



October 11, 2022

*Submitted electronically*

The Honorable Denis McDonough  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

**Re: Public comment regarding the interim final rule on reproductive health services**  
**RIN: 2900-AR57**

Dear Secretary McDonough:

Family Research Council (FRC) respectfully submits the following comment in response to the U.S. Department of Veterans Affairs (VA) interim final rule that allows VA facilities to counsel in favor of and perform abortions, effective immediately. The interim final rule should be immediately revoked, as it violates federal statutory authority prohibiting the VA from covering abortions. Instead of working in Congress or state legislatures to enact legislation allowing VA facilities to perform abortions, those advancing this rule have chosen to ignore federal law in order to promote abortion against the will of the people.

### **Federal Law Prohibits the VA from Providing or Paying for Abortions**

In 1992, Congress passed the *Veterans Health Care Act* with unanimous support in both chambers, and President George H.W. Bush signed it into law.<sup>1</sup> Section 106 of this law made explicitly clear that the secretary of the VA may provide healthcare services to women except for “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.”<sup>2</sup> At the time this bill was passed, it was understood that the only instances when the VA could provide an abortion were in the rare cases that a pregnancy led to a life-threatening complication for the mother (as numerous contemporary physicians have stated, the purposeful killing of an unborn child is never necessary to save the life of the mother<sup>3</sup>).

The interim final rule asserts that the *Veterans Health Care Eligibility Reform Act of 1996* allows healthcare services that “the Secretary determines to be needed” to be administered to veterans without

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<sup>1</sup> Veterans Health Care Act of 1992, Public Law 103-585, November 4, 1992, 106 Stat. 4947).

<sup>2</sup> Section 106(a)(3) of the Veterans Health Care Act of 1992, Public Law 103-585, November 4, 1992, 106 Stat. 4947), 38 U.S.C. 1710 note.

<sup>3</sup> “What Is AAPLOG’s Position on ‘Abortion to Save the Life of the Mother?’” American Association of Pro-life Obstetricians and Gynecologists (AAPLOG), July 2009, <https://aaplog.org/what-is-aaplogs-position-on-abortion-to-save-the-life-of-the-mother/>.

any exclusions on abortion. This reading of the 1996 law ignores the clear language in the 1992 law prohibiting the VA from furnishing abortion services for veterans. Nowhere in the 1996 law does Congress implicitly or explicitly mention that the 1996 law supersedes the prohibition on performing abortions made clear in the 1992 law. At no point since the 1996 law was passed has the VA ever covered or performed any abortions beyond what is allowed in the 1992 law. Even the Obama administration, which had a record of promoting abortion and abortion coverage throughout the Affordable Care Act, never established a medical benefits package for veterans that covered abortions or forced VA facilities to perform abortions.<sup>4</sup>

### **The Broad Interpretation of “Health” Will Be Used to Allow Abortions for Any Reason**

In the initial press release announcing the rule change, the VA gives the impression that VA facilities will only be conducting abortions for the rare cases that the mother’s life is in danger or the pregnancy resulted from rape or incest.<sup>5</sup> However, the interim final rule clearly states that the VA will amend its regulations by removing the exclusion for abortion counseling and permitting abortions “when the health of the pregnancy beneficiary would be endangered if the pregnancy were carried to term.” The lack of definition for the word “health” opens the door for the VA to perform abortions for nearly any reason a female veteran may give. As an example of how courts have liberally interpreted health exceptions to abortion laws, the U.S. Supreme Court said in *Doe v. Bolton* (the companion case to *Roe v. Wade*) that the word “health” in any health exception for abortion law is to be interpreted to include physical, emotional, psychological, and familial factors.<sup>6</sup> Abortions at the VA for purposes of the woman’s “health” are likely to be broadly interpreted to cover nearly any abortion.

At a hearing before the House Veterans Affairs Committee on September 15, 2022, Dr. Shereef Elnahal, the under-secretary of Health for the administration, admitted that there is likely to be a dramatic increase in the number of abortions the VA would perform. When asked by Rep. Mariannette Miller-Meeke (R-Iowa) whether the number of abortions being performed would be limited, Elnahal answered, “we project, Congresswoman, that about a thousand women veterans a year would receive this service.”<sup>7</sup> This came after Elnahal admitted earlier in the hearing that the VA had been approached by 10 to 20 women whose pregnancies had caused life-threatening conditions. If the VA only intended to perform abortions when a woman’s life is threatened or the pregnancy resulted from rape or incest, it is hard to believe that projected abortions being performed by the VA would increase 100-fold. Moreover, as many physicians have attested, life-saving medical treatments that unintentionally result in the death of the unborn child are not abortions.<sup>8</sup> If Dr. Elnahal believes that the 100-fold increase will come as the result of a 100-fold increase in the number of women in our military who are raped,

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<sup>4</sup> “Abortion in Obamacare,” Abortion In Obamacare, accessed October 7, 2022, <https://obamacareabortion.com/>.

<sup>5</sup> U.S. Department of Veterans Affairs, “VA will offer abortion counseling and — in certain cases — abortions to pregnant Veterans and VA beneficiaries,” press release, September 2, 2022, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5820>.

<sup>6</sup> *Doe v. Bolton*, 410 U.S. 179, 192 (1973).

<sup>7</sup> Examining Women Veterans’ Access to the Full Spectrum of Medical Care, Including Reproductive Healthcare, Through the Department of Veterans Affairs (VA): Hearing before the House Committee on Veteran’s Affairs 117<sup>th</sup> Congress (September 15, 2022).

<sup>8</sup> “What Is AAPLOG’s Position on ‘Abortion to Save the Life of the Mother?’” American Association of Pro-life Obstetricians and Gynecologists (AAPLOG).

the government should work to find a solution that prevents rapes from occurring rather than punishing the unborn child. However, it is more likely that the VA under-secretary for Health's comments reveal that the VA intends to perform abortions at VA facilities for reasons beyond life-threatening conditions to the mother or sexual assault.

### **Lack of Specifics on the Implementation of the Interim Final Rule**

Even if this interim final rule did not violate federal law, the fact remains that the process to implement it has been rushed and lacking transparency. The VA asserted that the agency had good cause in implementing this rule effective immediately because of what it called a medical emergency for women's health following the overturning of *Roe v. Wade*. However, it moved to implement the rule without a clear plan on how this new regulation would be carried out.

The VA has not performed abortions for reasons outside the cases in which the mother's life has been threatened since 1992. However, despite the medical advances that reveal not only the humanity of the unborn child but also allow physicians to offer better care to pregnant mothers, the VA has now opened the door for the exploitation of women by performing abortions for nearly any reason, without any evidence that these abortions will not put the woman's life at risk. There are also no clear limitations indicated by the interim final rule as to whether abortions can be performed late into pregnancy after viability or via chemical abortion, which has a high rate of emergency complications.<sup>9</sup> It is unclear what protocols will be put in place to ensure that children of veterans who may be eligible to receive abortions through the VA have received proper parental consent or that evidence of sexual abuse will be investigated.

Finally, the interim final rule does not sufficiently address whether medical professionals who work at VA facilities will have proper conscience protections in place. The VA has not made clear that doctors or pharmacists who have a moral or religious objection to performing abortions or counseling in favor of abortions will have their conscience rights protected. It is highly concerning that this regulation was rushed through on an emergency basis without regard or concern for the health and safety of our female veterans or the conscience rights of VA medical professionals.

### **Conclusion**

The interim final rule expanding abortion throughout the U.S. Department of Veterans Affairs violates federal law. Yet even if our laws allowed the VA to decide to provide and pay for abortion, we would still recommend that this new regulation be rejected based on the rushed manner in which it became effective immediately without a clear plan on how to ensure a standard of care for our female veterans. This interim final rule lacks clarity as to how the VA will balance the health and well-being of unborn children and their mothers and how medical professionals who work at the VA will be protected.

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<sup>9</sup> "Public Health Threat: Chemical Abortion Leads to Significantly Higher Rate of ER Visits," Charlotte Lozier Institute, November 16, 2021, <https://lozierinstitute.org/public-health-threat-chemical-abortion-leads-to-significantly-higher-rate-of-er-visits/>.

This policy seeks to promote abortion across our country through VA facilities. It will use scarce resources that should instead be dedicated to helping all veterans receive the quality healthcare they are owed. Our veterans deserve better than to become political pawns in this administration's unprecedented desire to promote abortion at home and abroad.

Respectfully submitted,

/s/ Connor Semelsberger, MPP  
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