to be a bar against providing life-saving treatment. VA has simply never used the term ''abortion'' to refer to life-saving treatment provided to a pregnant woman. VA's proposal and final action today do not change this long-standing understanding of the difference between an abortion and a medical intervention necessary to save the life of a pregnant woman.

After publishing the proposed rule on August 4, 2025, VA provided a 30-day comment period, which ended on September 3, 2025. VA received 20,984 document submissions, which included approximately 24,333 total comments. The vast majority of comments were duplicated form responses. This final rule addresses all relevant and significant comments received, regardless of how many individuals submitted the same (or even identical) comment. Some commenters solely expressed support or opposition or made comments that were beyond the scope of the proposed rule. These comments are not addressed in this final rule, except to the extent that they also requested clarifications or suggested substantive revisions.

Section I. below addresses comments that generally challenged the proposed rule related to the medical benefits package or CHAMPVA. This section also includes comments that may not have specifically mentioned either program but that expressed general opposition to all changes in the proposed rule.

Section II. below addresses comments that specifically challenged VA's rationale in the proposed rule. This section addresses VA's more specific rationale related to the number of abortions provided by VA, comparison to other Federal laws related to abortion, and VA's legal authorities.

Section III. below addresses comments that raised other legal issues, to include assertions that the proposed rule did not meet certain administrative law standards.

Sections IV. through VIII. below address all other comments.

I. Comments That Generally Challenged the Proposed Rule

A. Comments That Asserted Abortions Were Needed Medical Services for Veterans or Were Medically Necessary and Appropriate Treatment for CHAMPVA Beneficiaries

VA proposed to remove the exceptions to the general exclusion of abortions in § 17.38(c)(1)(i) and (ii) of title 38, Code of Federal Regulations (CFR), that, pursuant to an IFR published on September 9, 2022 (see 87 FR 55296) and a final rule published on March 4, 2024 (see 89 FR 15473), established that abortions could be provided when: (i) the life or the health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (ii) the pregnancy was the result of an act of rape or incest. Part of the rationale in the proposed rule for removing these exceptions to the general exclusion of abortions was that they are not needed and, as to the first exception, from 1999 through 2022, VA had never understood the exclusion of abortions to prohibit VA from providing care to pregnant women in life-threatening circumstances. 90 FR 36416. Since the creation of the medical benefits package and for nearly 23 years, VA had consistently interpreted that abortions were not needed medical services under 38 U.S.C. 1710 and furnished care in life-threatening circumstances to pregnant veterans as a needed medical service. Moreover, the DOJ Opinion concludes that VA lacks statutory authority to exercise discretion to provide abortion services under 38 U.S.C. 1710, thereby foreclosing reliance on discretionary judgment to justify the exceptions previously established in 38 CFR17.38(c)(1)(i) and (ii).

VA also proposed to revise the exceptions to the general exclusion of abortions in CHAMPVA in 38 CFR 17.272(a)(58) to similarly revert back to regulatory language in existence prior to September 9, 2022, so that there would be a single exception for abortion for CHAMPVA beneficiaries in cases when a physician certifies that the life of the mother would be endangered if the fetus were carried to term, versus broader exceptions in cases of life or health endangerment or when the pregnancy is the result of rape or incest. VA's rationale for these proposed changes in CHAMPVA was that abortions were not ''medically necessary and appropriate for the treatment of a condition'' (pursuant to the definition of CHAMPVA-covered services and supplies in 38 CFR 17.270(b)) under the broader exceptions for the same reasons that abortions were not ''needed'' (pursuant to 38 U.S.C. 1710(a)(1)–(3)) in the veteran's program. 90 FR 36417. VA notes that for the comment summaries and responses that follow and for the remainder of the discussion in the final rule, it will use the shorthand of ''needed'' care in the context of 38 U.S.C. 1710, and ''medically necessary and appropriate'' care in the context of 38 U.S.C. 1781 (as interpreted in 38 CFR 17.270(b)). Again, the DOJ Opinion

concludes that VA lacks statutory authority to exercise discretion on this issue, but for the purposes of addressing comments, VA provides analysis under section 1710 as a secondary basis for our rulemaking.

Multiple commenters asserted that abortion was a needed medical service, or that the broader exceptions to permit abortion were medically necessary and appropriate for the treatment of a condition for CHAMPVA beneficiaries. Many of these commenters made general statements that abortion was evidence-based and part of medically accepted standards of care for pregnant women and therefore was needed or medically necessary and appropriate. Some of these commenters referenced publications from medical or other organizations to support these statements or further provided examples of specific procedures that could be considered needed or medically necessary and appropriate in particular circumstances.

Other commenters generally challenged the proposed rule by asserting that abortion bans or abortion restrictions were harmful to pregnant women. Many of these commenters referenced publications from medical or other organizations that indicate increased maternal and infant mortality rates or other worsened physical and mental health outcomes of pregnant women in states with restrictive abortion laws. As stated in comments, these publications suggest that states with restrictive laws create uncertainty for healthcare providers, a chilling effect for fear of legal consequences for abortion providers and pregnant women, or additional administrative requirements to furnish or receive care, all of which can result in delays in or denial of abortion. Additionally, these commenters referenced publications showing that bans could have negative, non-medical impacts, such as long-term economic hardship and financial harm to women and their children and that it may encourage women to stay with abusive partners. These commenters also claimed that bans can disproportionately impact women veterans, who are particularly vulnerable due to unique issues they may face (such as a history of military sexual trauma and increased risks for certain health conditions), which is even more pronounced among various groups of veterans, such as women of color and women in rural areas.

VA does not make changes from the proposed rule based on these comments. The DOJ Opinion addresses all comments referencing VA's authority to provide abortions. See *Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services,* 49 Op. O.L.C._(Dec. 18. 2025), *https://www.justice.gov/olc/media/1421726/dl?inline.* Given that VA lacks statutory authority to provide abortion services, policy arguments that VA should have that authority are inapposite. In addition, under 38 U.S.C. 1710(a)(1), the Secretary has discretion to determine what hospital care and medical services are needed. As stated in the proposed rule, the regulatory determination that abortion is not a ''needed'' service for veterans was accepted by every VA Secretary and Presidential administration for over 20 years, under the recognition that VA was not prohibited from providing care to pregnant women in life-threatening circumstances under the medical benefits package. 90 FR 36416. Therefore, separate and apart from DOJ's opinion that VA lacks statutory authority, the Secretary is exercising discretion under 38 U.S.C.1710(a)(1) to reaffirm VA's longstanding determination that abortion is not a ''needed'' service.

Consistent with such determination, care to pregnant women in life-threatening circumstances will continue to be covered under the medical benefits package. Subject to the DOJ Opinion, VA similarly has discretion under 38 U.S.C. 1781 (as interpreted in 38 CFR 17.270(b)) to determine what is ''medically necessary and appropriate for the treatment of a condition'' in CHAMPVA and finds that the single exception for life endangerment when certified by a physician meets that standard.

VA will publish additional guidance regarding care that is not barred by this rule. VA will also ensure its health care providers are trained to provide life-saving care. Such guidance is consistent with both the DOJ Opinion and the Secretary's discretionary authority.

B. Comments That Asserted Exceptions for Abortions Were Needed or Were Medically Necessary and Appropriate in Cases of Health Endangerment or When the Pregnancy Is the Result of Rape or Incest

Some commenters asserted that abortions were needed or were medically necessary and appropriate not only when a pregnant individual might experience life-threatening or endangering circumstances, but also when such an individual's health may be threatened or endangered, or in any case when such an individual was pregnant as a result of rape or incest. Particularly, multiple commenters acknowledged VA's continued ability to furnish care in life-threatening circumstances without an explicit exception to the abortion exclusion in 38 CFR 17.38(c)(1), or with the limited exception for life endangerment in § 17.272(a)(58) as proposed, but additionally asserted that abortion can be needed to preserve health, not solely to prevent imminent death. Some of these commenters referenced publications from medical or other organizations to support these assertions or provided examples of serious but not immediately fatal medical conditions that a pregnant woman may have—such as severe preeclampsia, certain cardiac diseases, or cancers requiring urgent treatment—that could require an abortion to avoid additional harm to the pregnant woman as the pregnancy develops.

Other commenters stated more generally that restricting care to life-endangering or life-threatening circumstances would force delays, increase complications, and endanger the long-term health of a pregnant individual. Some of these commenters raised concerns that there is a lack of clarity regarding when there is life-endangering and life-threatening circumstances versus endangerment or threat to health, as there is not necessarily a bright line when a condition is health-threatening or endangering versus life-threatening or endangering. In those cases, these commenters noted that a patient's condition can deteriorate quickly, and clinicians rely on their medical training, judgment, and expertise to determine when to intervene, which is typically before a condition becomes life-threatening or endangering. Some commenters provided examples of conditions in which a patient's life may not be considered endangered or threatened in the short term, but their health is. Some commenters also referenced publications to show how a lack of clarity in states with similar restrictions impacts health care providers and pregnant women.

Some commenters asserted that health care providers will hesitate to rely on their expertise, training, and medical judgment to make any required certifications and provide care, even when permitted under this rule.

Lastly, a commenter noted that the medical benefits package included services recognized as needed health care (such as bereavement counseling, prosthetics, and a wide range of outpatient care and prescription drugs) that have an impact on the quality of life of patients but in many cases the life of the patient would not be at risk without them. This commenter noted that

restricting abortion to life-threatening circumstances, but not health-threatening circumstances, is therefore inconsistent with VA's interpretation of needed care by comparison.

VA does not make changes based on these comments. The DOJ Opinion renders any discussion of medical necessity moot. If VA did have discretion, VA still would not address every specific potential medical condition a pregnant woman may have or complication that could be experienced during pregnancy or otherwise further delineate the conditions under which care may be provided or allowed pursuant to this rulemaking. These are clinical matters that will need to be determined by health care providers with their patients, and VA will issue further related guidance. As such guidance is more appropriate for elaborating VA policy, VA does not make changes to its regulations based on these comments.

VA notes that there are other medical interventions that can be used to preserve the life of the mother in a life-threatening or endangering circumstance, which would be available under the medical benefits package. There is a subspecialty of obstetrics and gynecology, maternal-fetal medicine, that focuses on managing risk to the life of the mother before, during, and after pregnancy. These services are and will continue to be provided to veterans and CHAMPVA beneficiaries.

VA also does not make changes based on concerns that other services included in the medical benefits package do not have a threshold to be life-threatening to be considered needed. VA acknowledges that 38 U.S.C. 1710 allows the Secretary to provide care in other-than-life-threatening situations and that from the time that the medical benefits package was originally promulgated in 1999 and through the 2022 IFR, abortions were excluded generally while these other services were included, without any inherent conflict. VA is merely returning to that longstanding regulatory framework. VA is not establishing a threshold of life-threatening for services to be considered ''needed'' to be included in the medical benefits package.

C. Exception To Permit Abortion When the Life of Mother Would Be Endangered if the Fetus Were Carried to Term

In the context of discussing whether care is needed under 38 U.S.C. 1710, the proposed rule explained that VA had never understood its policy prior to September 9, 2022, to prohibit providing care to pregnant veterans in life-threatening circumstances, including treatment for ectopic pregnancies or miscarriages, which were covered under VA's medical benefits package prior to the 2022 IFR. 90 FR 36416. The DOJ Opinion reached the same conclusion.

The proposed rule further stated ''[f]or the avoidance of 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'.'' Id. VA clarifies today that this statement in the proposed rule referred to the language related to CHAMPVA and not to the medical benefits package. It was not intended to convey that a life endangerment exception for abortion would be expressly codified in the medical benefits package. The comment summaries and responses below address concerns and issues raised in these comments, distinct from some similar comments in section III.F. of this final rule as related to allegations of Administrative Procedure Act (APA) violations.

1. Confusion if Exception for Life of Mother Is Not Codified for Veterans in the Medical Benefits Package Regulation

Some commenters stated that the proposed rule was not clear as to whether there would be an express exclusion in the medical benefits package to permit abortion if the life of the mother would be endangered if the child were carried to term, and that there would be confusion among patients and health care providers by not including such an exception in the medical benefits package. Some commenters opined that such confusion could lead to delayed or denied care, with commenters referencing publications regarding abortion exceptions for life of the mother in states such as Texas. Some commenters further explained that VA providers may hesitate to provide care if the exception is not codified in the medical benefits package regulation because the regulatory text, not the preamble, controls. Many of these commenters further suggested that VA codify the life exception in the medical benefits package to avoid these issues.

VA makes no changes based on these comments. As explained in the proposed rule, VA is returning to pre-September 9, 2022 position. VA is reverting the regulatory text of 38 CFR 17.38 to the same language that was in place at that time. Although some commenters may have been confused by the language in the preamble, the amendatory text of the proposed rule clearly indicated that the explicit exception was included only in the regulatory section that related to CHAMPVA, consistent with the language of that regulatory text prior to September 9, 2022. That pre-September 9, 2022 language was applied to allow for life-saving procedures that resulted in termination of a pregnancy, and there is no reason to believe that it will be hard for VA providers to apply that language now just as they did for over 20 years before the September 9, 2022 change.

2. Difference Between the Medical Benefits Package and CHAMPVA

Some commenters raised concerns that the regulations for the medical benefits package would not include an express exception to permit abortion if the life of the mother would be endangered if the child were carried to term while the CHAMPVA regulations would include such an exception. Commenters were concerned that this could result in ambiguity and confusion, leading to delayed or denied care. One commenter asserted that VA failed to provide any explanation for the difference between the changes being made to the medical benefits package and CHAMPVA regulations, since the former does not codify a life endangerment exception.

VA makes no changes based on these comments. As explained in the proposed rule, VA is reverting the regulatory text of 38 CFR 17.38 and 17.272 back to the same language that was in place prior to September 9, 2022. Moreover, the CHAMPVA and medical benefits package authorities apply to wholly different groups of beneficiaries and are operationalized in entirely different contexts. The differences between these regulations did not cause confusion before September 9, 2022, and will not now.

II. Comments That Specifically Challenged the Rationale in the Proposed Rule

A. Number of Abortions Provided by VA

The proposed rule explained that the exceptions to VA's longstanding general exclusion of abortions (as created by the 2022 and 2024 rulemakings) were a reaction to *Dobbs,* which itself was intended to prevent Federal overreach and return to States control over the provision of abortions. 90 FR 36416. The proposed rule further explained that the 2022 and 2024 rulemakings did the opposite of preventing such overreach and instead created a Federal entitlement based in part on an anticipated high demand for VA abortions that never materialized. Id.

These statements in the proposed rule highlight the flawed reasoning in the 2022 and 2024 rulemakings in the post-*Dobbs* context that supported those rulemakings.

Some commenters challenged what they perceived to be VA's premise that the low volume of abortions provided by VA actually reflects a low demand for veterans or CHAMPVA beneficiaries to receive these services from VA. These comments offered that such low volume could instead indicate barriers to accessing abortions (such as excessive travel from states with restrictive abortion laws, the chilling effect of restrictive State laws on VA provider decision making, or lack of knowledge that these services are available from VA) or could be due to a delayed ramp up inherent in the nature of VA offering new services. Other commenters challenged what they perceived to be VA's assertion that low demand supports the Secretary's determination that services are not needed or are not medically necessary and appropriate, correctly stating that low need is irrelevant as other medical services covered by VA do not have any threshold of utilization to be considered needed under 38 U.S.C. 1710 or medically necessary and appropriate under 38 U.S.C. 1781 (as interpreted in 38 CFR 17.270(b)). Lastly, some commenters more generally stated that the low volume of abortions furnished by VA supports that such services were only offered within the confines of the exceptions created and finalized in the 2022 and 2024 rulemakings, and as such, demonstrates that abortions were needed or were medically necessary and appropriate and otherwise do not constitute overreach.

VA does not make changes based on these comments. VA's proposed rule did not rely on the low volume of abortions as a justification for rescinding the 2022 and 2024 rulemakings, and neither does this final rule. VA agrees that low volume of provision of a medical service should not be a basis to exclude such service; indeed, some veterans sustain significant and unique injuries during their service, and VA would not deny them medical procedures to treat such injuries even if most other veterans do not sustain such injuries. Rather, in the proposed rule, VA cited the low demand for abortions to point out the flawed reasoning in the 2022 and 2024 rulemakings regarding the post-*Dobbs* landscape. The 2022 and 2024 rulemakings provided that it was critical to change VA's long-standing policies because the demand for abortions would be high. However, the low utilization demonstrates that the reasoning was flawed. They also highlight the relatively small impact of the proposed rule, which addresses comments that this final rule would have significant or broad impacts on society. In short, the 2022 and 2024 predictions of high demand reflect the overall flawed reasoning of that rulemaking, which unnecessarily reversed more than 20 years of settled regulatory policy.

B. Comparison to Other Federal Programs and the Hyde Amendment

Commenters raised concerns that the proposed rule referenced other Federal programs, including Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, and the Federal Employee Health Benefits (FEHB), to demonstrate that Congress generally does not favor the use of Federal funds to furnish abortions without also recognizing that these same programs use Federal funding for some abortions. Multiple commenters asserted that these statements from the proposed rule either misinterpret or misapply the laws regarding the funding under these other programs, noting that each of the programs provides broader exceptions than the proposed rule to furnish abortions. Particularly, commenters asserted that Medicaid and CHIP are both subject to the Hyde Amendment, and that the Hyde Amendment has exceptions for abortions when the life of the pregnant patient is in danger and in cases of rape and incest. Relatedly, some commenters incorrectly asserted that VA is subject to the Hyde Amendment.

Commenters also asserted that the TRICARE program and the FEHB program both include abortion coverage bans with the same exceptions as the Hyde Amendment. Some commenters were also concerned that servicemembers who transition from active-duty service to civilian life would not be eligible for, and receive from VA, the same benefits they were previously eligible for under the Department of Defense (DoD).

While not addressed in the proposed rule, some commenters further asserted that individuals in Federal prisons have access to care veterans will be ineligible for under this rulemaking.

Some commenters construed the proposed rule to say that consideration of whether abortion is ''needed'' necessarily involves the question of whether taxpayers should pay for abortion. These commenters asserted that whether taxpayers should fund certain care for veterans is irrelevant to whether such care is considered needed, or otherwise stated that there is no support in either the statutory text of 38 U.S.C. 1710 or in VA's previous interpretations of section 1710 to suggest that taxpayer funding has been the basis for determining health care that is provided by VA.

VA does not make changes based on these comments. The statements in the proposed rule related to Congressional expressions of intent for funding of abortions, and taxpayer funding of abortions, to demonstrate that Congress has repeatedly articulated restrictions on abortion and VA's actions to restrict abortion are consistent with the fact that other Federal programs restrict abortions. This rationale similarly applies to the regulatory restriction under CHAMPVA. The statements were not intended to suggest that VA is bound by those non-VA restrictive authorities, or that VA should emulate them. Rather, VA must apply the specifically applicable authorities in title 38, U.S.C.

VA's provision of health care to veterans and CHAMPVA beneficiaries is governed by 38 U.S.C. 1710 and 1781, respectively. Pursuant to these authorities, the Secretary has discretion to determine what care is needed or medically necessary and appropriate. VA is not subject to the same statutory authorities as other Federal agencies programs, such as CHIP, Medicare, Bureau of Prisons, the FEHB Program, and TRICARE. For example, Federal funds available to the Departments of Labor, Health and Human Services, and Education are subject to the Hyde Amendment. Congress has included the Hyde Amendment in those agencies' annual appropriations legislation for more than forty years, but Congress has not subjected VA to the Hyde Amendment. VA is, however, subject to the conclusion in the DOJ Opinion that it may not provide abortions.

VA also recognizes that, like VA, some agencies are also not subject to the Hyde Amendment, and such agencies have different statutory authorities than VA. For example, DoD is subject to 10 U.S.C. 1093, which establishes that DoD may not use funds or facilities ''to perform abortions except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.''

To the extent commenters asserted that servicemembers who transition from active-duty service to civilian life would not be eligible for, and receive from VA, the same benefits they were previously eligible for DoD, VA acknowledges that veterans would not be eligible for, or receive, the same benefits relating to abortions and abortion counseling. As explained above, DoD and VA are subject to

different statutory authorities. VA also reiterates the point made earlier that veterans and CHAMPVA beneficiaries may seek care outside of the VA system, and would be subject to different authorities in those circumstances as well. This rulemaking impacts only the furnishing of VA care to veterans and CHAMPVA beneficiaries. VA is not regulating the care provided or funded by other Federal agencies and other health care, through private insurance or otherwise, that is available outside of that provided by, and through, VA.

VA also acknowledges that having an explicit exception for ''life'' in the Hyde Amendment and other statutory authorities but not in VA's regulations might lead to the (inaccurate) conclusion that VA intends to bar life-saving procedures that result in a termination of pregnancy. VA recognizes that there may be a semantic aspect to exempting life-saving procedures by not calling them ''abortions.'' However, the opposite is also true, *i.e.,* that allowing ''abortions'' in some cases can lead to broader interpretations of what is intended to be authorized by VA as needed care. Moreover, VA is reestablishing regulatory language that directed Department practice for decades. VA has been abundantly clear in the proposed rule and this final rule that the bar against abortions does not apply to life-saving procedures that could result in the termination of a pregnancy and any arguments that VA's providers will read the regulation differently are hypothetical and without factual basis. If such misapplications of regulation occur, VA will address them through training and management of its workforce—not by changing the language of the regulation. Thus, to the extent that VA's discretionary authorities apply in light of the DOJ Opinion, VA's final rule is appropriate and consistent with such discretion.

C. Competing Provisions of Section 106 of VHCA and 38 U.S.C. 1710

The proposed rule explained that VA's exclusion against abortions was legally established in 1999 and was observed until the 2022 revisions, and further that the 2022 IFR was legally questionable given that Congress has only specifically addressed VA's authority to provide abortions in section 106 of VHCA, which authorized VA to provide under chapter 17 of title 38, U.S.C., ''[p]apanicolaou tests (pap smears),'' ''[b]reast examinations and mammography,'' and ''[g]eneral reproductive health care'' but excluded ''under this section infertility services, abortions, or pregnancy care (including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.'' 90 FR 36416. As explained in the proposed rule, Congress extensively revised chapter 17 in 1996, but also did not expressly repeal section 106. Id. The proposed rule discussed these competing legal provisions to demonstrate that VA's authority to provide abortions is, at least, dubious and, at most, nonexistent; and, that VA's determination to restore the abortion exclusion was in any case consistent with VA's decades-long interpretation of the applicable law. Id. VA did not intend to interpret or opine on the continuing authority of section 106 because VA decided to bar abortions under 38 U.S.C. 1710 and 1781. Notwithstanding the DOJ Opinion, which concludes that VA lacks discretion in this area, VA would still decline to provide abortions under that discretionary authority.

Multiple commenters challenged VA's statements in the proposed rule regarding the potential competing authorities of section 106 of the VHCA and 38 U.S.C. 1710. These commenters generally stated that, although the proposed rule did not take a position on the force or effect of section 106 of the VHCA, the proposed rule relied on section 106 to introduce that there was uncertainty as to the authority of VA to furnish abortions, despite the analysis VA put forward in the prior 2022 and 2024 rulemakings to support that section 106 and the limitations therein were legally inoperable. Some commenters further asserted that the proposed rule's failure to specifically address any potential change in analysis from these past rulemakings regarding the effect of section 106 was grounds to find the proposed rule arbitrary and capricious. Lastly, some commenters additionally asserted that VA's acknowledgement in the proposed rule that there could be uncertainty regarding the interpretation of applicable authority related to VA's provision of an abortion was similar grounds to find that the proposed rule was arbitrary and capricious, or otherwise grounds to find that the proposed rule did not meet requirements under the APA to provide a reasoned basis explaining the proposed regulatory revisions.

VA does not make changes from the proposed rule based on these comments. Since the publication of the proposed rule, the DOJ Opinion has clarified this issue. Moreover, to the extent that VA's authority under section 1710 serves as a secondary basis for this rule, the major questions doctrine provides an alternative framework for evaluating the limits of agency discretion in areas of significant political and moral consequence. As articulated in *West Virginia* v. *EPA,* the doctrine requires agencies to identify clear congressional authorization before regulating in domains of extraordinary national importance. If, as some commenters suggest, the provision of abortion services exceeds the scope of VA's delegated authority, then any such limitation must arise from statute—not from medical or ethical arguments advanced in the public comments. In this context, the only specific statutory provision addressing abortion is section 106 of the VHCA, which broadly prohibits it. Thus, even under a major questions analysis, the result would not be to expand abortion access based on medical discretion, but to apply the statutory constraint and return to the prior observation of the prohibition. In this context, VA's return to its long-standing exclusion of abortion services is not only consistent with the DOJ Opinion and its statutory mandate under 38 U.S.C. 1710 and 1781, but also reflects a prudent exercise of discretion that respects the constitutional separation of powers and the limits of agency authority under administrative law. Furthermore, as reflected throughout this final rule, VA does not consider this ban to bar the provision of life-saving treatment to pregnant women.

D. Determination of ''*Needed*'' *Under 38 U.S.C. 1710 and the Promote, Preserve, or Restore Standard in 38 CFR 17.38(b)*

The proposed rule explained that from 1999, when VA established the medical benefits package in 38 CFR 17.38, until September 8, 2022, abortions were excluded because they were not ''needed'' medical services under 38 U.S.C. 1710—that for decades, VA had consistently interpreted abortions as not ''needed'' medical services and therefore they were not covered by the medical benefits package. 90 FR 36415–36416. Multiple commenters asserted that the Secretary's discretion to determine what care is needed under 38 U.S.C. 1710 must be based on medical standards and judgment and a clinical need for care. Some supported these assertions by citing Congressional reports related to the passage of the law that became section 1710 (Pub. L. 104–262). These commenters primarily referenced language from H.R. Rep. No. 104–690 as indicating legislative intent that a singular clinical need for care standard would replace the multiple legal

eligibility standards when determining those veterans who would receive care and what care would be furnished. Some of these commenters further cited VA's IFR and final rules from 2022 and 2024 to demonstrate that VA at one point determined that abortions could be considered needed under section 1710, and stated that the proposed rule did not establish how abortions were not clinically needed. Ultimately, these commenters concluded that VA could not reasonably determine that abortions were not needed under section 1710 as a matter of statutory interpretation, given Congressional intent and VA's own statements in prior rulemakings.

Other commenters asserted that the criteria for furnishing care under the medical benefits package in 38 CFR 17.38(b), if such care is determined by appropriate health care professionals ''to promote, preserve, or restore the health of the individual,'' were Congressionally mandated standards that are separate from and replace the Congressionally mandated requirement that the Secretary must determine that care is needed under 38 U.S.C. 1710. Others fell short of alleging that the promote, preserve, or restore criteria were Congressionally mandated, but nonetheless asserted that these criteria articulated how VA as a matter of practice assesses whether care is needed and should be used to decide whether care is included in the medical benefits package.

All of the above-described comments generally concluded that abortions must be included in the medical benefits package because abortions could be found by VA to promote, preserve, or restore the health of an individual.

VA does not make changes from the proposed rule based on these comments. VA first clarifies that the promote, preserve, or restore criteria in 38 CFR 17.38 are regulatory only; these criteria are not present in 38 U.S.C. 1710. Regarding comments about the Congressional intent behind section 1710, VA agrees that section 1710 was intended to streamline care decisions based on clinical need for care in place of formerly stratified legal criteria for different types of care that existed before the enactment of section 1710. However, to the extent commenters assert that this focus on clinical need means the Secretary cannot reevaluate an interpretation of what is needed under section 1710, VA disagrees. The text of section 1710 does not mandate the perpetual approval of any care that VA at one time found to be needed. Further, the text of section 1710 does not prohibit the Secretary from establishing limitations and exclusions as to whether care is needed under section 1710.

Regarding the comments related to the promote, preserve, or restore criteria in 38 CFR 17.38(b), VA did express in the original promulgation of its medical benefits package that ''[t]he Secretary has authority to provide healthcare as determined to be medically needed. In our view, medically needed constitutes care that is determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice. The care included in the medical benefits package is intended to meet these criteria.'' 64 FR 54207, at 54210. However, VA does not believe this statement from VA, or the criteria in 38 CFR 17.38(b), apply to Secretarial determinations of ''needed'' care under 38 U.S.C. 1710. Rather, the promote, preserve, or restore criteria were put in place by the Secretary to govern how VA providers make individualized clinical determinations of care; those individualized determinations can only provide care that the Secretary has already determined to be needed under section 1710. This is evidenced in the regulation at 38 CFR 17.38(b), which states that ''care referred to in the medical benefits package will be provided to individuals only if it is determined by appropriate health care professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.'' In fact, adopting the commenters' position would seem to undercut the Secretary's authority to restrict any care at all, and the medical benefits package contains both the above-quoted restriction in § 17.38(b) as well as other excluded types of care in § 17.38(c). These cannot be authorized even if a provider determines that they might promote, preserve, or restore health.

Therefore, to the extent that VA's discretionary authorities apply in light of the DOJ Opinion, VA makes no changes based on these comments.

III. Comments That Raised Other Legal Concerns

A. Compliance With State Laws Post-Dobbs

Several commenters raised concerns that post-*Dobbs,* VA must or should follow state laws regarding abortion, particularly in states where abortion is legal or less restrictive than the proposed rule. Some commenters were concerned that the proposed rule would negate or violate states' rights and that VA should not restrict women's ability to access abortions at VA in states that do not have restrictions or bans on abortions. Some commenters specifically asserted that veterans and CHAMPVA beneficiaries should have the same right to an abortion as other women in their same state and other citizens, generally.

VA makes no changes based on these comments. There is no Federal law that guarantees a right to abortion. In *Dobbs,* the U.S. Supreme Court concluded that there is no constitutional right to abortion and returned the issue to the states to decide. 142 S. Ct. 2228.

As a Federal agency, VA must follow Federal laws, such as 38 U.S.C. 1710 and 1781, which provide it with the authority and discretion to determine the care that may be furnished to veterans and CHAMPVA beneficiaries. The Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2., generally prohibits states from interfering with or controlling the operations of the Federal government, and therefore immunizes the Federal government from state laws that directly regulate it. As such, VA is not subject to state laws that purport to regulate, prohibit, or burden VA's furnishing of needed or medically necessary and appropriate care.

Furthermore, VA has consistently asserted such supremacy in its provision of health care to beneficiaries in all states. In 38 CFR 17.419, VA explicitly preempts any state laws, rules, regulations, or requirements that conflict with a VA health care professional's practice within the scope of their VA employment. Similarly, in § 17.417, implementing 38 U.S.C. 1730C, VA explicitly preempts any state laws, rules, regulations, or requirements that conflict with a VA health care professional's practice of telehealth within the scope of their VA employment. In both regards, VA is able to establish a uniform approach to the provision of VA health care by its health care professionals. VA has an interest in ensuring that it provides consistent and equitable care and services to its beneficiaries in all states regardless of where they may receive care or reside. See 38 CFR 17.417(c) and 17.419(c).

VA's rule is no more restrictive than the state laws that permit an abortion to save the mother's life. As explained in the proposed rule, no state law entirely bans abortions, as exceptions to preserve the life of the mother exist in all 50 states.[1]

[1] *https://www.justia.com/constitutional-law/50-state-survey-on-abortion-laws/.*

To the extent that VA's rulemaking is in direct conflict with state laws, rules, regulations, or requirements, such laws, rules, regulations, or requirements are without any force or effect pursuant to the Supremacy Clause of the U.S. Constitution and 38 CFR 17.419 and 17.417. As explained previously, VA, as a Federal health care system, has an interest in ensuring that it provides consistent and equitable care and services to all veterans and CHAMPVA beneficiaries in all states regardless of where they may receive care or reside. See 38 CFR 17.419(c). This rulemaking ensures that veterans and CHAMPVA beneficiaries continue to receive the same care in all states.

To the extent that commenters contend that veterans and CHAMPVA beneficiaries should receive the same care as other citizens or women in their state, VA notes that pursuant to 38 U.S.C. 1710 and 1781, VA is required to furnish care to veterans and CHAMPVA beneficiaries, respectively. That care is not required to be the same as that available to any other citizen or woman in their state. For example, VA does not provide certain elective procedures that may be widely available in the private sector unless they are medically necessary or connected to a service-related condition. VA is subject to a unique set of laws enacted by Congress and carried out by the Secretary, who has the authority and discretion to determine what care VA will provide.

B. Delegation

One commenter asserted that the proposed rule allows state laws to determine whether veterans and CHAMPVA beneficiaries can receive abortions, which is an inappropriate delegation for a Federal program. This commenter asserted that because Congress instructed VA to provide coverage to veterans and CHAMPVA beneficiaries based on clinical necessity, VA cannot delegate this responsibility to the most restrictive state law.

Pursuant to 38 U.S.C. 1710 and 1781, Congress appropriately delegated to the Secretary the discretion to determine what care may be furnished to veterans and CHAMPVA beneficiaries, respectively. To the extent that the Secretary retains discretionary authority on the issue of abortion, the Secretary's exercise of that discretion would not be a delegation of his authority and responsibility pursuant to section 1710 and 1781 to states, even if it superficially coincides with certain state laws. However, VA acknowledges that VA's rule is generally consistent with those state laws, or sections of state laws, that permit abortion to save the mother's life. As explained in the proposed rule, no state entirely bans abortions, as exceptions to preserve the life of the mother exist in all 50 states.[2] VA makes no changes based on this comment.

C. Emergency Medical Treatment and Labor Act (EMTALA) and 38 U.S.C. 1784A

Several commenters raised concerns about the proposed rule in light of the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. 1395dd, and VA's related authority, 38 U.S.C. 1784A. In particular, some commenters were concerned whether VA would meet requirements under EMTALA and 38 U.S.C. 1784A because they stated that the Federal government refuses to enforce EMTALA and has rescinded related guidance. Other commenters equated the proposed rule with eliminating VA's obligations under EMTALA and 38 U.S.C. 1784A, especially as commenters opined that EMTALA and 38 U.S.C. 1784A require the provision of stabilizing care, which may include an abortion, to a pregnant patient whose health is in serious jeopardy.

VA makes no changes based on these comments. VA is not subject to EMTALA, but has adopted some of its requirements through policy. Instead, VA has its own similar authority. Section 1784A of title 38 U.S.C. requires that in the case of a VA hospital with an emergency department, if any individual comes to the hospital or its campus and a request is made on behalf of the individual for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. It further requires that if any such individual has an emergency medical condition, the VA hospital must provide medical examination and treatment required to stabilize the medical condition or transfer the individual to another medical facility in accordance with specified requirements. VA complies with these requirements of 38 U.S.C. 1784A and will continue to do so. This rule will not impact VA's responsibilities and obligations under section 1784A. Furthermore, as explained in the proposed rule, VA will continue to provide care to pregnant women in life-threatening circumstances under the medical benefits package. 90 FR 36416–17.

D. Sex or Gender Discrimination

Commenters asserted that the proposed removal of the exceptions to furnish abortions amounted to gender or sex discrimination as such changes necessarily only affect veterans that can get pregnant, or women veterans. Other commenters alleged that the proposed removal of the abortion exceptions was discriminatory because VA would still provide all reproductive care for veterans who were men; particularly, some of these commenters noted that VA would still provide male veterans medication to treat erectile dysfunction, or would still perform vasectomies for male veterans, despite these services not being needed to save the lives of male veterans. Lastly, some comments more specifically opined that removal of the exceptions to furnish abortions would potentially violate specific laws related to preventing sex discrimination (*i.e.,* Title IX of the Education Amendments of 1972, or section 1557 of the Affordable Care Act), or otherwise would conflict with Congressional intent to ensure equality in the provision of health services to women veterans under the Deborah Sampson Act of 2020, Title V of Public Law 116–315.

VA does not make changes from the proposed rule based on these comments. VA's interpretation in the proposed rule and as made final in this rule is that abortions are not needed care in general, and that VA is not prohibited from providing care to pregnant women in life-threatening circumstances (under the medical benefits package), even if such treatment may result in the termination of a pregnancy. Standards of medical care and treatment, including with respect to reproductive health care, necessarily involve different protocols based on the clinical needs and biology of the individual patient, including their sex. That this regulatory change necessarily impacts the care and services available to veterans and CHAMPVA beneficiaries who are women does not alone amount to discrimination on the basis of sex or gender.

To the extent section 1557 of the ACA applies to VA, it does not require VA to maintain the abortion exclusions established by VA in the 2022 and 2024 rulemakings. Section 1303(c)(2) of the ACA specifically states that ''[n]othing in this Act shall be construed to have any effect on Federal laws regarding . . . willingness or refusal to provide abortion [or] discrimination on the basis of the willingness or refusal to provide,

[2] *https://www.justia.com/constitutional-law/50-state-survey-on-abortion-laws/.*

pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.'' In its regulations implementing section 1557, the Department of Health and Human Services (HHS) emphasized this point, stating that ''nothing in section 1557 shall be construed to have any effect on Federal laws regarding . . . willingness or refusal to provide abortion . . . and discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.'' 45 CFR 92.3(c). Although not applicable to VA, HHS's regulation informs VA's interpretation of section 1557 and its inapplicability to abortion as a form of discrimination.

Finally, title IX is inapplicable in this context because title IX was enacted to prevent discrimination on the basis of sex in educational programs and activities that receive Federal financial assistance. See 20 U.S.C. 1681(a). To the extent title IX would apply to health programs, title IX also contains an abortion neutrality provision, where ''nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion.'' 20 U.S.C. 1688. Accordingly, VA disagrees with commenters' assertions that VA's proposed changes violate section 1557 or title IX.

E. Constitutional Rights

Commenters alleged that the proposed rule violates multiple Federal Constitutional rights. These commenters stated that removing the exceptions to furnish abortion in certain circumstances imposes specific moral and religious views on all veterans, violating religious freedom protections under the First Amendment; deprives individuals of life, liberty, or property, violating due process protections under the Fifth Amendment; or otherwise violates fundamental bodily autonomy rights. Other commenters alleged that the proposed rule violated the Ninth or the Fourteenth Amendments without further explanation, and one commenter alleged a violation of the Fourth Amendment because medical history should be private.

VA does not make changes from the proposed rule based on these comments. In *Dobbs,* the Supreme Court determined that there is no Constitutional right to abortion, and VA's removal of exceptions to furnish abortion in certain circumstances is therefore not violative of any Constitutional right. Further, removal of the exceptions is not based on religious ideology, and it will not endanger the lives of veterans and CHAMPVA beneficiaries as VA will continue to furnish needed and medically necessary and appropriate care to a veteran or CHAMPVA beneficiary, respectively, even if such care might result in the termination of a pregnancy.

F. APA Violations

Multiple commenters alleged that the proposed rule failed to provide a reasonable explanation that considered prior evidence and consequences of policy reversal, and reliance interests in removing the exceptions to furnish abortions and abortion counseling, and that the rule if finalized as proposed would therefore be arbitrary and capricious under administrative law standards under the APA. Some of these commenters more specifically asserted that portions of the rationale in the proposed rule were confusing or presented flawed reasoning to also allege that the rule if finalized as proposed would be arbitrary and capricious. VA addresses these comments below as applying to both the medical benefits package as well as CHAMPVA, unless otherwise indicated.

1. Consideration of Prior Evidence Related to Whether Abortions Are Needed or Medically Necessary and Appropriate, and Consequence of Policy Reversal

Commenters asserted that the proposed rule fails to address the facts and circumstances presented in VA's 2022 IFR, and that rule's prior conclusion that abortions were needed or medically necessary and appropriate when the life or health of the pregnant veteran is at risk or in cases of rape and incest. Commenters stated that the proposed rule mischaracterized the 2022 IFR's rationale as only relating to an anticipated rise in demand for abortion as a result of the *Dobbs* decision, although the 2022 IFR and 2024 final rule were additionally based on evidence regarding the health consequences of carrying certain pregnancies to term. Commenters further asserted that the proposed rule did not address documented evidence of harm that results from abortion bans or restrictive abortion laws, and therefore that VA did not conduct the required consideration of harmful consequences in reversing policy from the 2022 and 2024 rules. Many of these commenters cited multiple medical or scientific studies or other publications which show increased maternal mortality rates or other worsened physical and mental health outcomes of pregnant individuals in states with restrictive abortion laws. Commenters asserted that these studies suggest that states with restrictive laws create uncertainty for healthcare providers, a chilling effect for fear of legal consequences for healthcare providers and pregnant individuals, or additional administrative requirements to furnish or receive care, all of which can result in delays in or lack of needed care being furnished. Commenters further stated that the proposed rule did not present any evidence to rebut or undercut the studies on which VA previously relied, or the factual findings that it made, in 2022 and reaffirmed in 2024. Commenters ultimately opined that because the proposed rule disregards VA's previous factual findings, any final rule that would also do so would be arbitrary and capricious.

VA does not make changes from the proposed rule based on these comments. The APA change-in-position doctrine states that ''agencies are free to change their existing policies as long as they provide a reasoned explanation for the change,'' ''display awareness that [they are] changing position,'' and consider ''serious reliance interests.'' *Encino Motorcars, LLC.* v. *Navarro,* 579 U.S. 211, 221–222 (2016); *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515–516 (2009). Change in position doctrine asks (1) whether agency changed its existing policy, and (2) whether the agency displayed awareness that it is changing its policy and offered good reasons for the new policy. *FDA* v. *Wages & White Lion Invs., LLC,* 604 U.S. 542, 569–570 (2025).

The standard described above does not require VA to respond to every factual consideration made in its prior rulemaking or show ''that the reasons for the new policy are better than the reasons for the old one.'' See *Fox Television,* 556 U.S. at 515. VA explained in its proposed rule that it was rescinding the 2022 and 2024 rules pursuant to its authority in 38 U.S.C. 1710 to furnish hospital care and medical services that the Secretary determines to be needed and to restore VA's medical benefits package to its pre-September 9, 2022 state. Similarly, VA explained in its proposed rule that it was rescinding the 2022 and 2024 rules pursuant to its authority in 38 U.S.C. 1781 and to restore its CHAMPVA coverage to its pre-September 9, 2022 state. This rationale provided for these proposed changes to the medical benefits package and CHAMPVA conforms to the standard under which an agency may subsequently change its position on prior rulemakings. See *Motor Vehicle Mfrs. Ass'n of the U.S.,*

Inc. v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983) (an agency's rule may not be set aside if it is ''rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute.'') Moreover, the DOJ Opinion is controlling legal authority for VA and forecloses discretionary authority in this area.

2. Reliance Interests

Some commenters raised concerns that the proposed rule disregarded reliance interests from VA's prior policy. In particular, some commenters noted that agencies are required to assess whether there are reliance interests in its existing policy, whether they are significant, and weigh any such interests against competing policy concerns.

VA makes no changes based on these comments. VA acknowledges that when an agency changes course, it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account. See *Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal., 591 U.S. 1, 30 (2020).* For purposes of abortions when the health of the pregnant mother would be endangered if the pregnancy were carried to term, in the case of rape or incest, and for abortion counseling provided to veterans under the medical benefits package and to CHAMPVA beneficiaries, VA has concluded there are no serious reliance interests because such services have been available for a short period of time (that is, only since September 9, 2022). Additionally, VA has concluded there are no serious reliance interests because very few veterans and CHAMPVA beneficiaries have been provided such services by VA, as explained in the proposed rule. Further, as explained in *Dobbs,* traditional reliance interests are lacking when it comes to abortion. *Dobbs,* 597 U.S. at 287–91.[3] Moreover, *Dobbs* made clear that there is no Federal constitutional right to abortion and no compelling government interest in promoting abortion.[4] Thus, VA finds that veterans and CHAMPVA beneficiaries will not have serious reliance interests that must be taken into account as part of this rulemaking. VA further acknowledges that this rulemaking is a two-stage rulemaking that had a proposed rule that, once final, will have a 30-day delayed effective date, which have provided veterans and CHAMPVA beneficiaries advance notice and sufficient time to identify other sources available for these services. Moreover, the DOJ Opinion governs VA's interpretation of applicable law and forecloses discretionary authority in this area.

3. Other Administrative Law Issues

Commenters asserted that the proposed rule's failure to specifically address any change in analysis from the 2022 and 2024 rulemakings regarding the effect of section 106 was grounds to find the proposed rule arbitrary and capricious. Some commenters further asserted that VA's mere acknowledgement in the proposed rule that there could be uncertainty regarding the applicable authority related to VA's provision of abortions was itself grounds to find that the proposed rule was arbitrary and capricious.

VA makes no changes based on these comments. Even if the DOJ Opinion did not overrule any exercise of discretion to allow abortion, VA would rely on the determination that abortions are not needed under 38 U.S.C. 1710. Acknowledging uncertainty about the applicability of a separate authority not relied on to promulgate a regulation change does not render a rule arbitrary and capricious. Instead, it reflects consideration of both the legal and policy context behind developing the rule. Under the arbitrary and capricious standard, as traditionally interpreted, a reviewing court would consider whether the agency ''relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for the decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'' *State Farm,* 463 U.S. at 43. The proposed rule was not arbitrary and capricious since the discussion of section 106 did none of these things. Moreover, VA's decision to bar abortion but continue to provide life-saving care is consistent with section 106 and the DOJ Opinion.

Some commenters asserted that although the preamble of the proposed rule stated that, ''[f]or the avoidance of 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,' '' the proposed amendment to the medical benefits package does not include any such language, making it unclear whether a life endangerment exception exists for veterans in the medical benefits package. One commenter stated that because the preamble does not have the force of law, the exception for life of the mother for the medical benefits package appears to be illusory, and that this inconsistency itself renders the rule arbitrary and capricious. Another commenter noted that the preamble of the proposed rule as referenced above incorrectly describes the text of the rule with regards to the medical benefits package, and the preamble is insufficient assurance that such a life endangerment exception exists to adequately justify the proposed change. Lastly, multiple commenters opined that the proposed rule failed to explain why CHAMPVA would have a life endangerment exception in regulatory text while the medical benefits package would not, where one of these comments more specifically asserted that the rule if finalized as proposed will be arbitrary and capricious for failing to provide a reasoned explanation for where the life endangerment exception applies.

VA makes no changes based on these comments. The proposed rule repeatedly stated that VA was returning to its pre-September 9, 2022, restrictions on abortion within the medical benefits package and CHAMPVA. The regulatory revisions previously proposed and now finalized within this rule reinstates the prior restrictions on abortion within the medical benefits package as well as CHAMPVA, and the interpretation of that language, as it was applied by VA before September 9, 2022. The preamble of the proposed rule explained how the regulatory text was interpreted and will be interpreted once finalized through this rulemaking. As VA's statutory authorities for the medical benefits package and CHAMPVA are 38 U.S.C. 1710 and 1781, respectively, pursuant to such authorities, VA may determine

[3] In *Dobbs,* the U.S. Supreme Court concluded that there is no constitutional right to abortion and found that there are no serious reliance issues for such a constitutional right, stating ''Traditional reliance interests arise 'where advance planning of great precision is most obviously a necessity.' *Casey,* 505 U.S. at 856 (joint opinion); see also *Payne,* 501 U.S. at 828. In *Casey,* the controlling opinion conceded that those traditional reliance interests were not implicated because getting an abortion is generally 'unplanned activity,' and 'reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.' 505 U.S. at 856. For these reasons, we agree with the *Casey* plurality that conventional, concrete reliance interests are not present here.'' *Dobbs,* 597 U.S. at 287–88.

[4] Before *Dobbs,* even during the entire time when the U.S. Supreme Court recognized a fundamental right to abortion, the U.S. government was under no obligation to subsidize or to facilitate abortion. *See Harris* v. *McRae,* 448 U.S. 297, 326 (1980) (''[W]e hold that a State that participates in the Medicaid program is not obligated under Title XIX to continue to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment.'').

which exceptions to abortion are appropriate for each program independently based on applicable law and programmatic objectives—subject to the limitations articulated in the DOJ Opinion. The absence of a life endangerment exception in the regulatory text for the medical benefits package, while included in CHAMPVA, does not render the proposed rule arbitrary and capricious.

Furthermore, in the case of CHAMPVA, allowing abortions when a physician certifies the life of the mother would be endangered if the child were carried to term aligns with the requirement under 38 U.S.C. 1781(b) to provide CHAMPVA benefits in a similar manner as TRICARE. The rescission of the 2022 and 2024 rulemakings restores both the medical benefits package and CHAMPVA to its pre-September 9, 2022 policy, in which CHAMPVA had an explicit life endangerment exception while the medical benefits package did not. As such, the differential treatment is merely a return to the regulations that were in place prior to September 9, 2022, and satisfies the APA's requirements for reasoned decision making.

One commenter asserted that the proposed rule fails to adequately explain how VA is changing course, which the commenter stated requires clearer statements of VA's understanding of both the status quo and the changes that would be made by the proposed rule. This commenter offered that the proposed rule framed the exceptions to furnish abortion (the status quo at the time the proposed rule was published) as permitting elective abortion, by way of VA's reference to other Federal programs as evidence that Congress does not fund elective abortion, and opined that this was a misrepresentation of the status quo and therefore VA could not properly explain the effect of the changes in the proposed rule, making the rule arbitrary and capricious.

VA makes no changes based on this comment. Consistent with the requirements of the APA, the proposed rule clearly articulated both the prior rule and the reasons underlying its decision to rescind the rule. The preamble identified the relevant provisions of 38 CFR 17.38(c)(1) and 17.272(a)(58) and explained how the proposed rule would restore VA's regulations to its pre-September 9, 2022, regulatory text. The discussion of other Federal programs provided context and a point of comparison. VA's explanation accurately reflected the status quo and the rationale for its proposed change. Accordingly, the proposed rule satisfied VA's legal obligation to provide a reasonable explanation for its change in position and is not arbitrary and capricious.

One commenter asserted that VA's interpretation in the proposed rule of ''similar, not identical'' in relation to CHAMPVA coverage for abortion being different from TRICARE was arbitrary and capricious because deviations from TRICARE should be based on the needs of the CHAMPVA population and medically necessity, and VA provides no evidence that offering coverage more similar to TRICARE is harmful or unnecessary.

VA makes no changes based on this comment. As previously stated, and discussed in more detail below, CHAMPVA benefits should be similar to, but not necessarily identical to, those provided under TRICARE. VA is afforded discretion to determine the extent to which it aligns CHAMPVA with TRICARE benefits, subject to its policy determinations and program objectives. VA is not required to justify deviations from TRICARE solely by referring to medical necessity or demonstrable harm to CHAMPVA beneficiaries. VA may adopt distinctions that reflect its own administrative considerations or differences in program purpose or population. Adopting such distinctions does not make the rule arbitrary and capricious. For a more detailed discussion of ''same or similar'' in relation to TRICARE, see further below.

One commenter asserted that the proposed rule failed to provide a reasonable explanation for why only physicians can certify an exception to permit abortion versus other types of clinical providers in CHAMPVA and therefore introduces an administrative burden in an arbitrary and capricious manner.

VA makes no changes based on this comment. Pursuant to 38 U.S.C. 1781, VA has the authority to determine the scope of CHAMPVA benefits and to establish reasonable procedures for their administration. VA's requirement that only physicians certify an exception to permit abortion is a permissible exercise of this discretion. This physician certification requirement is a return to VA's pre-September 9, 2022 regulatory text. This is not arbitrary and capricious as VA reasonably determined that physician certification ensures appropriate clinical oversight, is consistent with program objectives, and does not place an undue burden on CHAMPVA beneficiaries as it reinstates its former regulation.

One commenter asserted that changes occurred to a comment submission feature on the General Services Administration's *Regulations.gov* website during the comment period for the proposed rule without adequate notice, which the commenter stated impinged the public's ability to comment. This commenter opined that this change was a violation of the spirit of the APA to permit the public a meaningful opportunity to comment, to render the rule if finalized as proposed to be arbitrary or capricious.

VA makes no changes based on this comment. VA considers this outside the scope of the rulemaking since the General Services Administration (GSA), not VA, is responsible for *regulations.gov*.

4. Regulatory Impact Analysis (RIA) Insufficiencies

Commenters asserted that the RIA that accompanied the proposed rule underestimates the cost to society because it fails to adequately assess the additional costs related to lack of access or delayed receipt of abortions caused by strict abortion laws in states. These commenters cited increased monetary costs of abortion procedures performed later in pregnancy, as well as increased costs to travel to states with less strict laws, or lost wages in taking leave from work. Other commenters alleged that the RIA underestimated the proposed rule's cost to society by not estimating the additional costs in care that can occur the longer an individual may have to wait to obtain an abortion, citing to increased costs of emergency care or other required critical care as health outcomes of a pregnant individual worsen. Some comments also stated more generally that some assumptions in the RIA were flawed or not supported, such as statements in the RIA as to the number of states that have restrictive abortion laws (or the types or impact of state restrictions), or the percentage of abortion procedures estimated in the RIA to be medication abortions, or the percentage of veterans that would use VA's maternity care benefits if VA did not provide an abortion procedure.

VA is not making any changes to the rule or RIA based on these comments. VA developed the RIA in line with the Office of Management and Budget (OMB) Circular A–4 principles and applied methods consistent with OMB Circular A–4 and VA's RIA that accompanied the September 9, 2022 IFR. The RIA follows current Circular A–4 guidelines as it identifies the impacted population of female veterans, applies the appropriate baseline, and demonstrates the segregation of transfers, costs, and reliably measurable

societal impacts. VA's assumptions are based upon impacts that are reasonably predictable and are supported by available data at the time the analysis was developed. While commenters favor wider ranges of estimates, the key elements highlighted in the RIA remain the same as were present in the IFR.

The RIA relied on publicly available sources to characterize the state restrictions to develop the rulemaking's analytical baseline. While VA recognizes that state policies evolve and can be categorized in different ways, the RIA's baseline appropriately reflects the legal environment at the time the analysis was conducted, as required by Circular A–4. Alternative classifications of state restrictions examined during review do not alter the direction of findings and any quantitative differences lie within the qualitative bounds presented in the RIA. Additionally, the RIA used the best available published estimates at the time of drafting to allocate abortions between medication and procedural methods. VA acknowledges that these can vary over time and between jurisdictions. However, any variations in the method of abortion does not alter the policy conclusions of the analysis.

The RIA qualitatively discussed access constraints and acknowledged that individuals in some jurisdictions may face longer travel and wait times for procedures or determinations. VA chose not to monetize these impacts due to the current data limitations at the veteran level, both enterprise-wide and within CHAMPVA, which would make any estimates on this cohort insufficiently reliable for specific monetization. For this reason, VA treated these impacts qualitatively. Consistent with Circular A–4, the RIA focused the measurable impacts on reasonably certain resource changes and treated broader incidence effects qualitatively, as is the case for all VA RIAs that are unable to provide reliable estimates.

VA agrees with the commenters that any delays or reliance on later gestation care, including emergency care, can affect the type of care that may be provided to a veteran or beneficiary as well as increase the potential for financial impacts. The RIA discussed these concerns qualitatively and acknowledges the potential increases in utilization of this level of care. VA did not monetize these impacts in the RIA, both enterprise-wide and within CHAMPVA, because reliable specific probabilities and unit cost inputs are not currently available without imposing questionable assumptions that could greatly alter the estimates, either by under or over stating those impacts. The absence of the estimation of these impacts does not imply VA's belief that these impacts will not exist. Rather, it reflected consistent judgment to avoid speculative quantification in VA RIAs, as required by Circular A–4. Importantly, even if higher later gestation or emergency care costs were included in the RIA, they would not change the overall characterization or the necessity for the rulemaking.

Some commenters questioned VA assumptions regarding the proportion of beneficiaries who would use VA maternity benefits if VA did not provide abortions. The RIA distinguished between the services furnished by VA, services obtained outside VA, and the potential of foregone care. In this instance, where shifts largely reflect payer transfers rather than new resource use, Circular A–4 directs agencies to present those effects transparently but not to treat them as social costs. VA followed this approach in the RIA and finds no basis to revise these assumptions.

VA has carefully considered all comments on the RIA, and after a thorough review, has concluded that the existing RIA remains sufficiently informative and analytically sound based off the best available data.

5. Artificial Intelligence

One commenter, relying on the APA for support, stated that VA must disclose information related to any use of artificial intelligence (AI) as part of this rulemaking (including developing substantive policy, producing supporting analysis, or responding to public comments). This commenter stated that under the APA, when an agency uses a computer model, it must explain the assumptions and methodology used in preparing the model. This commenter further stated that to the extent use of AI is significant, an agency must provide an additional opportunity for public comment.

VA makes no changes based on this comment. There is no statutory or regulatory requirement under the APA that mandates such disclosure. While OMB guidance and Executive Order 14110 direct agencies to promote transparency and responsible artificial intelligence use, they do not impose a legal obligation to identify or describe the tools used during drafting or promulgating a rule.

VA further notes that this comment relies on a misunderstanding of the usage of "computer model" in *Owner-Operator Independent Drivers Ass'n* v. *Federal Motor Carrier Safety Administration,* 494 F.3d 188 (D.C. Cir. 2007). In *Owner-Operator,* the "computer model" at issue was used in determining the agency's cost-benefit analysis and was an integral component to its regulatory conclusions. Id. at 204–205. In its decision, the D.C. Circuit held that the Federal Motor Carrier Safety Administration erred in not explaining whole aspects of the use of this model in developing the methodology under which it created the rule. Id. at 205. In neither the proposed rule published on August 4, 2025, nor this final rule was AI used to the degree described regarding the model in *Owner-Operator;* therefore, this principle does not apply, and no additional disclosure is required.

G. Deborah Sampson Act of 2020

Some commenters opined that the Deborah Sampson Act of 2020 prohibits VA from providing abortion and abortion counseling while other commenters disagreed. At least one commenter opined that such legislation was Congressional endorsement of VA's ability to provide care, including care that would save the life of a pregnant mother when endangered, that was in the medical benefits package at that time (that is, January 5, 2021) pursuant to 38 U.S.C. 1710 and without reference to section 106 of the VHCA.

VA makes no changes based on these comments. As explained previously, the Secretary has discretion to determine what care is needed for veterans pursuant to 38 U.S.C. 1710. Prior to September 9, 2022, VA consistently interpreted abortions to not be needed, but did not consider this policy to prohibit VA from providing care to pregnant women in life-threatening circumstances (and thus, such care was covered under the medical benefits package). 90 FR 36416. The Deborah Sampson Act of 2020 created a central office to monitor and encourage the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of health care services provided to women veterans by the Department. 38 U.S.C. 7310(b)(1). As part of that Act, Congress defined "health care" as the health care and services included in the medical benefits package provided by the Department as in effect on the day before the date of the enactment of this Act (that is, Jan. 5, 2021). 38 U.S.C. 7310 note.

VA considers that Congress, through the Deborah Sampson Act of 2020, ratified VA's policy and interpretation in place prior to September 9, 2022. This included VA's policy and interpretation that needed care in the medical benefits package included the

provision of care to pregnant women in life-threatening circumstances. Additionally, the Deborah Sampson Act of 2020 is further example of Congress's ratification of the bar against abortions affirmed by the DOJ Opinion (because it did not authorize the provision of abortions) and of the Secretary's discretion and authority under 38 U.S.C. 1710 to establish what care (other than abortions) is needed pursuant to such authority.

H. International Law

Several commenters opined that access to abortion, especially in cases of rape and incest, is a basic human right as reflected by the United Nations and global human rights organizations. One commenter stated that the proposed rule is a de facto abortion ban, and as such, violates the United States' obligation as a State Party to the International Covenant on Civil and Political Rights.

VA makes no changes based on these comments. International human rights organizations and global norms regarding abortion access do not impact VA's authority to provide health care under 38 U.S.C. 1710 or 1781. The United States' participation as a State Party to the International Covenant on Civil and Political Rights does not create or impose binding obligations on domestic Federal agencies. As such, the referenced international standards are not controlling in this rulemaking.

IV. Comments Specific to CHAMPVA

A. Inconsistent With TRICARE (Select)

Some commenters raised concerns that VA's rule would be inconsistent with, and stricter than, TRICARE by excluding abortions in cases of rape and incest and abortion counseling and would result in a difference in treatment for two classes of Federal beneficiaries. Some commenters expressed their belief that Congress intended for families of veterans to receive comparable care to families of active servicemembers; and that excluding rape and incest in CHAMPVA undermines that. One commenter urged VA to consider ''similar'' to mean comparable in scope and fairness and that VA could maintain or expand coverage since 10 U.S.C. 1093 limits TRICARE, but not VA. Some commenters acknowledged that while CHAMPVA coverage need not be identical to that offered under TRICARE, the proposed rule did not address or acknowledge the significant differences that would be created between these two programs.

One commenter noted that TRICARE's limitation on abortion counseling is not a limitation on medical communication, but rather a limitation on billing, as abortion counseling in TRICARE is not reimbursed as a separate covered service unless medically necessary.

VA makes no changes based on these comments. VA acknowledges that pursuant to this rulemaking, CHAMPVA coverage for abortion will differ from TRICARE, particularly as TRICARE allows abortions in cases of rape and incest. As previously explained in this rulemaking, TRICARE is subject to a different authority from VA (that is, 10 U.S.C. 1093). The DOJ Opinion clearly forecloses the provision of abortion in CHAMPVA. Moreover, pursuant to 38 U.S.C. 1781(a), VA is not required to provide identical coverage to TRICARE. 90 FR 36417; 87 FR 55290; 89 FR 15459; 38 U.S.C. 1781(b); see 32 CFR 199.1(r), 199.17(a)(6)(ii)(D). Instead, VA provides similar coverage to TRICARE. See 38 CFR 17.270(b) (defining CHAMPVA-covered services and supplies) and 17.272 (setting forth benefits limitations and exclusions); 87 FR 55290; 89 FR 15459.

As explained in the proposed rule, prior to September 9, 2022, CHAMPVA coverage excluded abortions except when a physician certified that the abortion was performed because the life of the mother would be endangered if the fetus were carried to term, and VA is restoring the pre-September 9, 2022, abortion restrictions within CHAMPVA, just as it proposed to restore the long-standing restrictions to the medical benefits package. 90 FR 36416–17.

This language is consistent with the language VA promulgated in 1998 for purposes of CHAMPVA. 63 FR 48102 (Sept. 9, 1998). On February 10, 1996, 10 U.S.C. 1093 was amended by Congress to prohibit any DoD facility from performing an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest. See section 738 of Public Law 104–106. Despite this amendment to 10 U.S.C. 1093, when VA updated its CHAMPVA regulations in 1998, VA did not amend them to allow for abortions in situations involving rape or incest. Instead, VA continued to prohibit abortions except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term and abortion counseling in 38 CFR 17.272. Thus, VA's long-standing policy and practice was not identical to TRICARE in this regard, which continued to be VA's policy and practice until September 9, 2022. 63 FR 48102 (Sept. 9, 1998); 87 FR 55296. As explained in the proposed rule and throughout this final rule, the Secretary has determined that, pursuant to 38 U.S.C. 1781 and 38 CFR 17.270(b), VA will return to its pre-September 9, 2022 abortion and abortion counseling exclusions for purposes of CHAMPVA coverage.

How TRICARE's limitation on abortion counseling is implemented is not relevant to this rule.

B. Other Care That Is Covered Under CHAMPVA

One commenter raised concerns about VA determining abortions are not needed when VA provides other care that the commenter believes is not needed and further identified services and procedures provided under CHAMPVA that they consider not needed.

VA makes no changes based on these comments. First, they are mooted by the DOJ Opinion. Second, VA understands that the commenter may consider certain care provided in CHAMPVA as not needed, but VA has determined such care was medically necessary and appropriate pursuant to its authority in 38 U.S.C. 1781 and 38 CFR 17.270(b). Section 1781, 38 U.S.C. (as interpreted in 38 CFR 17.270(b)) provides the Secretary with the discretion to determine what care is medically necessary and appropriate for CHAMPVA beneficiaries. As explained in the proposed rule, the Secretary determined that it is not medically necessary and appropriate for abortions to be provided as part of CHAMPVA except when a physician certifies that the life of the mother would be endangered if the pregnancy were carried to term.

C. Suggested Changes to 38 CFR 17.272

One commenter suggested VA revise the proposed language in § 17.272 regarding the certification by a physician that a mother's life would be endangered if the child were carried to term to refer to a qualified provider rather than a physician, as there may be instances where a patient is receiving treatment from a nurse practitioner or other qualified clinician, or a physician is not available; that limiting this to only physicians could lead to unnecessary delays in treatment that could jeopardize the life of the mother; and that this suggested change would be consistent with current VA guidance. Another commenter stated that other health care providers, such as physicians' assistants and nurse practitioners, should be included as providers that can make the certification required in the life endangerment exception because they provide care, including care covered under this rule.

Relatedly, other commenters suggested VA exclude the proposed exception for the mother's life in § 17.272 because they opined that care covered under this rule is not an abortion. One of these commenters further stated that if VA includes this life endangerment language, then it should require that two physicians certify that a mother's life would be endangered if the child were carried to term, and mental health and stress-related concerns should not fall under this life endangerment exception.

VA makes no changes based on these comments. As explained in the proposed rule, VA is returning to its pre-September 9, 2022 position, and VA is reverting the regulatory text of § 17.272 in place at that time (that is, abortions are excluded from CHAMPVA, except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term), which used the term physician and only requires certification from one physician. Consistent with that position, VA is not expanding to include health care providers other than physicians and is not requiring two physicians certify that a mother's life would be endangered if the child were carried to term.

V. Comments Specifically Concerning Abortion Counseling

Many commenters opined that abortion counseling is needed or medically necessary and appropriate care for veterans and CHAMPVA beneficiaries, respectively, and should be provided by VA, including in instances when VA cannot provide an abortion itself. Reasons provided by commenters included that women should have access to all information regarding their options and associated risks; abortion counseling is a necessary part of comprehensive, evidence-based treatment; restricting abortion counseling impacts the patient-provider relationship by limiting what can be discussed, especially regarding potential and appropriate treatment options, and violates a health care provider's medical ethics and obligations; and abortion counseling is a necessary component of informed consent and informed decision-making. By not providing abortion counseling, these commenters opined that the lives and health of veterans and CHAMPVA beneficiaries will be put at risk, pregnant women will not receive necessary emotional support, there will be increased confusion about what can be discussed with a patient, there will be inequities in care outside VA, and trust with VA and health care providers will be eroded. Some commenters opined that removing abortion counseling replaces medical judgment with political ideology and allows the government to interfere with an individual's health care decisions. Some commenters further referred to cited studies or data to support these comments.

VA makes no changes to the regulations based on these comments. As stated in the proposed rule, VA has the authority to determine what care is needed or medically necessary and appropriate for veterans and CHAMPVA beneficiaries, respectively. The Secretary has used his authority to determine that abortion counseling is not needed or medically necessary and appropriate for those reasons stated in the proposed rule. 90 FR 36416–17. However, VA acknowledges that informed consent is critical for veterans and CHAMPVA beneficiaries in obtaining needed and medically necessary and appropriate health care. This includes when such individuals are receiving care covered under this rule. As a result, VA will ensure that veterans and CHAMPVA beneficiaries receive information necessary to provide informed consent in such situations, as informed consent is a necessary component of receiving care, including care covered by this rulemaking.

One commenter was particularly concerned about the impact of restricting abortion counseling on therapeutic dialogue, which could lead to fragmented care, undermining mental health outcomes, and conflict with trauma-informed care. This commenter opined that the lack of definition for abortion counseling in the proposed rule creates uncertainty regarding what discussions are permitted during therapy. Specifically, this commenter was concerned about whether patients can discuss incidents that occurred prior to military service and instances where a patient received reproductive health services outside of VA. This commenter suggested that abortion counseling should exclude general discussions of reproductive health as part of comprehensive mental health treatment, trauma-focused therapy that may include discussion of pregnancy resulting from assault, and post-abortion mental health care.

VA makes no changes based on these comments. VA did not have a definition of abortion counseling prior to the September 2022 IFR and is not adopting one through this rulemaking. The ban on abortion counseling will not impact VA's provision of mental health care.

Some commenters raised concerns that abortion counseling may not be provided in circumstances in which the life of the mother would be endangered if the child were carried to term or in life-threatening circumstances. These commenters were concerned that clinicians may provide abortions without discussion with their patients.

VA makes no changes based on these comments. As explained above, VA will ensure that veterans and CHAMPVA beneficiaries receive information necessary to provide informed consent in such situations, as informed consent is a necessary component of receiving care, including care covered by this rulemaking.

Some commenters opined that VA should be able to offer referrals to veterans and CHAMPVA beneficiaries for abortions outside VA and discuss options for care outside VA. These commenters were concerned the restriction on abortion counseling would limit such referrals and discussions.

VA makes no changes based on these comments. As explained in this rule, VA can provide care to pregnant women in life-threatening circumstances under the medical benefits package, and allow abortions to CHAMPVA beneficiaries when a physician certifies that the life of the mother would be endangered if the fetus were carried to term. In all other circumstances, VA will not discuss options for abortions outside VA and will not refer veterans and CHAMPVA beneficiaries to abortions outside VA. Instead, VA will explain to such individuals that if they are interested in receiving more information about such care, they should seek such information and care outside of VA.

One commenter found it notable that since September 9, 2022, there is no evidence of abuse or misconduct related to the provision of abortion counseling and referrals. Thus, this commenter stated that the abortion counseling ban serves no rationale purpose and is contrary to VA's patient-centered mission.

VA makes no changes based on this comment. While it may be true that there is no evidence of abuse or misconduct related to the provision of abortion counseling and referrals, that is not the standard VA uses to determine whether to provide certain care to veterans and CHAMPVA beneficiaries. As stated in the proposed rule, VA has the authority to determine what care is needed or medically necessary and appropriate for veterans and CHAMPVA beneficiaries, respectively. Under VA's authorities, the Secretary has determined that abortion counseling is not needed or medically necessary and appropriate for those reasons stated in the proposed rule.

VI. Comments Related to VA Mission and Funding

Some commenters opined that the proposed rule conflicts with VA's mission, commitment, and duty to serve veterans and other beneficiaries. One commenter opined that the Secretary's priority of suicide prevention is undermined by the proposed rule as they referred to a study that restricting abortion access is linked to increased suicide risk for women of reproductive age. Commenters also opined that it is appropriate for VA to use taxpayer funding to provide abortions while others disagreed.

VA makes no changes to the regulations based on these comments. VA serves veterans and other beneficiaries, in part, by providing needed and medically necessary and appropriate care pursuant to its statutory authorities. As noted in the proposed rule with respect to other Federal health programs, ". . .Congress has consistently drawn a bright line between elective abortion and health care services that taxpayers would support." 90 FR 36416. Pursuant to the DOJ Opinion and 38 U.S.C. 1710, the Secretary has determined that abortions are unlawful and not needed. However, VA is not prohibited from providing care to pregnant women in life-threatening circumstances under the medical benefits package. Pursuant to 38 U.S.C. 1781 and 38 CFR 17.270(b), the Secretary has determined that an abortion is only medically necessary and appropriate when a physician certifies the life of the mother would be endangered if the fetus were carried to term. Finalizing the proposed rule will restore VA's previous, longstanding scope of needed and medically necessary and appropriate care. This rulemaking thus aligns with VA's mission, duty, and responsibility to serve veterans and other beneficiaries. VA further notes that suicide prevention is VA's top clinical priority, and nothing in this rulemaking changes that.

VII. Rape and Incest Exception and Military Sexual Trauma

Several commenters opposed removing the exception for abortion in cases of rape or incest, particularly as one-third of women veterans experience military sexual trauma and are at greater risk for sexual assault and domestic/intimate partner violence, with commenters providing related data and articles as support. Some of these commenters alleged that excluding an exception for rape or incest is cruel and will further harm these veterans who deal with related stigma, shame, and unnecessary barriers to care. Some of these commenters also raised concerns that military sexual trauma survivors will be forced to continue pregnancies resulting from sexual assault, which can exacerbate trauma and cause long-term health consequences. Some commenters provided data to support that women who are pregnant are significantly more likely to be killed by intimate partner violence, and an inability to obtain an abortion increases risk for domestic/intimate partner violence.

VA makes no changes based on these comments. VA understands and acknowledges these concerns raised by the commenters. As explained previously in the proposed rule and throughout this final rule, VA is returning to its pre-September 9, 2022 position, which did not include an exception for rape or incest. VA will, as always, support veterans and CHAMPVA beneficiaries facing difficult circumstances in regard to pregnancy by ensuring such individuals receive needed and medically necessary and appropriate care through VA. VA provides treatment to those who may experience domestic/intimate partner violence and military sexual trauma. Nothing in this rulemaking impacts the care VA provides to those who experience domestic/intimate partner violence or military sexual trauma.

VIII. Other Matters

For the comment summaries and responses below, VA notes that many commenters did not distinguish whether the issues they raised related to the provision of care to veterans under 38 CFR 17.38, or the provision of care to CHAMPVA beneficiaries under 38 CFR 17.272. Unless specifically indicated in the summaries and responses below, VA treated the issues raised in comments as related to both the medical benefits package and CHAMPVA.

A. Rule Would Limit Access to Care

Some commenters asserted that the rulemaking will or may result in veterans

and CHAMPVA beneficiaries no longer having access to abortion and abortion counseling, since such individuals may live in states with bans and restrictions on such care and, for various reasons (*e.g.,* financial, geographic, logistical), may not be able to obtain such care from non-VA providers in states with less restrictions. Commenters were particularly concerned as such care is often time sensitive. Some commenters stated that for some women, VA may be their sole health care provider, and even that care can be limited in areas throughout the country (VA notes that all CHAMPVA beneficiaries receive care from non-VA providers which is then reimbursed by VA, unless they receive care from a VA provider under the CHAMPVA In-house Treatment Initiative, (CITI)). Some commenters stated that such limitation on access can result in greater costs to these women, delays in receiving treatment, or foregoing treatment entirely. Commenters asserted that such effects would be more pronounced within certain groups of women veterans, such as those experiencing housing instability, those of color, those in underserved and rural communities, those with disabilities including mental health disorders, those with limited financial means, and survivors of military sexual trauma and sexual assault. Furthermore, these commenters asserted that women veterans face unique issues that make such limited access more detrimental. Some of these commenters cited studies or other publications to support their contentions.

VA understands these concerns, but makes no changes based on these comments. As explained in the proposed rule and in this final rule, VA believes it is appropriate to return to its pre-September 9, 2022 position. Pursuant to that position, veterans and CHAMPVA beneficiaries will be able to receive care covered by this rulemaking and any other care in the medical benefits package and under CHAMPVA from VA, but VA does not believe it is appropriate to continue the current policy that became effective on September 9, 2022. Moreover, to the extent commenters are concerned about limited access to this care, as explained previously in the proposed rule and in this final rule, this rulemaking is expected to have a relatively small impact given the low volume of abortions furnished by VA.

B. Effect on Care and Erosion of Trust in VA

Some commenters asserted that the rulemaking will or may result in women leaving VA's health care system, which would fragment care and disrupt continuity of care; and prevent women from receiving care from familiar, trusted, and knowledgeable VA providers. Some of these commenters raised concerns that this rule will thus erode trust in VA.

VA makes no changes based on these comments. VA will continue to provide veterans and CHAMPVA beneficiaries with needed and medically necessary and appropriate care, respectively. As VA is returning to its pre-September 9,

2022 position, VA will continue to provide care to veterans and CHAMPVA beneficiaries in the same manner as it did at that time. VA does not believe this rulemaking will result in fragmented care or disrupt continuity of care, particularly as VA had this same policy in place prior to September 9, 2022. VA notes that commenters did not provide data to show that the prior policy resulted in fragmented care or disrupted continuity of care for veterans or CHAMPVA beneficiaries. VA is and continues to be a trusted provider and payer of health care to veterans and CHAMPVA beneficiaries, and VA does not expect that to change as a result of this rulemaking.

One commenter appeared to allege that since this rulemaking limits care classified as reproductive health care, other reproductive health care, such as cervical cancer screening, fertility treatments, and mammograms, could be restricted.

VA makes no changes based on this comment. This rule does not address other reproductive health care and does not restrict or otherwise impact such care.

C. Life-Threatening or Life-Endangering Circumstances and Conditions

Some commenters suggested VA clarify or define what is meant by ''life-threatening,'' including describing what conditions or circumstances would fall under such language and creating a definition of ''life-threatening.'' Commenters identified various conditions, such severe preeclampsia, infections, certain cancers, lupus, depression, and heart disease, that could be emergency situations and exacerbated by pregnancy and suggested that VA include those conditions under a definition for life-threatening. Some commenters were concerned about having a list of life-threatening circumstances or a list of what would qualify under the life endangerment exception, as such list would be impossible to create, and suggested VA defer to health care providers' judgment. Some commenters were specifically concerned that the rule would remove or impede treatment for miscarriages and ectopic pregnancies. Some commenters urged VA to clarify that the care covered under this rule would not be limited to certain situations but rather all life-threatening medical emergency situations.

VA makes no changes based on these comments. VA does not address every specific potential medical condition a pregnant individual may have that could be an emergency situation or exacerbated by pregnancy. As VA stated in the proposed rule and reiterated in this final rule, VA is not prohibited from providing care to veterans in life-threatening circumstances under the medical benefits package. 90 FR 36416. As stated in the proposed rule and reiterated in this final rule, VA will allow CHAMPVA beneficiaries to receive abortions when a physician certifies that the life of the mother would be endangered if the fetus were carried to term. Id. VA specifically referenced ectopic pregnancies and miscarriage in the rulemaking because treatment for these conditions is always required. Consistent with how VA addressed this care prior to September 9, 2022, VA is not regulating the conditions under which such care, as covered by this rule can be provided. Such matters require a clinical determination and are more appropriately addressed in policy. VA will publish guidance regarding the provision of care covered by this rule.

D. Medication as Part of Care Provided Under This Rule

Commenters raised concerns that access to medication needed for other services could be affected, as certain medications may have multiple uses in addition to abortions, such as managing miscarriages or treating chronic diseases. A few commenters were particularly concerned by any restrictions on the use of mifepristone and misoprostol in managing miscarriages and providing needed and medically necessary and appropriate care to pregnant women. One of these commenters encouraged VA to formally recognize that such treatment will continue to be available to patients. Some commenters opposed VA providing any type of abortion, including through medication.

VA makes no changes based on these comments. VA acknowledges the concerns expressed by commenters on the availability of specific medications based on this regulation. Neither this rulemaking nor the regulatory text stipulate any changes to the VA formulary. Currently available medications used for managing a variety of conditions including miscarriage and care as covered under this rule to pregnant women will remain available for use as clinically appropriate.

E. CHAMPVA Certification Requirement

One commenter raised concerns that the requirement for certification that the life of the mother would be endangered if the child were carried to term runs contrary to procedures under the Hyde Amendment. Another commenter asserted that the certification requirement is more limiting than other similar exemptions, which can have a chilling effect on willingness to make such certification. Such commenter recommended VA grant deference to its health care providers.

VA makes no changes based on these comments. These commenters did not necessarily distinguish between the care provided under the medical benefits package or the care allowed under CHAMPVA, as covered by this rule. Regardless of whether these commenters meant to refer to either or both programs, as explained previously in this rule, the Hyde Amendment does not apply to VA.

With regards to the certification requirement, VA clarifies that the certification requirement is included in the life endangerment exception, which only applies to CHAMPVA as it is only explicitly stated in CHAMPVA regulations, as amended by this rule. VA does not intend the certification requirement under the life endangerment exception for CHAMPVA to be a burden on VA or authorized non-VA physicians, and VA notes that this certification requirement was in place prior to September 9, 2022 for CHAMPVA. VA will follow the same standards it had in place prior to September 9, 2022.

One commenter suggested VA clarify in 38 CFR 17.272(a)(58), as proposed, whether the determination of when the life of the mother would be endangered if the child were carried to term is limited to only certain physicians (instead of the physician of the individual's choice).

VA makes no changes based on this comment as VA does not find it appropriate to specify the type of physicians who may certify when the life of the mother would be endangered if the child were carried to term. However, VA acknowledges that it will be the treating physician or physicians that will certify this life endangerment exception.

One commenter suggested VA allow veterans to receive abortions when a physician certifies that the fetus is not viable. Another commenter raised concerns that the rule did not include an exception for fatal fetal abnormality or fetal conditions that are catastrophic but not immediately fatal.

VA makes no changes based on this comment. As previously explained, VA is returning to its pre-September 9, 2022 position. As such, VA will provide care to pregnant women in life-threatening circumstances under the medical benefits package, and will allow abortions under CHAMPVA when a physician certifies that the life of the

mother would be endangered if the fetus were carried to term. Such care may be provided even if it may require an intervention that would end a pregnancy. VA will, as always, support veterans and CHAMPVA beneficiaries facing difficult circumstances in regard to pregnancy complications by ensuring such individuals receive, through VA, needed and medically necessary and appropriate care.

One commenter asserted that the proposed rule failed to articulate what is required for a physician to ''certify'' that an emergency pregnancy complication is sufficiently life threatening to permit an abortion, which this commenter contends will result in confusion and lead to delays in care.

VA makes no changes based on this comment. This certification requirement only applies to CHAMPVA and acknowledges that it will be the treating physician or physicians that will make this certification.

F. Proposed Rule Undermines Patient-Provider Relationship and Violates Medical Ethics

Several commenters raised concerns that the proposed rule undermines the patient-provider relationship by imposing non-medical restrictions on health care decisions. These commenters stated that this is a health care decision that should be made between a health care provider and their patient; not the government. Some commenters further alleged that the proposed rule is in direct violation of a health care provider's oath to do no harm and generally violates their responsibilities and medical ethics and obligations, particularly as they are required to ensure patients receive care that they need and provide informed consent for care. Commenters explained that the restrictions in the proposed rule can result in the health care provider's judgment being compromised and foster mistrust and confusion with their patient.

Some commenters raised these concerns specifically with regards to the ban on abortion counseling. Such commenters stated that it is a violation of medical ethics to ban abortion counseling as that prevents health care providers from providing complete medical information, which can harm patients, and undermines informed consent, particularly as a patient will not be able to fully understand necessary medical information in life-threatening or life-endangering circumstances and make an informed decision about their care.

VA makes no changes based on these comments. As stated in the proposed rule, VA has the authority to determine what care is needed or medically necessary and appropriate for veterans and CHAMPVA beneficiaries, respectively. Under this authority, the Secretary has determined that abortions and abortion counseling are not needed or medically necessary and appropriate for those reasons stated in the proposed rule. VA acknowledges that informed consent is critical for veterans and CHAMPVA beneficiaries in obtaining needed and medically necessary and appropriate health care. This includes when such individuals are receiving care covered by this rule. As a result, VA will help ensure that veterans and CHAMPVA beneficiaries receive information necessary to provide informed consent in such circumstances, as informed consent is a necessary component of receiving care, including care covered by this rulemaking.

G. Concerns Regarding Legal Ramifications and Risks to Health Care Providers, and Employee Protections

Some commenters raised concerns that health care providers will prioritize considerations of criminal or civil penalties over patient health, which can result in delays in care and harm to patients, including in states where there are life exceptions and in instances involving ectopic pregnancies and miscarriages. Commenters were concerned about the legal ramifications for providers. One commenter suggested that the rule clearly articulate that physicians have the authority to make determinations relating to care covered by this rule and questioned whether VA would represent physicians from Federal or state actions taken against them for making such determinations.

VA makes no changes based on these comments. To the extent a VA employee provides care consistent with this rule and within the scope of their VA employment as authorized by Federal law, they could not legally be subject to adverse state actions. Consistent with 38 CFR 17.419, state and local laws, rules, regulations, and requirements that unduly interfere with health care professionals' practice will have no force or effect when such professionals are practicing health care while working within the scope of their VA employment. As explained previously, if and when there is a conflict between Federal and state law, Federal law would prevail in accordance with the Supremacy Clause under Article VI, clause 2, of the U.S. Constitution. Thus, if states attempt to subject VA employees to legal action for appropriately carrying out their Federal duties, subject to the requirements and procedures set forth in 38 CFR 50.15(a), Department of Justice representation is available to Federal employees in civil, criminal, and professional licensure proceedings where they face personal exposure for actions performed within the scope of their Federal duties.

H. Gestational Limits

One commenter suggested that in any case in which VA provides abortions, such care must be provided within the first trimester of pregnancy. Another commenter opined that it is the government's job to ensure the life of the mother since a fetus cannot maintain its own existence until approximately the third trimester.

VA makes no changes based on this comment. As previously explained, VA is returning to its pre-September 9, 2022 position. As such, VA will provide care to pregnant women in life-threatening circumstances under the medical benefits package and, in the case of CHAMPVA beneficiaries, prohibit abortions except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term. VA will not place any time limit on when such care may or must be provided.

In addition, VA affirms that nothing in this rule alters or diminishes the conscience rights of VA or CHAMPVA-authorized health care providers. Employees may request to opt out of providing, participating in, or facilitating any aspect of clinical care based on sincerely held moral or religious beliefs, observances, or practices. These requests, often referred to as conscientious objections or conscience-based exceptions, will be honored in accordance with applicable Federal law and VA policy.

I. Specific Suggestions Not Already Addressed Above

One commenter suggested VA make clear in the CHAMPVA regulation that it intends to prohibit elective abortion.

VA makes no changes based on this comment. As previously explained, VA is returning to its pre-September 9, 2022 position. This means that VA will revise its regulatory text for 38 CFR 17.272 to return to the same regulatory text in place at that time which clearly prohibits elective abortions.

One commenter suggested VA clarify what provisions are made for a ''second opinion'' of a VA physician's determination regarding whether the life of the mother would be endangered if the child were carried to term. That same commenter suggested VA identify what procedures will be in place to

make whole women who suffer any harm due to delay or refusal by a physician to make such determination.

VA makes no changes based on this comment. VA considers these matters outside the scope of this rulemaking because they deal with clinical decisions and tort claims. VA assumes this commenter was referring to a CHAMPVA beneficiary receiving care from a VA physician, as the commenter referenced the proposed changes to 38 CFR 17.272. If a CHAMPVA beneficiary were receiving care from a VA physician, it would only be through the CHAMPVA In-House Treatment Initiative at a VA facility. In such instance, if the CHAMPVA beneficiary wanted a second opinion of the VA physician's determination regarding the life endangerment exception, they could seek such opinion through VHA's clinical appeal process. CHAMPVA beneficiaries may file a tort claim against the United States based on a negligent or wrongful act or omission of a VA employee. More information can be found at *https://www.va.gov/OGC/FTCA.asp.* To the extent this commenter was referring to a veteran receiving care from a VA physician, they would also follow VHA's clinical appeal process and may file a tort claim, as referenced above.

Two commenters suggested VA interpret the term ''needed'' through clinical judgment that is based on current medical standards, as care may be medically warranted in many specific situations. Another commenter suggested VA reconsider the definition of ''needed'' medical services to include mental health-related pregnancy risks.

VA makes no changes based on these comments. The term ''needed'' as used in 38 U.S.C. 1710 is not defined in law or regulation. To the extent consistent with the DOJ Opinion, the Secretary has discretion to determine what care is needed. As explained earlier in section II.D. of this final rule, while VA has interpreted, for purposes of care in the medical benefits package (see 38 CFR 17.38(b)), such language to refer to care determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice (see 64 FR 54210), VA does not believe that the ''promote, preserve, or restore'' criteria serves to replace or strictly articulates how the Secretary determines that care is ''needed'' under 38 U.S.C. 1710. VA does not believe it is necessary to define or interpret ''needed'' as the commenters suggest, as ''needed'' is specifically left to the discretion of the Secretary in section 1710.

To the extent one of the commenters suggested VA consider mental health-related pregnancy risks to be included under the term ''needed,'' VA declines to do so as VA is not defining the term ''needed'' in this rulemaking. VA further notes that to the extent mental health-related pregnancy risks would result in a life-threatening circumstance, care to treat such life-threatening circumstance could be provided under medical benefits package.

Some commenters asserted that life-saving treatment is never considered an abortion, and thus, VA should not include language in VA regulations to codify an exception for life to the prohibition on abortions. One commenter recommended VA clarify that treating certain conditions (*e.g.,* ectopic pregnancies, miscarriage, sepsis, severe preeclampsia) is not abortion. Other commenters recommended defining the term abortion and included recommendations on how to define it.

VA makes no changes based on these comments. VA is not defining abortion, consistent with how VA did not define abortion before September 9, 2022, and with how VA currently does not define abortion in its regulations. VA will publish policy that provides guidance to its health care providers regarding the provision of care covered by this rulemaking. Furthermore, as explained in the proposed rule and throughout this final rule, VA will continue to provide care to pregnant women in life-threatening circumstances pursuant to the medical benefits package, even if such care may result in the termination of a pregnancy. For purposes of CHAMPVA, VA will prohibit abortions except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule, the DOJ Opinion, and this final rule, VA is adopting the proposed rule as final without changes.

Executive Orders 12866, 13563 and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866. VA also examined the impact of this rulemaking as required by Executive Order 14192 (Jan. 30, 2025), which directs agencies to ensure that the cost of planned regulations is responsibly managed and controlled through a rigorous regulatory budgeting process. The Office of Information and Regulatory Affairs has determined that this final rule is a regulatory action under Executive Order 14192. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this 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. 601–612). This final rule will only impact veterans and CHAMPVA beneficiaries, who are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

This rule will not result in the 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 one year.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Health care, Health records, Mental health programs, Veterans.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on December 23, 2025, 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.

Jennifer Williams,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read, in part, as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Amend § 17.38 by revising paragraph (c)(1) and removing paragraphs (c)(1)(i) and (ii) to read as follows:

§ 17.38 Medical Benefits Package.

* * * * *

(c) * * *

(1) Abortions and abortion counseling.

* * * * *

■ 3. Amend § 17.272 by:

■ a. Revising paragraph (a)(58).

■ b. Removing paragraphs (a)(58)(i) and (ii).

■ c. Adding paragraph (a)(78).

The revision and addition read as follows:

§ 17.272 Benefits limitations/exclusions.

* * * * *

(a) * * *

(58) Abortions, except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.

* * * * *

(78) Abortion counseling.

* * * * *

[FR Doc. 2025–24061 Filed 12–30–25; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Claims Filing Date for Insured Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) subsection 609.1.4 to change the claims filing date for insured mail.

DATES: *Effective Date:* January 18, 2026.

FOR FURTHER INFORMATION CONTACT: Abdul Bah at (314) 452–2844 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On November 26, 2025, the Postal Service published a notice of proposed rulemaking (90 FR 54247–54248) to change the claims filing date for insured mail. The Postal Service did not receive any formal comments.

The Postal Service is re-establishing the ''No Sooner Than'' filing date of 15 days for filing insured mail claims to re-align the filing thresholds with other mail service and bulk claims.

The Postal Service adopts the described changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service amends *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations as follows (see 39 CFR 111.1):

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.4 When To File

File claims as follows:

* * * * *

WHEN TO FILE (FROM MAILING DATE)

MAIL TYPE OR SERVICE	No Sooner Than	No Later Than
* * * * *		

[Revise the ''No Sooner Than'' timeframe for ''Insured Mail'' line item to read as follows:]

Insured Mail (including Priority Mail under 503.4.2)	15 days	

* * * * *

[Delete the footnote at the bottom of the table in 1.4 in its entirety.]

* * * * *

Daria Valan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2025–24094 Filed 12–30–25; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA–HQ–OW–2009–0819; FRL–8794.3–04–OW]

RIN 2040–AG54

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Deadline Extensions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (the EPA or Agency) is finalizing a Clean Water Act (CWA) rule to extend deadlines promulgated in the 2024 ''Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category'' (2024 rule), update the 2024 rule's transfer provisions to allow facilities to switch between compliance alternatives, and create authority for alternative applicability dates and paperwork submission dates, based on site-specific factors.

DATES: The final rule is effective on March 2, 2026. In accordance with 40 CFR 23.2, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on January 14, 2026. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: The EPA has established a docket for this action under Docket ID

EXHIBIT B

No. _______

United States Court of Appeals for the Federal Circuit

MINORITY VETERANS OF AMERICA,

Petitioner,

v.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

DECLARATION OF LINDSAY CHURCH

I, Lindsay Church, declare as follows:

1. I am the co-founder and Executive Director of Minority Veterans of America ("MVA").

2. I am over 18 years of age, am competent to testify about the information contained in this declaration if needed, and offer this declaration based on my personal knowledge.

3. Founded in 2017, MVA is a nationwide nonprofit organization organized under the laws of the state of Washington. MVA's registered place of business is in Seattle, Washington.

4. MVA has been granted tax-exempt status by the Internal Revenue Service under Internal Revenue Code § 501(c)(3).

5. MVA is a membership organization. We welcome as members—and currently have as members—veterans who have separated from military service, veterans who are currently still serving in the Armed Forces, family members and caregivers of veterans and service members, and nonmilitary individuals who support MVA's work, including nonmilitary individuals who want to join or rejoin the Armed Forces.

6. Currently, MVA's membership list contains over 3,600 individuals in 49 states and the District of Columbia.

7. MVA's mission is to create belonging and advance equity and justice for our nation's most marginalized and historically underserved veterans—the more than 9.5 million veterans who are racial, gender, sexual, and/or religious minorities.

8. In accordance with its mission, MVA engages in policy advocacy before Congress, the U.S. Department of Veterans Affairs ("VA"), and the U.S. Department of Defense ("DoD") on issues that directly affect our membership.

9. MVA also engages in legal advocacy, including by filing and participating in impact litigation to change policies at VA and DoD, and by leading

or participating in amicus briefs in cases involving issues of concern to our members.

10. Part of MVA's mission is to ensure that veterans and their dependents can access comprehensive and equitable healthcare and benefits worthy of the profound sacrifices they have made in service to this country. MVA has consistently advocated that veterans' access to care and benefits is not only a moral obligation, but also a statutory and contractual commitment our federal government makes to those who have served our country.

11. For many years, MVA has participated in a coalition with other organizations and individuals focused on ensuring comprehensive reproductive healthcare access, including access to abortion, for veterans and service members.

12. On February 26, 2025, MVA submitted testimony before the House and Senate Committees on Veterans' Affairs, identifying "comprehensive reproductive and family planning services for veterans" as a legislative priority. In that testimony, MVA urged VA to continue furnishing abortion services and called on Congress to codify those protections into law.

13. On March 3, 2026, MVA again submitted testimony before the House and Senate Committees on Veterans' Affairs, identifying "comprehensive reproductive and family planning services, including abortion," as a policy priority. In that testimony, MVA asserted that access to comprehensive reproductive care,

including abortion care, is essential to the health equity, autonomy, and well-being of women and minority veterans. MVA noted that abortion access at VA had been a lifeline for veterans in states with total or near-total abortion bans in the wake of the Supreme Court's overturning of *Roe v. Wade.* MVA's testimony further protested that VA's reinstatement of a ban on abortion care and counseling has imposed the most extreme abortion restriction across all federal programs and has created fear and instability for veterans and CHAMPVA beneficiaries of reproductive age who rely on VA for care.

14. VA's implementation of a ban on abortion care and abortion counseling in the 2025 Final Rule restricts the ability of MVA's members and their family to both access critical health care and discuss all their options with their VA providers.

15. On April 3, 2025, pursuant to Executive Order 12866, MVA requested and attended a meeting with representatives from VA and the Office of Information and Regulatory Affairs to express our grave concerns about any rollback to abortion services at VA.

16. On September 3, 2025, MVA also submitted a public comment in opposition to VA's proposed rule to reinstate the restrictions on abortion and abortion counseling at VA.

17. Since VA implemented the 2025 Final Rule in December 2025, I have heard from MVA members who are directly and adversely affected.

18. One of these members, Member A, has filed a declaration in this case. As detailed in that declaration, Member A is currently pregnant. Due to her complex health conditions and history of pregnancy complications, Member A needs comprehensive pregnancy options counseling to be able to make fully informed decisions about her care. Because of the 2025 Final Rule, however, VA providers will not provide her counseling about all her pregnancy options, including abortion. Given her age, history of pregnancy complications, and preexisting health conditions, among other factors, there is a substantial risk that Member A will need a termination of the pregnancy to protect her health. Because of the 2025 Final Rule, however, VA providers will not provide Member A an abortion even if her health is at risk. Member A is therefore presently subjected to increased medical danger and is currently experiencing distress from not knowing whether VA will provide the care she needs.

19. Another MVA member, Member B, developed a life-threatening pulmonary embolism after the birth of her second child and learned that she has a genetic clotting disorder. Member B was advised by her doctor not to get pregnant again because of the significant risks that pregnancy and childbirth pose to her life and health. Member B is enrolled in VA health care and is terrified of becoming

pregnant again due to contraceptive failure or sexual assault. If she were to become pregnant again, she is concerned she would not be able to discuss her pregnancy options with VA providers and does not know whether VA would provide the care she needs.

20. Another MVA member, Member C, is fully disabled due to her service-connected head and neck injuries. She currently takes medications, including tizanidine and hydroxyzine, which are not compatible with a safe pregnancy due to potential adverse effects on the fetus. Member C is also high-risk for breast cancer and takes tamoxifen to reduce her risk. Member C's doctors have advised her, however, that tamoxifen has been linked to increased risk of birth defects and is therefore not recommended for use during pregnancy. Member C always hoped to become a mother, but she fears that if she were to become pregnant, she would not be able to discuss her pregnancy options with VA providers and does not know whether VA would provide the care she needs.

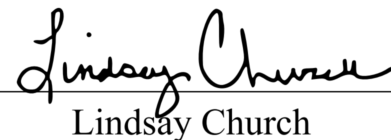
21. Another MVA member, Member D, is currently pursuing in vitro fertilization. Although Member D deeply desires to grow her family, she is fearful of how a pregnancy will affect her health given her history of pregnancy losses and the trauma of nearly losing her life due to a provider's refusal to provide necessary care during her last miscarriage. Member D also has a genetic disorder called alpha-1 antitrypsin deficiency, and service-connected conditions including a

cerebrospinal fluid leak, heart conditions, and gastroparesis, all of which are linked to pregnancy complications and/or adverse birth outcomes. If Member D were to become pregnant, she would not be able to discuss her options with VA providers and does not know whether VA would provide the care she needs.

22. Finally, I have a congenital birth defect that causes my sternum to be inverted. Since 2009, I have undergone nine surgeries on my sternum and spine and have had four of my ribs removed. Given my physical disabilities, my doctors have advised me that there is no way I could safely carry a pregnancy to term without causing extreme distress to the fetus and/or to my own body. I receive all of my medical care through VA. If I were to become pregnant, I would not be able to discuss my options with VA providers and do not know whether VA would provide the care I need.

***

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 14, 2026.



Lindsay Church

EXHIBIT C

No. _______

United States Court of Appeals for the Federal Circuit

MINORITY VETERANS OF AMERICA,

Petitioner,

v.

SECRETARY OF VETERANS AFFAIRS,

Respondent.

DECLARATION OF MEMBER A

I, Member A, declare as follows:

1. I am a veteran enrolled in VA health care. I make this declaration based on personal knowledge.

2. I am a member of Minority Veterans of America ("MVA"). I have been a member of MVA for a few years.

3. I am proceeding under a pseudonym in this action to protect my privacy and the privacy of my family.

4. I served as a medic in the Army and have had some medical training.

5. I am currently pregnant. I first realized I may be pregnant after I began feeling my chronic pain worsen and noticed that I had missed at least one menstrual cycle. I took an at-home pregnancy test on May 7, 2026, that was positive.

6. Since then, I have also had my pregnancy confirmed by multiple blood tests, as well as an ultrasound performed on May 13, 2026.

7. This pregnancy was a shock to me. I had surgery in March 2026 to remove adhesions and nodules on my reproductive organs, remove my appendix, and diagnose other reproductive issues. During that surgery, the doctor injected saline into my one remaining fallopian tube to check for any blockages. The doctor informed me that no saline was able to pass through the tube and suggested there was no path for me to become pregnant again naturally.

8. I wish I felt excited about this pregnancy, but instead I feel terrified. I am aware that VA recently imposed a ban on abortion care and abortion counseling (the "2025 Final Rule"), and I am deeply concerned about how this ban will restrict the medical care I am able to receive through VA and the freedom to make decisions about my body. I understand that VA no longer provides abortion counseling and no longer provides abortion care unless an abortion is necessary to save the patient's life. And even then, it's not clear to me what circumstances would qualify for that exception.

9. I am fearful about putting my body through another pregnancy right now. Due to many factors, including my age, extensive history of pregnancy loss, and my complex medical history, including my chronic health conditions and history of postpartum hemorrhage, my health care provider has informed me that my pregnancy is high-risk.

10. I am turning 40 years old this year. I understand that after the age of 35, many pregnancy risks increase, including the risk of high blood pressure, gestational diabetes, and fetal chromosomal abnormalities.

11. This is my eighth pregnancy. Of my prior seven pregnancies, five of them ended in a miscarriage in the first trimester. Two of those losses required medical intervention. A third loss, in February 2021, occurred when I went to the emergency room ("ER") for pain stemming from a ruptured ovarian cyst. I needed emergency surgery to remove my right fallopian tube and cauterize my right ovary. I did not know until afterward that I had been pregnant at the time of surgery, but following the surgery I was no longer pregnant. I suffered a significant amount of blood loss during this procedure.

12. I have been diagnosed with a bicornuate, or Y-shaped, uterus. This is a congenital anomaly associated with maternal and fetal complications and is likely a reason why I have experienced recurring pregnancy complications.

13. I have carried two pregnancies to term, the second of which involved complications. Because my second baby was breech, I had to have a C-section. I experienced postpartum hemorrhage and had blood pooling internally from my vagina down to my leg.

14. Since returning home from service, I have suffered various health conditions, including chronic pelvic pain, chronic nerve pain in my neck and back, migraines, anemia, circulatory issues, ovarian cysts, fibromyalgia, complex regional pain syndrome, suspected endometriosis, gastrointestinal issues, and PTSD.

15. I have been dealing with these issues for nearly two decades, and my chronic pain has gotten worse after each pregnancy. At times, my pain has been excruciating, rendering me bedridden, limiting my ability to engage in daily activities like driving, and causing me to go to the ER regularly.

16. In fact, this pregnancy has already exacerbated my underlying health conditions. Although my surgery in March 2026 initially relieved much of my chronic pelvic pain, I have been experiencing a flare-up of that pain again since becoming pregnant. My health care provider advised that the pelvic pain I am experiencing is likely due to increased blood flow in my pelvis that we observed on the ultrasound and hormonal changes associated with pregnancy. Therefore, I

believe the pregnancy has already begun causing a reversal of the benefits of my surgery in March 2026.

17. My health care provider informed me that while I am pregnant, I will not be able to undergo the primary medical treatments I rely upon to manage my nerve pain and fibromyalgia, relieve my PTSD, and assist with circulation. My health care provider has also referred me to Maternal-Fetal Medicine given my age and family history of a congenital heart condition.

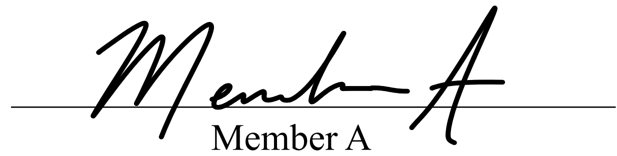
18. Because of all my risk factors and the threat this pregnancy presents to my health, I want to be able to discuss with and receive information from my providers about all my pregnancy options. Due to the 2025 Final Rule, however, VA providers are not able to provide me counseling about all my pregnancy options, including whether an abortion may be in my best interest, where I can obtain that care, or how they can support me in obtaining that care.

19. Due to the 2025 Final Rule, I understand VA providers also will not be able to intervene to provide me abortion care—even if necessary to preserve my health—unless a provider determines it is necessary to save my life. I understand VA providers would be required to delay intervention until it is clear the emergency is life-threatening and not just a danger to my health. As a result, I am being subjected to reduced treatment options and increased medical danger. I am also

experiencing significant psychological distress because I know VA will not provide me the full suite of pregnancy care.

***

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 14, 2026.



Member A

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit using the Court's CM/ECF system.

I further certify that, pursuant to Fed. Cir. R. 25(c), a true and correct copy of the foregoing is being served by mail within 3 days on the following:

Douglas A. Collins, Secretary
Danielle A. Runyan, Acting General Counsel
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420

Dated: May 15, 2026

/s/ Daralyn Durie
Daralyn Durie