THE STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

THE STATE OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ROB BONTA
ATTORNEY GENERAL

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ATTORNEY GENERAL

September 3, 2025

The Honorable Douglas A. Collins
Secretary
Department of Veterans Affairs
1722 I Street NW
Washington, D.C. 20421

RE: Comment of 21 States and the District of Columbia in Opposition to Proposed Rule Banning Abortion

Dear Secretary Collins:

On August 4, 2025, the Department of Veterans Affairs (VA) published a Proposed Rule in the Federal Register that proposes to "reinstate the full exclusion on abortions and abortion counseling" from the medical benefits package provided to veterans and their dependents (the "Proposed Rule").[1] The signatory States of California, Massachusetts, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia strongly oppose the Proposed Rule, which would eliminate access to abortion care and abortion counseling for veterans. This reversion is dangerous, unjustified, and should be withdrawn.

The current rule, implemented in 2022, allows pregnant veterans and their pregnant survivors and dependents to access abortion care at VA health care centers when the pregnancy poses a danger to their health or life or when the pregnancy is the result of self-reported rape or incest. The current rule also permits veterans and their survivors and dependents to access abortion counseling at VA health centers. The Proposed Rule, by contrast, alters the VA's medical benefits package for veterans to ban abortion with no exceptions and changes the medical benefits under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), a health care program for certain veterans' survivors and dependents, to eliminate abortion care unless the pregnant patient's life is in danger. The Proposed Rule eliminates abortion counseling completely from the VA health care system.

[1] 38 CFR Part 17, RIN 2900-AS31, available at https://www.federalregister.gov/documents/2025/08/04/2025-14687/reproductive-health-services.

The States met with the VA and the Office of Management and Budget (OMB) on April 8, 2025, to explain why such a rule would cause harm to veterans and their families. During that meeting, the States provided voluminous evidence outlining why veterans and their families should have access to medically necessary abortion care, as they have since 2022. In addition, following the meeting, the States submitted several documents, including scholarly research on the needs of veterans and relevant articles. Despite the meeting and subsequent submissions, the 3-page Proposed Rule fails to discuss any of the evidence that the States submitted.

The Proposed Rule issued by the VA fails to address the litany of issues raised by the States. As an initial matter, the Proposed Rule is plagued by ambiguity that will result in delays or denials in care. The Proposed Rule's preamble insists that the Proposed Rule will allow VA physicians to provide lifesaving care, yet the proposed regulatory text bans abortion care for veterans entirely—with no exception for the life of the veteran. Indeed, the Proposed Rule ultimately advances different abortion policy for veterans under 38 C.F.R. § 17.38 and their survivors and dependents under 38 C.F.R. § 17.272, CHAMPVA, without explanation. The VA's Proposed Rule mischaracterizes abortion care, promising to provide veterans and their families lifesaving care for a select few emergency conditions while incorrectly maintaining that abortions do not save lives. To the extent that the VA carves out an exception for the lives of pregnant survivors and dependents, it fails to set out a process by which individuals may take advantage of the exception.

The Proposed Rule is extreme in its formulation and is out of step with existing abortion exceptions on the state and federal level. Although exceptions themselves are problematic and often difficult to administer, the VA's proposed changes would mark a substantial and inhumane departure from decades of policy protecting the health and lives of pregnant patients and the autonomy of pregnant patients who have experienced rape and incest.

Furthermore, the Proposed Rule is not justified by any legal or medical rationale. It falsely claims that the VA does not have legal authority to provide abortion care, obfuscates other federal abortion policy in order to establish congressional intent for a VA abortion ban where there is none, and relies on political considerations instead of medical ones. Although the Proposed Rule claims to allow only for the provision of care that is "needed," a requirement under the 1996 Veteran's Health Care Eligibility Reform Act (VHCERA), it fails to engage with the word before "needed" in the statute: "medically." Over 100 veterans per year access abortion care through the VA, demonstrating that it is a "medically needed" service.[2] Women veterans are a fast-growing population in the VA, and ensuring reproductive service availability was a "priority" for the VA as recently as February 2024.[3] This reversal also goes unexplained. Instead, the Proposed Rule understands what is "needed" to be a matter of public opinion, notwithstanding the fact that public opinion militates against every change in the Proposed Rule;

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[2] Proposed Rule at 36,416, note 2.

[3] Lori Gawron, et al., *Women's Health Provider Perspectives on Reproductive Services Provision in the Veterans Health Administration,* SOUTH MED J. 2023 FEB https://pmc.ncbi.nlm.nih.gov/articles/PMC9906969/.

88% of Americans support access to abortions for patients who are experiencing pregnancy-related emergencies.[4]

Ultimately, the Proposed Rule is dangerous. Eliminating abortion care for veterans without any exceptions and abortion care with a life exception for their families will lead to delays in the provision of emergency treatment. These delays or denials of care will be a death sentence for some veterans and their family members. If they survive, the proposed changes will cause lasting physical and mental trauma and drastic financial consequences. The Proposed Rule's extreme restrictions on abortion care and abortion counseling will damage the trust of veterans and lead to preventable harm to the health of veterans and their families.

Because the Proposed Rule is ambiguous, unjustified by any legal rationale, and because it will cause harm to veterans and their families, it should be withdrawn.

I. THE PROPOSED RULE PRESENTS AN UNCLEAR STANDARD, MAKING IT DANGEROUS FOR VETERANS

A. The Proposed Rule Is Ambiguous

The Proposed Rule purports to change current regulations by limit when VA physicians can provide abortion care to only those circumstances "when a physician certifies that the life of the mother would be endangered if the fetus were carried to term." Yet the Proposed Rule's language and explanatory text do nothing to ensure VA physicians understand the circumstances that may call for such care. As a result, the Proposed Rule presents yet another standard for physicians and patients to understand, adding on to existing exceptions in state law and under the federal Emergency Medical Treatment and Labor Act (EMTALA) to create confusion around when an abortion is permitted for a particular patient. The ambiguity will endanger the lives of veterans.

1. The Proposed Rule Fails to Clearly Articulate *Any* Exception That Would Allow a Veteran to Access an Abortion, Even to Save the Pregnant Veteran's Life

Despite stating that the VA will permit an abortion to save a woman's life, the Proposed Rule's regulatory language in fact provides *no* exception to protect the life of the woman veteran. As noted above, the Proposed Rule claims to revert to the prior 2021 rule, amending 38 C.F.R. § 17.38 to specifically exclude "[a]bortions and abortion counseling" from the VA medical benefits package. 38 C.F.R. § 17.38(c) ("In addition to the care specifically excluded from the 'medical benefits package'" under paragraphs (a) and (b) of this section, the 'medical benefits package' does not include the following: abortion and abortion counseling."). The prior rule did allow for an exception if the "life of the mother" was at risk. 38 C.F.R. § 17.38 (2022).

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[4] Usha Ranji, et al. *Key Facts on Abortion in the United States*, KAISER FAMILY FOUNDATION (July 15, 2025), https://www.kff.org/womens-health-policy/key-facts-on-abortion-in-the-united-states/#ca0b7d96-e2e3-4257-b592-b03048339b3a.

In the preamble portion of the Proposed Rule, the VA purports to "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.'"[5] However, the proposed amendment to 38 C.F.R. § 17.38 (c)(1), does *not* list this as an exception to the VA's proposed abortion ban. There is no language laying out a life exception in the regulatory text that sets out the medical benefits package available to veterans, only in the explanatory preamble. Where there is a discrepancy between the preamble and the regulatory text, the regulatory text controls. *AT&T Corp. v. Fed. Comms. Comm'n*, 970 F.3d 344, 351 (D.C. Cir. 2020). Thus, nothing in the Proposed Rule would provide physicians and their patients comfort that such care would be legal and permissible under the Proposed Rule.

By contrast, the Proposed Rule amends the medical benefits under CHAMPVA, the health care program for certain veterans' survivors and dependents, 38 C.F.R. § 17.272 (a)(58), to exclude "[a]bortions, except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term."[6] The inconsistency is glaring: under the Proposed Rule, veterans cannot access life-saving abortion care, but their survivors and dependents can. Further, any subsequent interpretation of the regulation would necessarily involve examining both changes to understand the VA's intent in drafting. The listing of an exception in one section, and its omission in another, can be easily confused as evidence of the VA's intent to exclude a "life exception" for veterans. *See Russello v. United States*, 464 U.S. 16, 23 (When "Congress includes a particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally in purposely in the disparate inclusion or exclusion.") At a bare minimum, the VA should amend the VA regulatory language to be consistent with the CHAMPVA regulatory language. Failure to amend the language will likely result in VA hospital systems and VA providers reading the language of the regulation and concluding that *no* exception exists for veterans—even when a patient's life is endangered. Furthermore, adding the specific language that there is a "life exception" to the Proposed Rule is consistent with the Administration's insistence in the preamble that this exception exists.[7] In sum, if the VA "understood" the pre-2022 policy to allow for abortion care in life-threatening circumstances, the Proposed Rule should conform the statutory language to that understanding. The lives of the 840,000 women veterans depend on it.[8]

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[5] Proposed Rule at 36415-01 (quoting proposed amendment to 38 C.F.R. § 17.272 (a)(58)).

[6] Proposed Rule at 36415-01, amending 38 C.F.R. §17.38.

[7] Proposed Rule at 36415-01 (quoting proposed amendment to 38 C.F.R. § 17.272 (a)(58)) (the VA purports to "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.'").

[8] *VA to Provide Abortions, Counseling for Cases of Rape, Incest and Medical Complications from Pregnancy*, MILITARY.COM (September 2, 2022), https://www.military.com/daily-news/2022/09/02/va-provide-abortions-counseling-cases-of-rape-incest-and-medical-complications-pregnancy.html; *Issue Brief: State Abortion Bans Could Harm Nearly 15 Million Women of Color*, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES (June 2023), http://www.nationalpartnership.org/our-work/economic-justice/reports/state-abortion-bans-harm-woc.html.

2. The Proposed Rule's Conflicting Statements Introduces Further Ambiguity

The Proposed Rule fails to appreciate that the medical "care" needed in some circumstances is abortion, resulting in a preamble littered with conflicting statements. The preamble states that the exclusion of abortion will not prohibit care "to pregnant women in life-threatening circumstances, including treatment for ectopic pregnancies or miscarriages." However, within a few sentences, it goes on to state that "claims in the prior administration's rule that abortions throughout pregnancy are needed to save the lives of pregnant women are incorrect." But the lifesaving "treatment" required for ectopic pregnancy and miscarriage *is* abortion, and it may be necessary at various stages of pregnancy.[9] The Proposed Rule creates confusion by stating that the very same life-saving abortions the rule should permit do not exist.[10] The VA must cure the ambiguity it created in the Proposed Rule by confirming that an abortion may be the standard of medical care required in certain medical emergencies and may be needed to save the life of the pregnant patient.

3. Listing Some Medical Emergencies Without Noting that the List Is Non-Exhaustive Creates Confusion

By singling out ectopic pregnancies and miscarriages, the VA's Proposed Rule creates additional confusion. As noted, the Proposed Rule vaguely references ectopic pregnancies and miscarriages as qualifying conditions for the CHAMPVA "life exception." But these are not the only two emergency conditions for which an abortion is the standard of care—far from it. Abortion care is the standard medical care required in a variety of medical emergency situations, including, but not limited to, infection (chorioamnionitis), pre-viable premature rupture of membranes (PPROM), severe high blood pressure associated with pregnancy (preeclampsia), abnormal placenta (abruption, previa, and accreta), certain types of cancers and severe medical disorders that will significantly increase the patients' health risks if they remain pregnant, such as severe conditions of the heart, thyroid, kidneys, diabetes, and others.[11] Failure to provide an abortion in these emergency situations can have devastating consequences: Delays in treatment in cases of PPROM, for instance, can cause sepsis/septic shock, placental abruption, hemorrhage,

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[9] *See, e.g.*, *Fact Check-Termination of pregnancy can be necessary to save a woman's life, experts say*, REUTERS (Dec. 27, 2021), https://www.reuters.com/article/factcheck-abortion-false/fact-check-termination-of-pregnancy-can-be-necessary-to-save-a-womans-life-experts-say-idUSL1N2TC0VD (discussing, for example, that placental abruption presents a risk of hemorrhage, which if left untreated, threatens the pregnant person's life and that preeclampsia if not treated quickly can result in the pregnant person's death).

[10] Proposed Rule at 36,416; *see, e.g.*, *Fact Check-Termination of pregnancy can be necessary to save a woman's life, experts say*, *supra*, note 9.

[11] See Declaration of Herman Hedriana, M.D. Supp. Pl.'s Mot. Prelim. Inj., *The People of the State of California v. St. Joseph Health Northern California*, Sup. Ct. of Humboldt County Case No. 24-cv-01832 at 4.

severe kidney disease, hypertensive crisis/stroke, and acute respiratory distress syndrome.[12] The Proposed Rule fails to explain that its list is not exhaustive. But to cure this omission, the VA should not attempt to create an exhaustive list. The American College of Obstetricians and Gynecologists warns that "it is impossible to create an inclusive list of conditions that qualify as 'medical emergencies.'"[13] This is precisely why the 2022 Rule deferred to physicians' medical judgment in these situations—emergencies can arise suddenly, and the treating medical professional should have the discretion to make a determination about when an exception should be invoked to save the life of the pregnant patient. In short, in creating a strict, ill-defined abortion ban, the VA "exacerbate[s]. . . the lack of deference given to clinicians' medical judgment under" its ban.[14] The VA should ensure that the treating health care professionals have the discretion to make the determination as to when the life exception applies. But, at a minimum, the VA should make clear that the exception is not limited to "ectopic pregnancies or miscarriages," but extends to all life-threatening medical emergency situations that could arise during a pregnancy.

4. The Proposed Rule Fails to Clearly Articulate the Certification Process for the Life Exception

The Proposed Rule fails to articulate what is required for a physician to "certify" that an emergency pregnancy complication is sufficiently life threatening to permit an abortion. Given the severe criminal, civil, and professional penalties for performing an illegal abortion in abortion ban states, doctors have been forced to seek multiple signoffs or permission from internal review panels to reduce legal liability—even in life-threatening circumstances. These added hurdles are fundamentally incompatible with the time-sensitive practice of emergency medicine and will lead to harmful life-threatening delays in patient care.[15] The VA's failure to provide explicit guidance on this standard will not only result in confusion in emergency situations, but also will lead to delay in moments when every second counts.

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[12] See Mem. of P's & A's Supp. Pl.'s Mot. Prelim. Inj., *The People of the State of California v. St. Joseph Health Northern California*, Case No. 24-cv-01832 at 13.

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

[14] Mabel Felix, et al., *A review of Exceptions in State Abortion Bans: Implications for the Provision of Abortion Services*, KAISER FAMILY FOUNDATION, (June 6, 2024), https://www.kff.org/womens-health-policy/a-review-of-exceptions-in-state-abortions-bans-implications-for-the-provision-of-abortion-services.

[15] J. David Goodman and Azeen Ghorayshi, *Women Face Risks as Doctors Struggle with the Medical Exceptions on Abortion*, NY TIMES (July 20, 2022), https://www.nytimes.com/2022/07/20/us/abortion-save-mothers-life.html. (describing Texas hospitals requiring internal review panels to approve medically necessary abortions or multiple doctors to sign off and instances of delay harming patients)

5. The Purported "Life-Only" Exception Will Function as an Abortion Ban, Especially in States that Already Ban Abortion

The VA's limited life exception will function as a complete abortion ban, even in "life-threatening" cases, and especially in abortion ban states. Since the *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), decision, a number of states have banned abortion with ill-defined exceptions for life-threatening situations. Yet, there are no bright line rules as to what constitutes a "life-threatening" situation, so doctors hesitate to rely on their professional medical judgment for fear of facing professional and criminal penalties, even in situations where the standard of care dictates that an abortion should be performed to relieve an emergent condition.[16] Thus, these life exceptions have only been used in the most extreme circumstances.[17] The result: Patients experience life-threatening outcomes exacerbated by unnecessary delays or refusal of treatment, suffer intense trauma, and several have even died preventable deaths.[18]

In sum, the Proposed Rule and its preamble present VA physicians with incoherent mixed messages that will prevent them from providing abortion care that would save veterans' lives. Given the consequences of providing unlawful care, VA physicians are unlikely to provide abortions in such an ambiguous legal landscape.

II. THE PROPOSED RULE SIGNIFICANTLY DIVERGES FROM OTHER STATE AND FEDERAL ABORTION EXCEPTIONS STANDARDS

A. The Proposed Rule Is More Extreme Than State-Based Restrictions

In addition to the unclear messaging about when abortion is or is not permitted, the Proposed Rule's changes introduce a vague standard for VA physicians that diverges from the approach taken in states across the nation. Whereas the current rule grants pregnant veterans access to abortion when either the life *or health* of the pregnant veteran would be endangered if the pregnancy were carried to term, or the pregnancy *is a result of an act of rape or incest*, the Proposed Rule does not allow for any exceptions in the veteran medical benefits package and offers exceptions in the CHAMPVA package only when the *life*, but not *health* of the mother would be endangered. [19]

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[16] Kavita Surana, *Their States Banned Abortion. Doctors Now Say They Can't Give Women Potentially Lifesaving Care*, PROPUBLICA, (February 26, 2024), https://www.propublica.org/article/abortion-doctor-decisions-hospital-committee.

[17] *Id.*

[18] Daniel Grossman et al., *Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision*, ADVANCING STUDIES IN REPRODUCTIVE HEALTH at 2, (May 2023), https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf.

[19] Importantly, as discussed earlier, the language of the proposed text does not even allow for a life exception, but the preamble insists that the ban will not prevent veterans from accessing lifesaving treatment.

Most states that have taken steps to restrict abortion allow physicians to provide an abortion when the pregnant patient's life or health is at risk, at a minimum.[20] Forty-one states have placed some kind of limit on abortion care, and twenty-two of these states do so in the form of gestational limits after eighteen weeks. [21] The vast majority of states that restrict abortion in the form of bans or later gestational limits have enacted exceptions for the life and health of pregnant patients.[22] Several of these states also have incorporated exceptions for fatal fetal anomalies, and two include exceptions for mental health.[23] Thus, the Proposed Rule's elimination of the current rule's health exception is out of step with exceptions nationwide. Although VA physicians must adhere to the standard set by the VA, regardless of where a given VA health center is located, the comparison to state exceptions is indicative of the extreme content of the Proposed Rule's ban.

One of the Proposed Rule's stated justifications seems to rely on the existence of these state exceptions to abortion bans across the nation. The Proposed Rule states that "[n]o State law prohibits treatment for ectopic pregnancies or miscarriages to save the life of a mother," perhaps implying that, because life-saving abortions may be provided by other facilities in every state, the VA does not need to provide them. Even though these exceptions do exist on the state level, pregnant veterans are likely to face challenges in accessing life-saving abortion in several states. For instance, twelve states have enacted total bans on abortion, and five of those states only have exceptions for the life of the pregnant patient.[24] The other seven states have a form of a health exception, but many only list certain conditions, are not general health exceptions like that in the current rule, or require physicians to take extra steps before providing care.

Recent research and reporting revealed that many pregnant women have died—or have come dangerously close to death—in these states.[25] In effect, these states do prohibit treatment

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[20] *See, e.g.*, *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER INST. (last updated July 7, 2025), https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans (showing that five states only have exceptions for life while others with abortion restrictions and gestational limits also have, at least, an exception for health). Some states started with more narrow abortion bans and added exceptions after horrific stories of pregnant women dying or almost dying. *See* Eleanor Klibanoff, *Texas Legislature clarifies when doctors can perform life-saving abortions*, TEXAS TRIBUNE (May 21, 2025), https://www.texastribune.org/2025/05/21/texas-abortion-exception-save-mothers/.

[21] *Id.*

[22] *Id.*

[23] *State Bans on Abortion Throughout Pregnancy*, *supra* note 20; Ala. Code § 26-23H-3(6) (laying out exceptions to the state's abortion ban, one of which provides that, individuals with "diagnosed serious mental illness" may access abortion care if they meet other requirements).

[24] *State Bans on Abortion Throughout Pregnancy*, *supra*, note 20.

[25] Jill Filipovic, *They Were Critically Ill. Abortion Could Have Saved Their Lives. They Weren't Given the Option.*, MS. MAG. (April 3, 2025), https://msmagazine.com/2025/04/03/they-were-critically-ill-abortion-could-have-saved-their-lives-they-werent-given-the-option/; Lizzie Presser & Kavitha Surana, *A Third Woman Died Under Texas' Abortion Ban. Doctors Are Avoiding D&Cs and Reaching for Riskier*

for many ectopic pregnancies or miscarriages to save the life of the mother, largely because these states' exception standards were unclear and unworkable, just like the standard presented by this Proposed Rule.

Additionally, the Proposed Rule's elimination of the current rule's rape and incest exception also sharply diverges from long-standing practice. Historically, exceptions for rape and incest have been standard additions to abortion restrictions across the nation.[26] These exceptions remain overwhelmingly popular—over 80% of Americans support legal access to abortion in cases of rape and incest—and only eight states across the country have abortion restrictions with no rape or incest exceptions.[27] Notably, many of the state exceptions are unworkable, as they incorporate unrealistic prerequisites for victims of rape or incest or restrict the window during which patients can make use of the exception.[28] The current rule employs a self-reporting mechanism to allow more patients in desperate need of abortion care after instances of rape and incest to get this care. The Proposed Rule, on the other hand, scraps these exceptions altogether, potentially forcing VA patients to carry pregnancies to term that are the result of rape or incest, with devastating consequences.[29]

B. The Proposed Rule Is Inconsistent with Federal Law

Additionally, the Proposed Rule's dogmatic approach is inconsistent with other federal law. Under EMTALA, every hospital in the United States that participates in Medicare and

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Miscarriage Treatments., PROPUBLICA (November 25, 2024), https://www.propublica.org/article/porsha-ngumezi-miscarriage-death-texas-abortion-ban.

[26] Jennifer Haberkorn, *Rape exceptions to abortion bans were once widely accepted. No more*, LOS ANGELES TIMES (April 8, 2022), https://www.latimes.com/politics/story/2022-04-08/red-states-eliminate-rape-exceptions-from-abortion-bans (describing how, prior to *Dobbs*, opposition to rape and incest exceptions was rare on the state level).

[27] Mabel Felix, Laurie Sobel, & Alina Salganicoff, *A Closer Look at Rape and Incest Exceptions in States with Abortion Bans and Early Gestational Restrictions*, KAISER FAMILY FOUNDATION (August 7, 2024), https://www.kff.org/policy-watch/rape-incest-exceptions-abortion-bans-restrictions/; Policy *Tracker: Exceptions to State Abortion Bans and Early Gestational Limits*, KAISER FAMILY FOUNDATION (last updated January 6, 2025), https://www.kff.org/womens-health-policy/dashboard/exceptions-in-state-abortion-bans-and-early-gestational-limits/.

[28] Katia Riddel & Julie Luchetta, *Many state abortion bans include exceptions for rape. How often are they granted?*, NPR (October 26, 2024), https://www.npr.org/2024/10/25/g-s1-28955/abortion-rape-pregnancy-exception-doctor-police-report (highlighting how the requirement that those who have experienced rape and incest report those assaults to law enforcement prevent people from getting abortions after the assaults); *State Bans on Abortion Throughout Pregnancy*, *supra*, note 20 (showing gestational limits on rape and incest exceptions).

[29] Ashley Lopez, *How the Texas ban on most abortions is harming survivors of rape and incest*, NPR (November 15, 2021), https://www.npr.org/sections/health-shots/2021/11/15/1054710917/texas-abortion-law-harm-sexual-assault-survivors (describing how individuals forced to carry pregnancies that are the result of rape or incest strip survivors of agency and can cause financial, psychological, and physical harm).

operates an emergency department must provide necessary stabilizing treatment, including abortion care when necessary, to individuals presenting with emergency medical conditions.[30] EMTALA, passed in 1986, requires that these hospitals must provide abortion care to pregnant patients at risk of serious harm to their health, serious impairment to bodily function, or serious dysfunction of an organ or body part.[31] Physicians at hospitals required to comply with EMTALA must do so regardless of any abortion restrictions of the state in which the hospital is located.

The Trump administration has refused to enforce EMTALA in cases where state abortion bans violate the law's directive to provide stabilizing care in the form of abortion, which has sparked confusion for emergency physicians regarding what care they can provide legally.[32] Furthermore, on May 29, 2025, the U.S. Centers for Medicare and Medicaid Services (CMS) rescinded guidance from 2022 reminding hospitals across the country of their obligations under EMTALA, including emergency abortion care.[33] Physicians in the Fifth Circuit face particularly acute ambiguity, given the decision in *Texas v. Becerra*, 89 F.4th 529 (5th Cir.), *cert. denied*, 145 S. Ct. 139 (2024), finding that EMTALA does not preempt the total abortion ban in Texas.

Nonetheless, as many of these States expressed in a June 24, 2025, letter to the American Hospital Association, EMTALA continues to obligate hospitals in such states to provide abortion care when necessary to stabilize a patient.[34] Many of These States also have enacted state-level EMTALA laws requiring hospitals to provide medically necessary care to stabilize patients, including abortion care.[35]

Finally, the Proposed Rule contravenes public opinion on when abortion should be permitted. Around 82% of Americans support access to abortion care to protect the life or health

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[30] 42 U.S.C. §1395dd.

[31] Letter from Att'ys Gen. Rob Bonta et al. to Richard J. Pollack, President & CEO, Am. Hospital Assoc. (June 24, 2025), https://oag.ca.gov/system/files/attachments/press-docs/2025.06.24%20-%20Multistate%20Letter%20to%20AHA%20re%20EMTALA.pdf/ ("Emergency medical conditions can include, but are not limited to, ectopic pregnancy, traumatic placental abruption, pre-eclampsia, hemorrhaging, amniotic fluid embolism, and hypertension.").

[32] Nadine El-Bawab, *Trump administration drops lawsuit over Idaho total abortion ban filed under Joe Biden*, ABC NEWS (March 6, 2025), https://abcnews.go.com/US/trump-administration-drops-lawsuit-idaho-total-abortion-ban/story?id=119517271 (covering the Trump administration's decision to drop a Biden-era lawsuit against the state of Idaho challenging its total abortion ban for violating EMTALA).

[33] Letter from Dirs., Quality, Safety, & Oversight Grp. & Surv. & Operations Grp. of Dep't of Health and Hum. Servs., to State Survey Agency Dirs. (May 29, 2025), https://www.cms.gov/files/document/qso-22-22-hospitals-rescinded-05292024.pdf.

[34] Letter from Att'ys Gen. Rob Bonta et al. to Richard J. Pollack, President & CEO, Am. Hospital Assoc., *supra*, note 32.

[35] *See, e.g.*, Cal. Health & Safety Code § 1317.1; 210 Ill. Comp. Stat. Ann. 80/1; Mass. Gen. Laws c. 111 §51 1/4

of a pregnant patient—at any gestational age.[36] Taken together, the Proposed Rule thus would be one of the most extreme and restrictive abortion bans that will cause confusion and result in the delay and denial of care for veterans.

III. THE PROPOSED RULE IS INADEQUEATELY JUSTIFIED

A. The Proposed Rule Lacks Legal Justification

The Proposed Rule incorrectly relies on section 106 of the Veterans' Health Care Act of 1992 (VHCA) to assert that "the VA's authority to provide abortions is, at least, dubious, and, at most, nonexistent." Section 106 of the VHCA permitted the VA to provide women veterans with pap smears, breast examinations and mammography, and general reproductive care, "but not including under this section infertility services, abortions, or pregnancy care (including prenatal and delivery care)."[37] Section 106 of the VHCA does not prevent the VA from providing abortion care, for two reasons. First, the 1996 Veteran's Health Care Eligibility Reform Act (VHCERA) restricts any effect of section 106 because it subsumed its authorization to provide care. The VHCERA expanded eligibility for care provided by the VA—from hospital and outpatient care "needed for the care of a 'disability'" to care that is "medically needed."[38] More specifically, as revealed by the accompanying House of Representatives Report, the VHCERA makes use of a "clinically appropriate 'need for care' test, thereby ensuring that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished."[39] The Proposed Rule concedes that the VHCERA's "dramatic revisions . . . may limit the continued force and effect of section 106," [40] but it fails to acknowledge that the VHCERA rendered section 106 of the VHCA obsolete.[41]

Second, even if section 106 of the VHCA were still effective, it has no impact on other statutes authorizing the VA to provide care, including abortion care. 38 U.S.C. §1710 allows the VA Secretary to delineate necessary medical services for veterans, providing an entirely separate license for the VA to provide services not previously authorized by section 106. Furthermore, since section 106, by its own terms, only excludes infertility services, abortion, and prenatal and delivery care from the treatments it authorizes "under this section," the VA may provide these services under 38 U.S.C. §1710 or any other authorizing statute. [42] Historically, the VA has done

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[36] Shannon Schumacher, et al., *KFF Health Tracking Poll March 2024: Abortion in the 2024 Election and Beyond*, Kaiser Family Foundation, (March 7, 2024), https://www.kff.org/womens-health-policy/kff-health-tracking-poll-march-2024-abortion-in-the-2024-election-and-beyond/.

[37] Pub. L. 102-585, §106.

[38] Cong. Rsch. Serv., Department of Veterans Affairs: Abortion Policy, 5 (last updated March 20, 2023), https://www.congress.gov/crs_external_products/R/PDF/R47191/R47191.6.pdf.

[39] House of Representatives Report No. 104-690, at 4 (1996).

[40] Proposed Rule at 36,416.

[41] *Id.*

[42] Pub. L. 102-585, §106.

just that. The VA has long relied on 38 U.S.C. §1710 to provide a range of pregnancy care and some infertility services in its standard medical benefits package.[43] There is no statutory ban on the VA providing abortion care.

B. The Proposed Rule Obfuscates Federal Abortion Policy

The Proposed Rule also wrongly compares VA medical services to "a slew of Federal programs, including Medicaid, the Child Health Insurance Program, TriCare, Federal Employee Health Benefits Program, and others" as a means to demonstrate that Congress has "drawn a bright line between elective abortion and health care services that taxpayers would support."[44] Medicaid and the Child Health Insurance Program (CHIP) are both subject to the Hyde Amendment, which bans the use of federal funds for abortion care with exceptions for abortions when the life of the pregnant patient is in danger and in cases of rape and incest.[45] Tricare and the Federal Employee Health Benefits Program (FEHB) both include abortion coverage bans with the same exceptions.[46] The Proposed Rule points to these programs to imply that Congress generally does not favor federal program coverage of abortion care, but ignores that the listed programs actually provide exceptions that the Proposed Rule does not.

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[43] Cong. Rsch. Serv., Department of Veterans Affairs: Abortion Policy, 5 (last updated March 20, 2023), https://www.congress.gov/crs_external_products/R/PDF/R47191/R47191.6.pdf. Congress even provides funding for some VA-provided infertility services, a practice that started in fiscal year 2017. *See* Section 260 of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and the Zika Response and Preparedness Act (P.L. 114-223); Section 236 of Division J of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018 (P.L. 115-141); Section 235 of the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019 (P.L. 115-244); Section 235 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2020 (Division F of the Further Consolidated Appropriations Act, 2020; P.L. 116-94); Section 234 of Division J of the Consolidated Appropriations Act, 2021 (P.L. 116-260); Section 234 of Division J of the Consolidated Appropriations Act, 2022 (P.L. 117-103); and Section 234 of Division J of the Consolidated Appropriations Act, 2023 (P.L. 117-328).

[44] Proposed Rule at 36,416.

[45] Megan K. Donovan, *In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact*, GUTTMACHER INST. (January 5, 2017), https://www.guttmacher.org/gpr/2017/01/real-life-federal-restrictions-abortion-coverage-and-women-they-impact#:~:text=Enrollees%20in%20Federal%20Insurance%20Programs,created%20the%20program%20in%201997; Alina Salganicoff, et al., *The Hyde Amendment and Coverage for Abortion Services Under Medicaid in the Post-Roe Era*, KAISER FAMILY FOUNDATION (March 14, 2024), https://www.kff.org/womens-health-policy/the-hyde-amendment-and-coverage-for-abortion-services-under-medicaid-in-the-post-roe-era/.

[46] *Id.*

C. The Proposed Rule Relies on Political Rather than Medical Considerations

The Proposed Rule insufficiently engages with the current rule's rationale, asserting without basis that it "served only to unnecessarily redefine VA's medical benefits package based on politics instead of science." The Proposed Rule seemingly takes aim at the current rule's discussion of *Dobbs v. Jackson Women's Health Organization* as a motivating factor behind the rule. The current rule recognized that *Dobbs* permitted states to restrict abortion care so severely that it would become nearly impossible for some pregnant veterans to get life-saving care in their states of residence. Over 400,000 women veterans live in states with total abortion bans or restrictions that were made more severe after *Dobbs*.[47]

Rather than engage with the medical need for abortion given the new legal landscape, the Proposed Rule accuses the current rule of "creating a purported Federal entitlement to abortion for veterans" and incorrectly predicting a "high demand for VA abortions that never materialized." The Proposed Rule suggests that one hundred veterans per year, the official number of veterans who receive VA abortions according to the Proposed Rule, is not high demand. These States disagree; that figure represents, at this point in time, hundreds of veterans who were spared from death or intense suffering and trauma because they were able to access abortion care through the VA.

Furthermore, the Proposed Rule ducks every opportunity to discuss what it means for a service to be "needed" in a medical or scientific sense and instead asserts that whether a service is "needed" is largely a matter of public opinion. Setting aside the fact that the Proposed Rule centers on politics at the expense of medicine and science, public opinion cuts against its proffered changes. Sixty-three percent of Americans believe abortion care should be accessible in all or most cases.[48] Even more Americans, over 80%, support access to abortion when the life or health of the pregnant patient is at risk or in cases of rape or incest.[49]

IV. ELIMINATING EMERGENCY ABORTION CARE WHEN A WOMAN'S HEALTH IS AT RISK IS EXTREMELY DANGEROUS

The Proposed Rule's elimination of emergency abortion care for pregnant veterans when their life or health is at risk will result in the death, suffering, and traumatization of pregnant veterans. Contrary to what the preamble suggests, the Proposed Rule's sole "exception" for when a woman's life is at risk is nonexistent—it does not actually appear in the regulatory text. By

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[47] Press Release, Trump Administration Announces Plans to Ban Abortions for Veterans—Even After Rape or When Health is in Danger, CTR. FOR REPROD. RTS. (August 1, 2025), https://reproductiverights.org/trump-plans-ban-abortions-veterans/#:~:text=Women%20are%20currently%20the%20fastest,their%20care%20from%20the%20VA.

[48] Fact Sheet, *Public Opinion on Abortion*, PEW (June 12, 2025), https://www.pewresearch.org/religion/fact-sheet/public-opinion-on-abortion/#:~:text=abortion%20by%20state-,Views%20on%20abortion%2C%201995%2D2024,on%20X%20Share%20on%20Facebook.

[49] Usha Ranji, et al. *Key Facts on Abortion in the United States*, *supra*, note 4.

delaying or outright denying emergency abortion care under the Proposed Rule, the VA will inflict profound and lasting consequences to veterans' health, exacerbating an already strained VA medical system. This change, as discussed further below, will also harm the mental health of women veterans, a group already more likely to suffer from mental health conditions. Rather than rewarding veterans and their families for the sacrifices they have made for our country, the Proposed Rule will also cause them financial hardship as they are forced to both spend time and resources locating healthcare and pay out of pocket for medically necessary services.

A. Permitting Abortions Only When the Life of the Woman Is at Risk Has Deadly Consequences

Abortion bans and restrictions lead to dangerous delays in providing emergency treatment. Even if there were a "life exception" to the VA medical benefits package which, as explained above in Section I.A.1, does not exist under the Proposed Rule, pregnant veterans who are actively miscarrying would be denied care until the miscarriage puts the life of the pregnant person in jeopardy. Evidence continues to mount of the harmful, and even deadly, consequences of preventing doctors from providing medically necessary abortion care.[50] Indeed, the data shows that pregnancy in states that banned abortion is becoming increasingly dangerous. At least seven women have *died* preventable deaths as a direct result of interference by abortion bans with doctors' ability to provide the standard of care.[51] Pregnant women living in states that banned

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[50] Daniel Grossman et al., *Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision*, supra, note 18 at 2; Eleanor Klibanoff, *Doctors Report Compromising Care out of Fear of Texas Abortion Law*, TEXAS TRIB. (June 24, 2022); Brittni Frederiksen et al., KAISER FAMILY FOUNDATION, *A National Survey of OBGYNs' Experiences After* Dobbs, at 12 (June 2023).

[51] Lizzie Presser & Kavitha Surana, *A Third Woman Died Under Texas' Abortion Ban. Doctors Are Avoiding D&Cs and Reaching for Riskier Miscarriage Treatments*, PROPUBLICA (November 25, 2024), https://www.propublica.org/article/porsha-ngumezi-miscarriage-death-texas-abortion-ban (describing how Porsha Ngumezi died as a direct result of the Texas abortion ban); Kavitha Surana, *Abortion Bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother's Death Was Preventable*., PROPUBLICA (September 16, 2024), https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death (covering Amber Nicole Thurman's preventable death, a direct result of Georgia's abortion ban); Kavitha Surana, *Afraid to Seek Care Amid Georgia's Abortion Ban, She Stayed at Home and Died*, PROPUBLICA (September 18, 2024), https://www.propublica.org/article/candi-miller-abortion-ban-death-georgia (covering the death of Candi Miller, a direct result of Georgia's abortion ban); Lauren Caruba, Marin Wolf, & María Ramos Pacheco, *Two Texas moms were forced to wait for urgent care after pregnancy loss. They died*, DALLAS MORNING NEWS, https://interactives.dallasnews.com/2025/texas-abortion-ban-pregnancy-health-care-jeopardized/texas-abortion-ban-maternal-deaths/(last visited August 22, 2025) (describing the preventable deaths of Porsha Ngumezi and Brenda Yolani Arzu Ramirez, as well as traumatic miscarriages and stillbirths, and intense fear, all resulting from the Texas abortion ban); Stephania Taladrid, *Did An Abortion Ban Cost A Young Texas Woman Her Life?*, NEW YORKER (January 8, 2024), https://www.newyorker.com/magazine/2024/01/15/abortion-high-risk-pregnancy-yeni-glick (covering the preventable death of Yeniifer Alvarez-Estrada Glick, which was the direct result of the Texas abortion ban); Cassandra Jaramillo & Kavitha Surana, *A Woman Died After Being Told It Would Be a "Crime" to Intervene in Her Miscarriage at a Texas Hospital*, PROPUBLICA (October 30, 2024),

abortion are nearly two times more likely to die during pregnancy, childbirth, or soon after giving birth.[52] While maternal mortality fell 21% in states supportive of abortion access post-*Dobbs*, it rose 56% in Texas, an abortion ban state.[53] By contrast, California, a state that supports the right to abortion and protects providers, had the lowest maternal mortality rate in the United States in 2023.[54]

This Rule exacerbates the long-standing barriers to accessing reproductive care that already exist in the VA system.[55] As of 2015, 27% of healthcare systems lacked an onsite gynecologist and about 18% of VA facilities providing primary care lacked a women's health primary care physician.[56] As for obstetrician gynecologists (OBGYNs), these "are a scarce Veterans Health Administration resource and primarily located in urban, academically affiliated Veterans Affairs Medical Centers (VAMCs)."[57] A 2022 study found that "nearly 1 in 10 women veteran VA primary care patients lived in a gynecologist supply desert in 2017, with no local VA gynecologist and with inadequate county-level gynecologist supply."[58] Given the negative impact abortion bans have had on the number of OBGYNs practicing in certain states, it is reasonable to conclude that the additional restrictions of the Proposed Rule will result in decreasing access to obstetrics and gynecological care at VA facilities.[59]

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https://www.propublica.org/article/josseli-barnica-death-miscarriage-texas-abortion-ban (covering the death of Josseli Barnica, the direct result of the Texas abortion ban); Lizzie Presser & Kavitha Surana, *A Pregnant Teenager Died After Trying to Get Care in Three Visits to Texas Emergency Rooms*, PROPUBLICA (November 1, 2024), https://www.propublica.org/article/nevaeh-crain-death-texas-abortion-ban-emtala (covering the death of Nevaeh Crain, who died as a direct result of the Texas abortion ban).

[52] *Maternal Mortality in the United States After Abortion Bans*, GENDER EQUITY POLICY INST., (April 2025), https://thegepi.org/maternal-mortality-abortion-bans/.

[53] *Id.*

[54] *Id.*

[55] Lori M. Gwaron, et al., *Women's Health Provider Perspectives on Reproductive Services Provision in the Veteran's Health Administration*, SOUTH MED. J. (February 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC9906969/.

[56] *VA Healthcare: Improved Monitoring Needed for Effective Oversight of Care for Women Veterans*, Gov't Accountability Office, (December 2, 2016) https://www.gao.gov/products/gao-17-52.

[57] *Women's Health Provider Perspectives on Reproductive Services Provision, supra*, note 55 (citing Gray KE, Katon JG, Callegari LS, et al., *Gynecologists in the VA: do they enhance availability of sex-specific services and policies in the emergency department?*, MEDICAL CARE 2015;53(4 Suppl 1):S76–S80, https://pubmed.ncbi.nlm.nih.gov/25767980/).

[58]Sarah Friedman, et al., *Gynecologist Supply Deserts Across the VA and In the Community,* J. INTERNAL MED., (August 30, 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9481821/pdf/11606_2022_Article_7591.pdf.

[59] Jane M. Zhu, et al., *Post-Dobbs Decision Changes in Obstetrics and Gynecology Clinical Workforce in States with Abortion Restrictions*, JAMA INTERNAL MED., VOL. 185, NO. 5, March 10, 2025, https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2831199#250314080, (finding over a 4% decrease in the percentage of OB/GYNs for every 100,000 women of reproductive age in states that enacted abortion restrictions after Dobbs).

When it comes to abortion care, this desert becomes even more pronounced given the impact that abortion bans have had on OBGYNs nationwide. Medical students' applications for residency positions in obstetrics and gynecology in abortion ban states plummeted nearly 12% between 2022 and 2023 and dropped an additional 6.7% in 2024.[60] The reduction in applications was even steeper for students applying to emergency medicine residency programs: applications fell nearly 24% between 2022 and 2023 and dropped another 7% during 2024. On the practice and clinician side, abortion ban states have also seen significant reductions in the number of OBGYNs practicing. A recent study found a 4% decrease in the percentage of OBGYNs for every 100,000 women of reproductive age in states that enacted abortion restrictions after *Dobbs*.[61] During their service, veterans and their families are often compelled to move somewhere in the United States that may not have abortion providers, and now the Proposed Rule will prevent the VA from providing the medical care they need after they have served their country—even in situations that pose great risk to their health.

Compounding these added barriers, the VA faces severe staff shortages. Currently, 94% of VA facilities face a severe shortage of doctors, and 79% of facilities face a severe shortage of nurses.[62] Nor does this situation appear to be improving. 40% of doctors offered jobs at the VA from January to March of this year turned them down, in the face of the Trump Administration's stated intention to cut its workforce by at least 70,000 people.[63]

The VA promulgated the Proposed Rule at a time when the severe strains on the VA healthcare system are accompanied by an historic enrollment of women veterans in the VA healthcare system. In 2024, over 50,000 women veterans enrolled in VA healthcare, an increase present in every state but most pronounced in Texas, Florida, California, Virginia, Georgia, and North Carolina—most of which are states with abortion bans or severe restrictions on care. [64] As

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[60] Kendal Orgera, MPH, MPP, et al., *States with Abortion Bans See Continued Decrease in U.S. MD Senior Residency Applicants*, ASSOC. OF AM. MED. COLLEGES (May 9, 2024), https://www.aamc.org/about-us/mission-areas/health-care/post-dobbs-2024.

[61] Jane M. Zhu, et al., *Post-Dobbs Decision Changes in Obstetrics and Gynecology Clinical Workforce in States with Abortion Restrictions*, *supra*, note 59.

[62] Aaron Glantz, *'Severe' Staff Shortages at US Veterans' Hospitals, Watchdog Finds*, THE GUARDIAN, (August 13, 2025), https://www.theguardian.com/us-news/2025/aug/13/department-veterans-affairs-shortages-trump.

[63] David Armstrong, Eric Umansky, and Vernal Coleman, *Veterans' Care at Risk Under Trump as Hundreds of Doctors and Nurses Reject Working at VA Hospitals*, PROPUBLICA (August 8, 2025), https://www.propublica.org/article/veterans-affairs-hospital-shortages-trump.

[64] Press Release, More than 50,000 women Veterans enrolled in VA health care over past 365 days, marking the largest enrollment year ever for women Veterans, VA (June 12, 2024), https://news.va.gov/press-room/50k-women-veterans-enrolled-in-va-healthcare-over-past-365-day/; Press Release, Trump Administration Announces Plans to Ban Abortions for Veterans—Even After Rape or When Health is in Danger, CTR. FOR REPROD. RTS. (August 1, 2025), https://reproductiverights.org/trump-plans-ban-abortions-veterans/#:~:text=Women%20are%20currently%20the%20fastest,their%20care%20from%20the%20VA.

a result of their service, veterans and their families are often compelled to move somewhere in the United States that may not have abortion providers, and now the Proposed Rule will prevent the VA from providing the medical care they need—even in emergency gynecological situations. In short, banning abortion for veterans and their families will further exacerbate the strains on the VA healthcare systems, which will lead to worse care and outcomes for veterans and their families.

B. The Proposed Rule's Narrow "Life-Only" "Exception" Will Harm Veterans' Mental Health

Denials or delays in emergency abortion care will also have profound mental health consequences for veterans and their families. The trauma from delays in, or denial of, treatment for pregnancy complications affect a substantial number of patients.[65] Up to 45% of new mothers experience birth trauma, and risk factors include birth complications and not receiving expected care.[66] Among the public at large, 20% of pregnancy-related deaths are attributable to mental health conditions.[67]

Women veterans' mental health may fare even worse under the VA's Proposed Rule. Women veterans are more likely than their male counterparts to experience moderate to severe symptoms of depression, post-traumatic stress disorder (PTSD) and anxiety—a phenomenon that is supported by numerous studies of nonveteran women, as well.[68] PTSD can, in turn, *cause* pregnancy complications. VA research has shown that PTSD may increase the risk of gestational diabetes, preeclampsia, and preterm birth.[69]

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[65] Antje Horsch, et al., *Childbirth-related Posttraumatic Stress Disorder: Definition, Risk Factors, Pathophysiology, Diagnosis, Prevention, and Treatment*, AM. J. OBSTETRICS & GYNECOLOGY (March 2024), https://www.ajog.org/article/S0002-9378(23)00713-5/fulltext, ("Psychological birth trauma and childbirth-related posttraumatic stress disorder represent a substantial burden of disease with 6.6 million mothers and 1.7 million fathers or co-parents affected by childbirth-related posttraumatic stress disorder worldwide each year.").

[66] *The Toll of Birth Trauma on Your Health*, MARCH OF DIMES (March 2023), https://www.marchofdimes.org/find-support/topics/postpartum/toll-birth-trauma-your-health.

[67] *Pregnancy Related Deaths: Data from Maternal Mortality Review Committees in 38 U.S. State*, 2020, CTRS. FOR DISEASE CONTROL, https://www.cdc.gov/maternal-mortality/php/data-research/mmrc/?CDC_AAref_Val=https://www.cdc.gov/maternal-mortality/php/report/?trk=public_post_comment-text.

[68] Paul Albert, *Why is Depression More Prevalent in Women?*, J. PSYCHIATRY & NEUROSCIENCE (July 2015), https://pmc.ncbi.nlm.nih.gov/articles/PMC4478054/; Carmen McLean, et al., *Gender Differences in Anxiety Disorders: Prevalence, Course of Illness, Comorbidity, and Burden of Illness*, J. PSYCHIATR. RES. (August 2021), https://pmc.ncbi.nlm.nih.gov/articles/PMC3135672/; Dawne Vogt & Erin Mangan, *Research on Women, Trauma, and PTSD*, U.S. DEP'T OF VETERANS AFFAIRS, https://www.ptsd.va.gov/professional/treat/specific/ptsd_research_women.asp#:~:text=Estimates%20from%20community%20studies%20suggest,%25%20for%20men%20(5).

[69] Tristan Horrom, *PTSD, Moral Injury Ties to Pregnancy Complications*, U.S. DEP'T OF VETERANS AFFAIRS, (April 14, 2020) https://www.research.va.gov/currents/0420-PTSD-and-moral-

C. Removing the Exception for Health Will Have Financial Consequences for Veterans and Their Families

The VA's Proposed Rule will also threaten the economic security of women veterans and their families. Overwhelming research shows that women denied an abortion are more likely than those who received an abortion to experience economic hardship and insecurity lasting years.[70] For those veterans who survive pregnancy complications, the short- and long-term costs associated with those complications can be significant.[71] As is the case in states that severely restrict or ban abortions, many veterans who cannot access abortion care will be left with lasting health consequences or disability: In one abortion ban state, a woman diagnosed with breast cancer learned that she was six-weeks pregnant and could not begin cancer treatment until she had an abortion—but she could not get one in the state.[72] The lack of abortion care prevented her from accessing lifesaving chemotherapy, forcing her to leave the state for abortion care. Women in her position must incur significant financial burdens in traveling to find care and managing more severe illnesses. Not all veterans will survive pregnancy complications or denied care, however, and their families will have to withstand their grief alongside the financial challenges associated with losing a working member of a family.

For those veterans who have the ability and time to travel to an out-of-state healthcare provider that will provide an abortion, those veterans will face significant costs, including the cost of travel, lodging, childcare, and expensive medical procedures. For example, the out-of-pocket cost for a surgical abortion procedure is around $4,872.[73] And patients traveling from out of state for abortion care tend to need more complex and costly care. Travel for pregnant veterans who are already experiencing pregnancy complications will result in increased

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injury-linked-to-pregnancy-complications.cfm (citing Jonathan G. Shaw, et al. *Post-traumatic Stress Disorder and Antepartum Complications: a Novel Risk Factor for Gestational Diabetes and Preeclampsia*, PAEDIATRIC PERINATAL EPIDEMIOLOGY, (March 22, 2017), https://pubmed.ncbi.nlm.nih.gov/28328031/).

[70] See e.g., Diana Greene Foster, et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, AM. J. OF PUB. HEALTH (2018), https://pmc.ncbi.nlm.nih.gov/articles/PMC5803812/, (women denied abortions who gave birth had higher odds of poverty 6 months after denial, than did women who received abortions; women denied abortions were also more likely to be in poverty for 4 years after denial of abortion).

[71] See, e.g., So O'Neil, et al., *The High Cost of Maternal Morbidity Show Why We Need Greater Investment in Maternal Health*, COMMONWEALTH FUND, (November 12, 2021), https://www.commonwealthfund.org/publications/issue-briefs/2021/nov/high-costs-maternal-morbidity-need-investment-maternal-health#:~:text=These%20conditions%20also%20represented%20the,and%20TANF%20($239%20million).

[72] Grossman et al., *Care Post-Roe: Documenting cases of poor-quality care since the Dobbs decision, supra*, note 18.

[73] Brittni Frederiksen et al., *Out of Pocket Costs for Abortion Care Among Individuals enrolled in Employer Sponsored Insurance Plans*, KAISER FAMILY FOUNDATION, (April 2025), https://www.kff.org/womens-health-policy/out-of-pocket-costs-for-abortion-care-among-individuals-enrolled-in-employer-sponsored-insurance-plans/.

risks to life and health. These added costs for veterans will compound the current situation in which—compared to male veterans, women veterans are already more likely to live in poverty.[74] The VA's mission is to care for those who have served. No veteran should have to bear the economic cost of a necessary abortion, particularly in a situation where the woman's health is in danger.

V. REMOVING THE EXCEPTION FOR VICTIMS OF RAPE AND INCEST WILL HARM WOMEN AND DAMAGE THE TRUST OF VETERANS

Eliminating the current rule's exception for abortions in cases of self-reported rape or incest is cruel and will inflict long-term damage on veterans and their survivors and dependents who have been the victims of sexual violence. The VA will be forcing individuals who become pregnant as a result of rape or incest to carry that pregnancy to term. According to the VA's own statistics, the rates of women experiencing sexual assault in the military are staggering: Around 10% of deployed and non-deployed women veterans experience sexual assault—a higher rates than their civilian peers.[75] One third of women veterans also experience intimate partner violence during their lifetime.[76] There appears to be no publicly available information on how many survivors and dependents of veterans are victims of rape and incest, but the Proposed Rule would eliminate care for them as well. While nothing can erase the damage caused by rape or incest, permitting an abortion in these cases empowers these victims of egregious crimes to make a medical decision, which, in turn, could help them regain a sense of control and healing. Although the VA has made a concerted effort towards building trust with women veterans in recent years, the VA's 180-degree pivot in this Proposed Rule will diminish the trust and goodwill these efforts have created.[77] Rather than providing these veterans with the medical care and support that they deserve after enduring this trauma, the VA is turning its back on these veterans, forcing them to look elsewhere for care, at greater risk and expense, or to carry those pregnancies to term.

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[74] *Women Veterans: The Journey Ahead*, DISABLED AM. VETERANS (2018), https://www.dav.org/wp-content/uploads/2018_Women-Veterans-Report-Sequel.pdf.

[75] *Military Sexual Trauma in Recent Veterans*, U.S. DEP'T OF VETERANS AFFAIRS, https://www.publichealth.va.gov/epidemiology/studies/new-generation/military-sexual-trauma-infographic.asp (finding that over 40% of deployed and non-deployed women veterans experience military sexual trauma, defined as "the experience of sexual assault or repeated, threatening sexual harassment during military service," and around 10% experienced sexual assault); Carey Pulverman & Suzanna Creech, The Impact of Sexual Trauma on the Sexual Health of Women Veterans: A Comprehensive Review TRAUMA VIOLENCE ABUSE, (August 2022), https://pubmed.ncbi.nlm.nih.gov/31438778/.

[76] *Women Veterans confront intimate partner violence*, VA News (July 17, 2019), https://news.va.gov/63116/aboutvha-asp-index-asp/.

[77] Kelsey Sanchez, *Veterans React to VA's Abortion Service Rollback by Trump Administration*, KVUE, (August 5, 2025), https://www.kvue.com/article/news/local/veteran-affairs-department-revokes-abortion-access/269-54118bfb-1ed3-4d78-81df-ee1ab6b9a398.

VI. ELIMINATION OF ABORTION COUNSELING HARMS VETERANS

In addition to severely restricting the situations in which veterans may access abortion through VA medical care, the Proposed Rule also includes a prohibition on abortion counseling. This restriction on *counseling* would mean many veterans and their families could not even be told about the availability of abortion care outside of a given VA health center, regardless of the state in which they are based. The restriction will leave veterans and their families alone to make crucial medical decisions without the benefit of information tailored to their circumstances provided by a health care professional, navigate the confusing web of state restrictions, wait times, and manage the logistics of obtaining care on their own—or being unable to access abortion altogether.

Removing the availability of options counseling threatens physicians' ability to practice consistent with the standard of care. With respect to pregnancy loss, the medical standard of care is to inform pregnant patients of all their options.[78] However, research from the Kaiser Family Foundation (KFF) demonstrates that abortion bans and restrictions on counseling for abortion has led to physicians concluding that they cannot practice within this standard of care:

> The standard of care for pregnancy loss counseling is to inform pregnant patients of all the options. Prior to *Dobbs*, clinicians in all states could offer this counseling; however, in states that now have bans and gestational limits, clinicians may fear that they cannot offer all of these options, nor referrals to this care. In states with bans, many OBGYNs do not even give patients referrals to clinicians out of state who offer abortions. This may be particularly heightened in states such as TX that have enacted laws that prohibit aiding and abetting the receipt of abortion services. More than half of OBGYNs practicing in states with abortion bans (55%) say that the *Dobbs* decision has made their ability to practice within the standard of care worse, more than twice the share (23%) who practice in states where abortion is available…[79]

A recent study brought to light three cases where emergency providers' refusal to provide abortion counseling due to strict abortion bans led to preventable deaths.[80] The study concludes, in part, that "abortion bans are impacting patients and physicians in medical specialties outside

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[78] Usha Ranji, et al., *Dobbs-era Abortion Bans and Restrictions: Early Insights About Implications for Pregnancy Loss*, KAISER FAMILY FOUNDATION, (May 2, 2024), https://www.kff.org/womens-health-policy/dobbs-era-abortion-bans-and-restrictions-early-insights-about-implications-for-pregnancy-loss/.

[79] *Id*.

[80] Hauschildt, et al., *U.S. Physicians' Perceived Impacts of Abortion Bans in Pulmonary and Critical Care Medicine*, (August 2025) https://www.sciencedirect.com/science/article/abs/pii/S0012369225003009; *see also* Stephanie Kirchgaessner, *US doctors describe three patient deaths that could have been prevented with abortion access in new study*, THE GUARDIAN, (April 3, 2025), https://www.theguardian.com/us-news/2025/apr/03/abortion-critically-ill-patients.

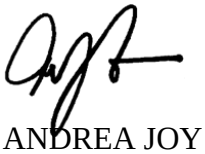
of obstetrics and gynecology." One physician interviewed for the study stated the restriction on counseling in a particular state impacted the messaging received by the patient: "When they're pretty early along in pregnancy, you might want to offer the option of termination to help prioritize the life of the person carrying the child. But, with the restrictions in place in the state, that is not something you could really do freely." The Proposed Rule would compound this problem, forbidding VA physicians from advising their patients of all their medical options, perhaps to the detriment of their patients' health.

* * *

For these reasons, and to support the many American women and their families who served our country and are slated to lose the bare minimum in abortion protections—we vehemently object to the Proposed Rule and request that it be withdrawn.

Sincerely,

ROB BONTA
California Attorney General



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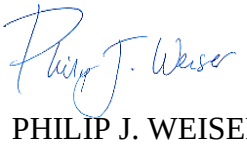

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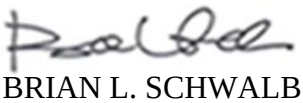

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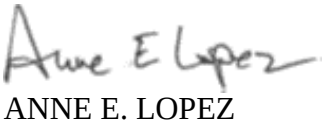
District of Colombia



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