September 3, 2025

Submitted electronically via regulations.gov

Dr. Steven L. Lieberman
Acting Under Secretary for Health
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, D.C. 20420

Re: Comment Regarding Proposed Rule: *Reproductive Health Services*, Docket No. VA-2025-VHA-0073, 90 Fed. Reg. 36415 (August 4, 2025)

Dear Acting Under Secretary Lieberman:

Vet Voice Foundation is a non-profit, non-partisan organization that seeks to empower veterans across the country to become civic leaders and policy advocates, harnessing the energy and drive of dedicated individuals who have fought for our country and putting it to work at home and in their communities on the important issues they face, including health care. This includes advocating for adequate and gender-specific health care for women veterans, who are the fastest growing population of veterans using Veterans Health Administration (VA) services.

Women are the fastest growing group in the veteran population, with an estimated population of over 2,000,000 women veterans in 2025.[1] Of the approximately 600,000 women veterans who access their health care through the VA, half are of childbearing age.[2] The women who access their health care services through the VA are racially and ethnically diverse, with over 43 percent belonging to a racial or ethnic minority group.[3] The share of family members accessing their health care through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) has likewise increased in recent years. Between FY2001 and FY2023, CHAMPVA enrollments grew by 629%, from 96,500 to 703,600 beneficiaries.[4] Given these realities, it is crucial that the VA maintain the medically necessary abortion care and counseling it currently provides.

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[1] VA, *Women Veterans Health Care Facts and Statistics* (2022), https://perma.cc/6MN2-LK92.
[2] VA, Off. of Inspector Gen., *Review of Veterans Health Administration Reproductive Health Services* (Sept. 28, 2023), https://perma.cc/QJD2-64N3.
[3] VA, *Women Veterans Health Care Facts and Statistics* (2022), https://perma.cc/6MN2-LK92.
[4] Sidath Viranga Panangala, Cong. Rsch. Serv., RS22483, *Health Care for Dependents and Survivors of Veterans* 14 (2024), https://perma.cc/FQW2-YR37.

Vet Voice appreciates the opportunity to comment on VA's proposed rule on Reproductive Health Services, Docket No. VA-2025-VHA-0073 (the proposed rule), and writes in opposition to the proposed rule, which would modify the VA's medical benefits package by removing access to abortion care for veterans when the veteran's health would be endangered if the pregnancy was carried to term and for veterans who became pregnant by rape or incest. The proposed rule likewise proposes eliminating access to any abortion counseling by VA providers. The preamble to the proposed rule states that the VA will continue to permit abortion care where a physician certifies that the life of the veteran would be endangered by the pregnancy, but does not propose codifying that exception or permit abortion counseling in those situations. The proposed rule rolls back access to abortion and abortion counseling for Civilian Health and Medical Program of the VA (CHAMPVA) beneficiaries by excluding abortion care where the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of an act of rape or incest.

Vet Voice vehemently opposes the exclusions of abortion care and counseling in the proposed rule, which will harm the health and well-being of the veteran community and their beneficiaries. The proposed rule, and the legal interpretations espoused in it, are contrary to law and the relevant sources of statutory and regulatory authority that underlie the medical benefit programs for veterans and their beneficiaries. The VA should withdraw its proposed rule.

1. **The VA has the statutory authority to provide abortion care and counseling to veterans under 38 U.S.C. § 1710 and should continue to provide this essential and medically necessary care.**

Pursuant to the VA's general-treatment authority for veterans, the VA ''shall furnish'' certain veterans with ''hospital care and medical services which the Secretary determines to be needed.''[5] The Secretary ''may,'' subject to certain limitations, ''furnish hospital care'' and ''medical services . . . which the Secretary determines to be needed.''[6] As relevant here, such ''medical services'' include ''medical examination, treatment,'' ''[s]urgical services,'' and ''[p]reventive health services.''[7]

The VA implements its general-treatment authority under 38 U.S.C. § 1710, and determines what care is ''needed,'' by regulation through the VA's medical benefits package.[8] Care included in the medical benefits package is ''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.''[9]

In 2022, the VA correctly determined that the following medical care and counseling is "needed" and authorized by the VA's general-treatment authority under 38 U.S.C. §1710(a):

[5] 38 U.S.C. § 1710(a)(1)–(2).
[6] 38 U.S.C. § 1710(a)(3).
[7] 38 U.S.C. §1701(6).
[8] *See* 38 U.S.C. § 1710(a)(1)–(3); 38 C.F.R. § 17.38.
[9] 38 C.F.R. § 17.38(b).

> It is essential for the lives and health of our veterans that abortions be made available if determined needed by a health care professional when: (1) the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest. VA has also determined that abortion counseling is needed so that veterans can make informed decisions about their health care.[10]

The VA discussed the statutory support for its provision of such abortion care and counseling at length in its prior interim final rule (the 2022 IFR) and its 2024 final rule.[11] The Office of Legal Counsel likewise issued a still-binding opinion that under the VA's general-treatment authority,[12] the VA is authorized to provide abortion care and counseling specified in the 2022 IFR.[13]

The VA's proposed rule excludes abortions that a VA clinician has determined to be medically necessary to preserve a woman's health, and abortions for pregnancies that were the result of rape or incest. It also proposes excluding abortion counseling. The VA justifies excluding this care in the proposed rule by stating that the 2022 IFR and final rule authorizing VA to provide such abortion care and counseling were "legally questionable," and claiming that VA's authority to provide abortions is "at least[] dubious and, at most, nonexistent."[14] These legal conclusions are inadequately explained and erroneous as a matter of statutory interpretation.

To begin, in the proposed rule, the VA does not expressly make a determination that abortion care and counseling services provided by the 2022 IFR are no longer "needed," care and instead frames the changes in the proposed rule as a "decision to restore VA's medical benefits package to its pre-2022 state."[15] That is insufficient under the statute. The VA previously determined that such abortion care and counseling were "needed," under 38 U.S.C. § 1710, and unless and until the VA makes an explicit determination that such care is "no longer needed," supported by adequate evidence and consideration of the significant reliance interests at stake, the VA "shall furnish" this care under its general-treatment authority. If the proposed rule becomes final based on this ill-explained and erroneous legal interpretation, it will be contrary to law.

The VA claims, without support, that "[c]onsiderations about whether abortion is 'needed' for purposes of VA- provided services necessarily involves the question of whether taxpayers should pay for abortion."[16] That novel assertion finds no support in the statutory text of Section 1710 or in any of VA's previous interpretations of its general-treatment authority. To the contrary, as the VA previously explained, in passing the VHCA, Congress intended that the VA's determination of whether certain care should be provided would be based only on whether that care is

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[10] Reproductive Health Services, 87 Fed. Reg. 55,287, 55,288 (Sept. 9, 2022).
[11] *See id*. at 55,288–90; Reproductive Health Services, 89 Fed. Reg. 15,451, 15,453–61 (Mar. 4, 2024).
[12] 38 U.S.C. § 1710.
[13] *Intergovernmental Immunity for the Department of Veterans Affairs and its Employees When Providing Certain Abortion Services*, 46 Op. O.L.C. __ (Sept. 21, 2022) (slip op. at 5–9).
[14] Reproductive Health Services, 90 Fed. Reg. 36,415 (Aug. 4, 2025).
[15] *Id.* at 36,416.
[16] *Id.*

medically necessary.[17] Whether and to what extent taxpayers are funding care for veterans is irrelevant to whether such care is medically necessary. The VA makes no attempt to explain this novel interpretation, and the statutory text certainly does not provide a basis for the VA's erroneous interpretation of when and why care is medically necessary under its regulations.

Finally, the proposed rule vaguely refers to the Hyde Amendment and other similar statutory provisions that restrict when federal funds can be used for abortion as a potential justification for drawing "a bright line between elective abortion and health care services that taxpayers would support."[18] But this does not provide the support the proposed rule claims. To the contrary, the existence of other restrictions on abortions demonstrates that Congress has made a consistent choice for 50 years *not* to apply the Hyde Amendment or any other statutory restriction to the VA.[19] It also underscores that the proposed rule's exclusion of abortions for pregnancies that are the result of rape and incest is not only cruel but inconsistent with the Congressional judgment that such abortions should be paid for with federal funds.

At bottom, the proposed rule's failure to assess that excluded abortion care and counseling are no longer "needed," and its reliance on inapplicable legal restrictions lay bare that the proposed rule is a not-so-thinly-veiled attempt to limit medically necessary abortions because of a policy disagreement with this care. But Congress determined that medical necessity, not policy objections, is the standard by which VA determines whether it will provide medical care to those who have served our nation.

2. Section 106 of the VHCA does not prohibit the abortion care and counseling provided by the 2022 IFR and final rule.

The proposed rule tepidly states that Section 106 of the VHCA may call into question the VA's general-treatment authority under Section 1710 to provide abortion care and counseling. Not only is this conclusion inadequately stated and explained, but any conclusion that Section 106 somehow prohibits the provision of abortion care and counseling in the 2022 IFR is legally erroneous as a matter of statutory interpretation. Any final rule cannot rely on the VA's flawed interpretation of Section 106 espoused in the proposed rule.

First, the VA does not make clear in the proposed rule what authority it relies on in excluding the abortion care and counseling provided in the 2022 IFR from VA's medical benefits package. As explained above, the VA previously relied on its general-treatment authority under Section 1710 as the basis for its determination in the 2022 IFR and final rule that such abortion care and counseling was needed and therefore must be included in its medical benefits package.[20] If VA believes that it did not previously have the legal authority to provide certain abortion care and counseling under Section 1710, it must say so and adequately explain its changed legal interpretation of that provision. The proposed rule certainly does not do so.

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[17] *See* 89 Fed. Reg. at 15,457 (The VHCA "establish[ed] a new standard to focus on medical necessity as the sole criterion of eligibility for VA hospital care and medical services.") (internal citation omitted).
[18] 90 Fed. Reg. at 36,416.
[19] 87 Fed. Reg. at 55,290; *accord* 89 Fed. Reg. at 15,459
[20] *See* 87 Fed. Reg. at 55,288–90; 89 Fed. Reg. 15,451, 15,453–61.

The proposed rule appears to rely on Section 106's exclusion of abortion-related services as authorizing its exclusion of abortion care and counseling, asserting that "our actions fully comply with its abortion exclusion."[21] What "exclusion" the VA is referring to is unclear. On that basis, the proposed rule claims that "VA's authority to provide abortions is, at least, dubious and, at most, nonexistent."[22] To the extent that the VA is relying on Section 106 as providing statutory authority for its exclusion of abortion care and counseling from its medical benefits package, that conclusion is contrary to law and VA's long-standing interpretation of Section 106 dating back to 1993.[23] To state it clearly, VA has already made clear that it does not rely on Section 106 to provide any care—pregnancy or otherwise. As explained in more detail below, the VA cannot rely on a non-operative provision (Section 106) as supporting its prohibition in the proposed rule on the provision of certain abortion care and counseling under its general-treatment authority in Section 1710.

As the VA previously and correctly concluded, Section 106 of the VHCA does not prohibit VA's from providing abortion care and counseling in its medical benefits package.[24] Prior to the 1996 enactment of the VHCA, VA health care was subject to a patchwork of eligibility criteria, and care was largely linked only to medical care of service-connected conditions.[25] The VHCA, in relevant part, was designed to improve the health care services available to women veterans. Section 106(a) of the VHCA stated that VA could provide ''women'' with ''[p]apanicolaou tests (pap smears),'' ''[b]reast examinations and mammography,'' and ''[g]eneral reproductive health care . . . , but not including 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.''[26]

Relevant here, the VHCA made the availability of all medical care services for veterans turn on a single "need for care" criterion focusing on medical judgment rather than legal definitions.[27] That is because prior to the 1996 Act, Section 1710 only addressed eligibility for hospital, nursing, and domiciliary care.[28] It did not address outpatient medical services, which were instead

[21] 90 Fed. Reg. at 36,416.
[22] *Id.*
[23] Veterans Health Admin. (VHA) Directive 10–93–151 (Dec. 6, 1993); Letter from Sec'y Denis McDonough to Sen. Jerry Moran (July 7, 2021).
[24] 87 Fed. Reg. at 55,288–89.
[25] *See* 38 U.S.C. § 1710 (Supp. I 1994) (authority under which hospital and nursing home care were provided prior to 1996); 38 U.S.C. § 1712 (Supp. I 1994) (authority under which medical services were provided prior to 1996).
[26] Pub. L. No. 102-585, § 106(a), 106 Stat. 4943 (Nov. 4, 1992).
[27] Veterans' Health Care Eligibility Reform Act of 1996, Pub. L. No. 104-262, § 101(a)–(c), 110 Stat. 3182, 3178–79 (Oct. 9, 1996) [1996 Act]; 142 Cong. Rec. H8771 (1996) (statement of Rep. Tim Hutchinson) ("The bill substitutes a single, streamlined eligibility provision—based on clinical need for care—for the complex array of disparate rules currently governing eligibility for hospital and outpatient care.").
[28] 38 U.S.C. § 1710 (1996), amended by 1996 Act, § 101(a).

covered by Section 1712.[29] That section authorized the Secretary to provide "such [ambulatory or outpatient] medical services as the Secretary determines are needed,"[30] but "require[d] the VA to apply at least four different legal tests to distinct veteran classifications"[31] using "medically uninterpretable" standards.[32] For instance, one provision required care where it would "obviate the need for hospital admission."[33] In the 1996 Act, Congress repealed Section 1712, and the confusing "legal tests" contained within that provision, and instead provided a single "need for care" determination.

The congressional record accompanying the 1996 Act is clear that the purpose of the Act was to create a more streamlined and medically grounded criterion for determining what care should be provided to veterans.[34] The House Report accompanying the Act summarizes Congress' view of what the 1996 Act meant to achieve: "While the new standard is a simple one, more importantly, it would employ a clinically appropriate 'need for care' test, thereby ensuring that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished."[35] The amendments would "establish medical need as the sole criterion of eligibility for VA hospital care and medical services."[36] Thus, the VHCA "overtook section 106 of the VHCA."[37]

As the VA explained at length in the 2022 IFR and final rule, the exclusion of certain abortion care in Section 106 does "not limit VA's authority to provide care under any other provision of law," including its general-treatment authority under 38 U.S.C. § 1710.[38] The VA stated that "it has consistently interpreted section 106 in this fashion," and unequivocally stated that "VA no longer relies on section 106 of the VHCA to provide such services or any other services."[39] Rather, as the VA explained, it "relies on 38 U.S.C. 1710(a)(1)–(3) to provide pap smears, breast exams and mammography, or general reproductive health services, [and] pregnancy or infertility

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[29] 142 Cong. Rec. H8771 (1996) (statement of Rep. Tim Hutchinson); *id.* at § 1712 (1996), amended by 1996 Act, § 101(c).
[30] *Id.* at § 1712(a)(1) (1996).
[31] H.R. Rep. No. 104-690, at 4 (1996); *id*. (providing that "under section 1712(a), the VA 'shall furnish' comprehensive treatment to certain service-connected veterans, 'may furnish' such broad treatment to certain other classes of veterans, and either 'shall' or 'may' furnish treatment of more limited scope (to 'obviate' the need of hospital admission or to complete treatment begun during hospitalization) to still other groups of veterans").
[32] 142 Cong. Rec. H8771 (1996) (statement of Rep. Tim Hutchinson).
[33] *Id.*; 38 U.S.C. § 1712(5)(A) (1996).
[34] H.R. Rep. No. 104-690, at 13 (noting that the Act "substitute[s] 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"); *accord* 142 Cong. Rec. H8771 (statement of Rep. Tim Hutchinson).
[35] H.R. Rep. No. 104-690, at 4 (emphasis added).
[36] *Id.* at 11.
[37] 87 Fed. Reg. at 55,289.
[38] *Id*. at 55,289; *see also* 89 Fed. Reg. at 15,454–57.
[39] 87 Fed. Reg. at 55,289.

services."[40] Thus, Section 106's "prohibition on providing certain services," including abortions, "simply is no longer operative."[41]

Notably, the VA has long exercised its general-treatment authority to provide comprehensive pregnancy care and infertility without opposition or argument that it acted contrary to Section 106. A veteran in 1992 was only eligible for pregnancy and delivery care under section 106 if the pregnancy was complicated or the risks of complication were increased by a service-connected condition. Pub. L. No. 102-585, § 106(a). In contrast, general pregnancy and delivery services were included in the medical benefits package when it was established in 1999 pursuant to VA's authority in 38 U.S.C. § 1710.[42] Moreover, while section 106 of the VHCA provided that infertility services could not be provided under that section, infertility services (with the exception of in vitro fertilization) were also included in the medical benefits package pursuant to VA's authority under 38 U.S.C. § 1710.[43] And in 2017, the Secretary authorized the provision of in vitro fertilization (IVF) treatment for veterans in certain cases, notwithstanding the exclusion of such care under Section 106 of the 1992 Act.[44] Consequently, for decades, VA has offered general pregnancy care and certain infertility services under 38 U.S.C. § 1710.[45] There is no argument—and the VA has never taken the position—that general pregnancy care or IVF services are foreclosed by Section 106. Rather the "under this section" language in Section 106 preserved the authority of the Secretary to provide such care if and when he deemed it "needed," including as VA has historically done, under its general treatment authority.

The proposed rule does not meaningfully grapple with the VA's long standing, extensive, careful, and contrary interpretation of Section 106 in the 2022 IFR and final rule. Nor does it grapple with the OLC's still-binding conclusion that Section 106 does not prohibit VA from providing such care under its general-treatment authority.[46] The proposed rule acknowledges that "the wholesale revision" in the VHCA "may limit the continued force and effect of section 106," but nonetheless states that the exclusions in the proposed rule "fully comply with its abortion exclusion."[47] To the extent that the proposed rule is relying on Section 106 as providing authority for its exclusion of abortion care and counseling from its medical benefits package, it must say so clearly in the final rule. But to the extent that the final rule relies on Section 106 as authorizing the exclusions on abortion care and counseling, such an interpretation is both contrary to law and an unexplained change from the VA's long-standing interpretation that Section 106 is no longer operative and is not the basis on which it provides women with pregnancy care. It is also an interpretation that would conflict the VA's longstanding practice of

[40] *Id.* at 55,290.
[41] *Id.* at 55,289–90.
[42] 64 Fed. Reg. 54,210; 38 C.F.R. § 17.38(a)(1)(xiii).
[43] *Id.*
[44] 87 Fed. Reg. 55,287, 55,289; *see also* 38 C.F.R. § 17.38.
[45] *Id.*
[46] *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, 46 Op. O.L.C. __ (Sept. 21, 2022) (slip op. at 5-9).
[47] 90 Fed. Reg. at 36,416.

providing general pregnancy and fertility services in its medical benefits package pursuant to its general-treatment authority.[48]

Section 106 does not prohibit the abortion care and counseling provided in the 2022 IFR and final rule and cannot serve as the basis for any prohibitions of such care in a final rule.

3. **The Secretary has the authority to provide coverage for abortion care and counseling for CHAMPVA Beneficiaries.**

By statute, VA's ''Secretary is authorized to provide'' specified ''medical care'' to certain spouses, children, survivors, and caregivers of veterans who meet specific eligibility criteria.[49] This health benefits program is known as CHAMPVA. VA must provide ''for medical care'' under CHAMPVA ''in the same or similar manner and subject to the same or similar limitations as medical care is'' provided by the Department of Defense to active-duty family members, retired service members and their families, and others under the TRICARE (Select) program.[50] VA has regulated services covered by CHAMPVA to mean those medical services that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded.[51]

Prior to 2022, CHAMPVA coverage significantly deviated from its statutory mandate that it provide the same or similar care as the TRICARE program because CHAMPVA did not provide for abortion counseling and did not provide for abortions when the pregnancy is the result of rape or incest. In 2022, the VA amended its CHAMPVA regulations by "removing the exclusion for abortion counseling and permitting abortions when the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of an act of rape or incest."[52] VA did so, in part, to "better align coverage under CHAMPVA with coverage under TRICARE (Select)."[53] Then and now, TRICARE provides coverage for abortions when the pregnancy is the result of for rape and incest or where a physician certifies that the life of the woman would be endangered if the fetus were carried to term.[54] TRICARE also provides counseling for covered abortions.[55] Thus, the VA's 2022 amendment of the CHAMPVA regulations brought that program in alignment with its statutory mandate to provide benefits that are the same or similar to those offered by the TRICARE program.[56]

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[48] Additionally, to the extent that the VA relies on Section 106 as providing authority for its exclusion of abortion care and counseling, its proposed exclusions are contrary to Section 106. That section still allows for abortions when the pregnancy is "complicated or in which the risks of complication are increased by a service-connected condition." Thus, Section 106 would still allow the VA to provide health-related abortions.

[49] 38 U.S.C. § 1781(a).

[50] 38 U.S.C. §1781(b); *see* 32 C.F.R. §§ 199.1(r), 199.17(a)(6)(ii)(D).

[51] 38 C.F.R. § 17.270(b).

[52] 87 Fed. Reg. at 55,290.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

In the proposed rule, the VA concludes that "abortion is not a 'needed' VA service for the same reasons that it is not 'medically necessary and appropriate for the treatment of a condition' under CHAMPVA."[57] Again, the proposed rule has made no finding, supported by evidence, that CHAMPVA coverage provided by the 2022 IFR and final rule is not medically necessary. The proposed rule does not explain the VA's change in position that such abortion care and counseling is not medically necessary under Section 1781, much less rebut VA's previous conclusions supported by data that such abortion care and counseling provided by the 2022 IFR and final rule was medically necessary.[58] The proposed rule thus does not align with the statutory mandate that the VA provide abortion care under CHAMPVA that is medically necessary by permitting abortions when the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of an act of rape or incest.

Additionally, although the VA correctly acknowledges that CHAMPVA coverage need not be identical to that offered under TRICARE, the proposed rule does not otherwise address or acknowledge the significant differences that would be created between TRICARE and CHAMPVA coverage if a final rule excludes abortion counseling and abortions that are necessary for pregnancies that result from rape or incest. If adopted into a final rule, such a difference in coverage would run afoul of the statutory mandate that CHAMPVA provide medically necessary coverage that is the same or similar as that provided by TRICARE.

For these reasons, Vet Voice Foundation strongly opposes the proposed rule and the VA should withdraw the proposed rule.

Very respectfully,

Janessa Goldbeck
Chief Executive Officer
Vet Voice Foundation

[57] 90 Fed. Reg. at 36,416.
[58] 87 Fed. Reg. at 55,291–93.