October 11, 2022

Dr. Shereef Elnahal
Under Secretary for Health
Department of Veterans Affairs
810 Vermont Avenue NW, Washington, DC 20420

Submitted Electronically

Attention: VA Reproductive Health Services, 38 CFR Part 17 (RIN 2900-AR57)

Dear Under Secretary for Health Dr. Elnahal:

As organizations committed to protecting and expanding abortion access for all people, including service members, veterans, and their family members, we commend the U.S. Department of Veterans Affairs' ("VA") for its Interim Final Rule ("IFR") on Reproductive Health Services. This IFR will provide essential abortion care and counseling to veterans and their family members in the midst of the current reproductive health care crisis. Access to abortion is essential to veterans' freedom to make decisions about their health and well-being, and this IFR is a critical action toward ensuring they have control over their bodies, lives, and futures.

As a part of this country's commitment to providing for the needs of veterans after they leave the military, VA has been directed by Congress to "promote, preserve, or restore the health"[1] of the veterans they serve—and this includes ensuring access to abortion without political interference. Lacking access to abortion care and adequate reproductive health services can have profound impacts, including financial insecurity, increased risk of intimate partner violence, and maternal and neonatal deaths.[2] These impacts are disproportionately felt by marginalized communities in the U.S who have long faced systemic barriers to health care—including Black, Indigenous, and people of color, low-income people, rural populations, LGBTQI people, people with disabilities, and immigrants.[3]

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* has created devastating and potentially insurmountable barriers to abortion care for veterans and their families.[4] VA has historically neither provided nor covered abortions—meaning veterans faced

[1] The proposed rule states that "[c]are 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.'" VA Reproductive Health Services, 87 Fed. Reg. 55293 (proposed Sept. 9, 2022) (to be codified at 38 C.F.R. pt. 17).
[2] CTR. FOR REPROD. RIGHTS & COLUMBIA MAILMAN SCH. OF PUB. HEALTH, HEILBRUNN DEP'T OF POPULATION & FAMILY HEALTH, ABORTION IS ESSENTIAL HEALTHCARE: ACCESS IS IMPERATIVE DURING COVID-19 1 (2020), https://reproductiverights.org/sites/default/files/ documents/USP-COVID-FS-Interactive-Update.pdf.
[3] *Id.*
[4] *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (overturning *Roe v. Wade*, 410 U.S. 113 (1973)).

unique barriers to care. As VA notes, the onslaught of state bans and restrictions have created "urgent risks to the lives and health of pregnant veterans and the health of pregnant CHAMPVA beneficiaries in those States."[5] According to VA, over 155,000 veterans who may need abortion care and rely on VA for health care live in states with abortion bans and restrictions.[6] Women are the fastest growing cohort within the veteran community, and the percentage of women veterans is expected to grow by more than half in the next twenty years.[7] Within that group, women of reproductive age between ages 18–44 are the fastest growing subset of new VA users.[8] Further, research estimates that the veteran community includes more than 11,000 trans men,[9] in addition to nonbinary veterans and veterans who identify with a different gender, many of whom need abortion care. Moreover, female veterans are more likely to live in poverty than male veterans, and, similarly, trans veterans are more likely to live in poverty than their cisgender peers. Importantly, the IFR extends to CHAMPVA beneficiaries, expanding abortion access and counseling for many veterans' loved ones and caregivers. According to VA, nearly 50,000 CHAMPVA beneficiaries who may need abortion care live in states with abortion bans and restrictions.[10]

The current crisis for abortion access warrants urgent action from VA. At the time of this writing, abortion bans in the U.S. have left over 70 million people across twelve states without access to abortion.[11] Twelve states are enforcing total bans, one state is enforcing a six-week ban, and seven other states have tried to prohibit abortion, but are blocked by court orders as of this writing.[12] Across the South and Midwest, these bans have decimated abortion access. Many veterans who need an abortion will be forced to travel to another state to reach a clinic. The cost of traveling to obtain care in another state is often prohibitive, especially for people who already face systemic barriers to accessing health care. This has been the unfortunate reality for many veterans even before the Supreme Court decision because of VA's pre-existing ban on abortion care, and it will only continue to get worse.

Additionally, evidence is clear that pregnant patients are being denied critical medical care. Providers are being forced to prioritize consideration of the potential legal ramifications for providing care—rather than the health of their patient—fearing punishment from state-

[5] VA Reproductive Health Services, 87 Fed. Reg. 55293 (proposed Sept. 9, 2022) (to be codified at 38 C.F.R. pt. 17).
[6] *Id*. at 55295.
[7] NAT'L CTR. FOR VETERANS ANALYSIS & STATS., U.S. DEP'T OF VETERANS AFFS., THE PAST, PRESENT AND FUTURE OF WOMEN VETERANS 10 (2017); available at https://www.va.gov/vetdata/docs/SpecialReports/Women_Veterans_2015_Final.pdf.
[8] Sarah A. Friedman et al., *New women veterans in the VHA: a longitudinal profile*, 21 WOMEN'S HEALTH ISSUES 103, 103–11 (2011); available at https://pubmed.ncbi.nlm.nih.gov/21724129/.
[9] GARY J. GATES & JODY L. HERMAN, TRANSGENDER MILITARY SERVICE IN THE UNITED STATES, THE WILLIAMS INST. 4 (2014); available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf.
[10] VA Reproductive Health Services, 87 Fed. Reg. 55295 (proposed Sept. 9, 2022) (to be codified at 38 C.F.R. pt. 17).
[11] Calculated using the 2020 U.S. Census Apportionment Population numbers. U.S. CENSUS BUREAU, 2020 CENSUS APPORTIONMENT RESULTS, https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html.
[12] CTR. FOR REPROD. RIGHTS, AFTER ROE FELL: ABORTION LAWS BY STATE, https://reproductiverights.org/after-roe-fell-abortion-laws-by-state/ (last visited Sept. 30, 2022).

sanctioned abortion bans.[13] As a result, patients have been denied care for complications in a range of situations, including when facing miscarriage or ectopic pregnancies, or treated only when they are at risk of death or serious injury.[14] Hospitals have implemented cumbersome procedures to ensure compliance with vaguely-worded laws, such as requiring multiple providers to sign-off for an emergency abortion and requiring detailed documentation.[15] The American Medical Association has expressed deep concern over the detrimental effects of state abortion bans and the ability of providers to make medically informed decisions for their patients.[16] These barriers are medically unnecessary and can substantially delay care of the pregnant person, putting their life and health at risk. The new VA policy reinforces the duty of medical professionals to uphold their ethical promises to veterans.

Abortion care is essential to the health of our veterans, and VA is plainly tasked with ensuring veterans receive the health care they need.[17] Childbirth and being forced to carry a pregnancy to term can have severe health consequences. Each year in the United States, about 700 people die during pregnancy or in the year after. Another 50,000 people each year have unexpected outcomes of labor and delivery with serious short- or long-term health consequences.[18] Women denied abortions report more life-threatening complications and chronic health conditions than those who receive abortion care. These complications include chronic migraines, joint pain, gestational hypertension, eclampsia, and postpartum hemorrhage.[19] Pregnancy is especially dangerous for Black and Native women in the United States: Black women are three times more likely to experience a pregnancy-related death than white women[20] and Native women more than

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[13] J. David Goodman & Azeen Ghorayshi, *Women Face Risks as Doctors Struggle With Medical Exceptions on Abortion*, NY TIMES (Jul. 20, 2022), https://www.nytimes.com/2022/07/20/us/abortion-save-mothers-life.html.

[14] Reese Oxner & María Méndez, *Texas hospitals are putting pregnant patients at risk by denying care out of fear of abortion laws, medical group says*, TEXAS TRIBUNE (July 15, 2022), https://www.texastribune.org/2022/07/15/texas-hospitals-abortion-laws/.

[15] J. David Goodman & Azeen Ghorayshi, *Women Face Risks as Doctors Struggle With Medical Exceptions on Abortion*, NY TIMES (Jul. 20, 2022), https://www.nytimes.com/2022/07/20/us/abortion-save-mothers-life.html.

[16] In a statement, Jack Resneck Jr., MD, President of the American Medical Association, described how "[a] growing number of current and pending laws insert government into the patient-physician relationship by dictating limits or bans on reproductive health services and while also aiming to criminally punish patients for their health decisions.'" STATEMENT BY JACK RESNECK JR., MD, PRESIDENT OF THE AMERICAN MEDICAL ASSOCIATION, https://www.ama-assn.org/delivering-care/population-care/abortion-under-attack-doctors-push-back-criminalizing-care.

[17] Pursuant to 38 U.S.C. Section 1710, the Secretary must provide "hospital care and medical services which the Secretary determines to be needed" to veterans under VA care. As such, the Secretary has authority to determine and amend the scope of care as "needed" including the provision of abortion and abortion counseling.

[18] CTR. FOR DISEASE CONTROL & PREVENTION, WORKING TOGETHER TO REDUCE BLACK MATERNAL MORTALITY (2022), https://www.cdc.gov/healthequity/features/maternal-mortality/index.html.

[19] AM. COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, PRACTICE BULLETIN NO. 183, POSTPARTUM HEMORRHAGE (Oct. 2017), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2017/10/postpartum-hemorrhage; AM. COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, OBSTETRIC CARE CONSENSUS, PLACENTA ACCRETA SPECTRUM (July 2021), https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2018/12/placenta-accreta-spectrum; AM. COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, PRACTICE BULLETIN NO. 198, PREVENTION AND MANAGEMENT OF OBSTETRIC LACERATIONS AT VAGINAL DELIVERY (Sept. 2018), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2018/09/prevention-and-management-of-obstetric-lacerations-at-vaginal-delivery; AM. COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, CLINICAL CONSENSUS NO. 1, PHARMACOLOGIC STEPWISE MULTIMODAL APPROACH FOR POSTPARTUM PAIN MANAGEMENT (Sept. 2021), https://www.acog.org/clinical/clinical-guidance/clinical-consensus/articles/2021/09/pharmacologic-stepwise-multimodal-approach-for-postpartum-pain-management.

[20] CTR. FOR DISEASE CONTROL & PREVENTION, WORKING TOGETHER TO REDUCE BLACK MATERNAL MORTALITY (2022), https://www.cdc.gov/healthequity/features/maternal-mortality/index.html.

twice as likely.[21] In addition, veterans of reproductive age, in particular, have high rates of chronic medical and mental health conditions that may increase the risks associated with pregnancy.[22] Such conditions include chronic post-traumatic stress disorder, severe hypertension, and chronic renal disease.[23] Being denied an abortion has negative impacts on people's mental health and is associated with elevated levels of anxiety.[24]

Given the devastation in abortion access, VA's action will provide necessary relief. We urge VA to do everything it can so that any eligible veteran can seamlessly access the abortion care they are entitled to without barriers. Every veteran who needs abortion care to protect their health and life must be able to rely on VA for such care.

In addition to having access to abortion itself, veterans must have the ability to make informed decisions about their own body, health, and well-being. VA's repeal of the ban on abortion counseling for both veterans and CHAMPVA beneficiaries is a critical and necessary change. The lifting of the counseling ban helps ensure that veterans and their loved ones are provided the opportunity to receive counseling on all of their options, have their questions answered, and receive information relevant to whatever options they might choose, as well as receiving any referral they request. As VA notes, abortion counseling "is a component of comprehensive, patient-centered, high quality reproductive health care both as a responsibility of the provider and a right of the pregnant veteran."[25] We firmly support VA's decision to ensure that veterans can decide whether to have an abortion, on their own terms, with the information they need.

As anti-abortion lawmakers decimate abortion access, veterans face significant barriers to care. As mentioned above, VA's IFR reflects a core responsibility of the agency: that its providers must "promote, preserve, or restore the health"[26] of the patient. The Department notes—and we firmly agree—that inaction would be "unconscionable" on behalf of the veterans that VA is sworn to serve.[27] VA has taken a critical step forward on abortion care for veterans and we urge the Department to ensure seamless access to abortion for all veterans.

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[21] Elizabeth Chuck & Haimy Assefa, *She hoped to shine a light on maternal mortality among Native Americans. Instead, she became a statistic of it*, NBC NEWS (Feb. 8, 2020), https://www.nbcnews.com/news/us-news/she-hoped-shine-light-maternal-mortality-among-native-americans-instead-n1131951.

[22] Joan L. Combellick, et al., *Severe Maternal Morbidity Among a Cohort of Post-9/11 Women Veterans*, J. WOMEN'S HEALTH, 29(4):577–84 (Apr. 2020).

[23] Jonathan Shaw, et al., *Post-traumatic Stress Disorder and Antepartum Complications: a Novel Risk Factor for Gestational Diabetes and Preeclampsia*, 31 PAEDIATR PERINAT EPIDEMIOL 185 (2017); David Jones & John P. Hayslett, *Outcome of pregnancy in women with moderate or severe renal insufficiency*, 25 N. ENGL J. MED. 226 (1996).

[24] M. Antonia Biggs et al., *Women's Mental Health and Well-being 5 Years After Receiving or Being Denied an Abortion: A Prospective, Longitudinal Cohort Study*, 74 JAMA PSYCHIATRY 169, 174 (2017); available at: https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2592320.

[25] VA Reproductive Health Services, 87 Fed. Reg. 55292 (proposed Sept. 9, 2022) (to be codified at 38 C.F.R. pt. 17).

[26] *Id*. at 55288.

[27] *Id*. at 55293.

Signed,

Abortion Access Front
Access Reproductive Care- Southeast
ACCESS Reproductive Justice
ACLU of Mississippi
ACLU of Texas
Advocates for Youth
AIDS United
Allentown Women's Center
All-Options
American Atheists
American Humanist Association
American Society for Reproductive Medicine
Atlanta Women's Center (GA)
Carafem
Catholics for Choice
Center for American Progress
Center for Biological Diversity
Center for Reproductive Rights
Cherry Hill Women's Center (NJ)
Cincinnati Physicians for Change
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)
Combat Sexual Assault
CommonDefense.us
Delaware County Women's Center (PA)
Desert Star Family Planning
FL National Organization for Women
Forward Allies
Global Justice Center
Grandmothers for Reproductive Rights (GRR!)
Greater Orlando National Organization for Women
Guttmacher Institute
Hartford GYN Women's Center (CT)
Ibis Reproductive Health
Indigenous Women Rising
Indivisible Georgia Coalition
Indivisible Miami
Ipas Partners for Reproductive Justice
Jane's Due Process

Latino Action Network Foundation
Minority Veterans of America
MomsRising
Nebraska Abortion Resources (NEAR)
NARAL Pro-Choice America
National Abortion Federation
National Birth Equity Collaborative
National Council of Jewish Women
National Crittenton
National Family Planning & Reproductive Health Association
National Health Law Program
National Hispanic Medical Association
National Latina Institute for Reproductive Justice
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
National Women's Political Caucus
New Jersey Coalition to End Domestic Violence
Ohio Physicians for Reproductive Rights
Operation Liberty
PA Religious Coalition for Reproductive Justice
Philadelphia Women's Center (PA)
Physicians for Reproductive Health
Planned Parenthood Federation of America (PPFA)
Planned Parenthood Keystone
Positive Women's Network-USA
Power to Decide
Pro-Choice Connecticut
Pro-Choice Missouri
Pro-Choice North Carolina
Pro-Choice Ohio
Pro-Choice Oregon
Pro-Choice Washington
Pro-Choice Wyoming
ProgressNow New Mexico
Reproaction
Reproductive Health Access Project
Service Employees International Union
Service Women's Action Network

SisterReach
Society for Maternal-Fetal Medicine
South Jersey NOW Alice Paul Chapter
SPARK Reproductive Justice NOW, Inc.
Steph Black Strategies
Tampa Bay Abortion Fund
The Leadership Conference on Civil and Human Rights
Union for Reform Judaism
Universal Health Care Foundation of Connecticut
URGE: Unite for Reproductive & Gender Equity
UltraViolet
Veteran Legislative Voice
Vet Voice Foundation
#VOTEPROCHOICE
VoteVets
Wall of Vets Georgia
West Alabama Women's Center
Women of Reform Judaism