This subsection is also amended to broaden the group of individuals who may act as Deputy Ethics Officials pursuant to delegations from the DAEO. Finally, 38 CFR 0.735–1(b)(2) is amended to include a citation to 5 CFR 2638.104(e) as the existing citation to 5 CFR 2638.204 is outdated.

Administrative Procedure Act

This final rule is a procedural rule that does not impose new rights, duties, or obligations on affected individuals but, rather, explains that the Secretary appoints Agency ethics officials and identifies the employees that may serve as Agency ethics officials. Therefore, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553. *See* 5 U.S.C. 553(b)(A) and (d)(3). This rule merely updates information regarding the delegation of Agency ethics officials, the employees who may serve in those roles, and the names of certain offices and employees in the Office of General Counsel.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will affect only: (1) Office of General Counsel (OGC) and VA employees who serve as Agency ethics officials, and (2) VA employees seeking ethics advice from these Agency ethics officials. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov*.

Assistance Listing

There are no Assistance Listing numbers and titles for the programs affected by this document.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

List of Subjects in 38 CFR Part 0

Core Values, Characteristics and Customer Experience Principles of the Department, General Provisions, Standards of Ethical Conduct, and Related Responsibilities of Employees.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 26, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 0 as follows:

PART 0—VALUES, STANDARDS OF ETHICAL CONDUCT, AND RELATED RESPONSIBILITIES

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Amend § 0.735–1 by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 0.735–1 Agency ethics officials.

(a) *Designated Agency Ethics Official (DAEO).* The Secretary will designate attorneys from the Office of General Counsel to serve as the Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO).

(b) * * *

(1) The District Chief Counsels and attorneys on the Ethics Specialty Team are Deputy Ethics Officials. They have been delegated the authority to act for the DAEO pursuant to 5 CFR 2638.104(e).

(2) Other officials may also act as Deputy Ethics officials pursuant to delegations of one or more of the DAEO's duties from the DAEO.

[FR Doc. 2024–04442 Filed 3–1–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AR57

Reproductive Health Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is finalizing, without changes, an interim final rule that amended VA's medical regulations to remove the exclusion on abortion counseling in the medical benefits package; establish exceptions to the exclusion on abortions for veterans who

receive care set forth in that package; and remove the exclusion on abortion counseling and expand the exceptions to the exclusion on abortions for Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries.

DATES: This rule is effective April 3, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Shereef Elnahal, Under Secretary for Health, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–0373.

SUPPLEMENTARY INFORMATION: In an interim final rule (IFR) published in the **Federal Register** (FR), VA amended its medical regulations to remove the exclusion on abortion counseling in the medical benefits package; establish exceptions to the exclusion on abortions for veterans who receive care set forth in that package; and remove the exclusion on abortion counseling and expand the exceptions to the exclusion on abortions for Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries. 87 FR 55287 (September 9, 2022).

VA provided a 30-day comment period on the IFR, which ended on October 11, 2022. VA received 57,901 comments, many of which were supportive of the IFR. The vast majority of the comments were a type of duplicated form response, where some requested clarifications or suggested changes to the IFR, and others merely expressed support or requested the IFR be rescinded without suggested clarifications or changes. VA summarizes and addresses all topics raised in relevant and significant comments below, but VA does not address any supportive comments below that did not also request clarifications or suggest substantive revisions.

I. Comments That Asserted VA Does Not Have Authority To Promulgate or Implement the IFR

Many commenters asserted that VA does not have the legal authority to promulgate or implement the IFR, most of which provided few details to explain their assertions. Other commenters cited to specific laws that they asserted conflicted with VA's provision of the health care services permitted by the IFR. VA addresses these comments below.

A. General Assertions of Lack of Authority

Many comments asserted that VA should rescind the IFR because VA has a longstanding policy regarding abortion and does not have the authority to impose the IFR in a manner that violates this policy. These comments generally assert that VA does not have authority to either promulgate or implement the IFR to remove the restriction on abortion counseling and create exceptions for abortions in certain circumstances in §§ 17.38 and 17.272 of title 38, Code of Federal Regulations (CFR).

VA does not make any changes to the rule and does not rescind the IFR based on these comments. As indicated in the IFR (see 87 FR 55288–55290), pursuant to VA's general treatment authority for veterans, VA ''shall furnish'' specified veterans with ''hospital care and medical services which the Secretary determines to be needed.'' Section 1710(a)(1)–(2) of title 38, United States Code (U.S.C.). For veterans not described in paragraphs (1) and (2), the Secretary ''may,'' subject to certain limitations, ''furnish hospital care'' and ''medical services . . . which the Secretary determines to be needed,'' 38 U.S.C. 1710(a)(3). Such ''medical services'' include ''medical examination, treatment,'' ''[s]urgical services,'' and ''[p]reventive health services.'' 38 U.S.C. 1701(6). VA implements its general treatment authority, and the Secretary determines what care is ''needed,'' 38 U.S.C. 1710(a)(1)–(3), by regulation through VA's medical benefits package. 38 CFR 17.38. 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.'' 38 CFR 17.38(b). VA has determined that the health care services permitted under the IFR are ''needed'' within the meaning of VA's general treatment authority, 38 U.S.C. 1710, if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. 38 CFR 17.38(b). Although VA previously did not have any exceptions to the exclusion on abortion in the medical benefits package, VA's authority as described above permits it to amend the medical benefits package through regulation. VA can therefore provide the health care services permitted under the IFR to veterans pursuant to 38 U.S.C. 1710 and 38 CFR 17.38. Similarly, VA has determined that providing access to such care is medically necessary and appropriate to protect the health of CHAMPVA beneficiaries. *See* 38 U.S.C. 1781; 38 CFR 17.270(b) (defining ''CHAMPVA-covered services and supplies'' as ''those medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded under [38 CFR 17.272(a)(1)] through (84)'').

Several commenters suggested that the IFR usurps Congressional authority. Other commenters stated that VA is unable to provide the health care services permitted under the IFR because Congress has not funded them specifically, or that VA should not use taxpayer money to provide the health care services permitted under the IFR because VA does not have the legal right to do so, and it is contrary to the wishes of taxpayers. VA does not make changes to the rule based on these comments. The IFR did not usurp Congressional authority. VA, similar to other agencies in the Executive Branch, has the authority to promulgate regulations to interpret and implement laws passed by Congress, and such regulations may have the force and effect of law. In this instance, the IFR was promulgated and implemented pursuant to statute. 38 U.S.C. 1710, 1781; *see also id.* 501. VA does not receive separate appropriations for individual medical services, but instead receives appropriations generally for authorized services. While some taxpayers may disagree with this use of Federal funds, VA is authorized to provide and pay for care that is needed for veterans and medically necessary and appropriate for CHAMPVA beneficiaries.

B. Specific Assertions of Lack of Authority or Conflicting Authority

1. Lack of Authority Under 38 U.S.C. 1710

Commenters asserted that VA's interpretation of 38 U.S.C. 1710 to provide access to health care services permitted under the IFR was unsupported because the text of 38 U.S.C. 1710 does not expressly include these services and because VA has not previously invoked or construed 38 U.S.C. 1710 as authority for provision of these services. VA does not make changes to the rule based on these comments. The commenters' assertions regarding the text of 38 U.S.C. 1710 overlook that the terms ''hospital care'' and ''medical services'' as used in 38 U.S.C. 1710 are further defined in 38 U.S.C. 1701(5) and (6). As relevant here, ''hospital care'' is defined to include ''medical services rendered in the

course of hospitalization of any veteran'' and ''medical services'' is defined to include ''medical examination, treatment, and rehabilitative services,'' ''[s]urgical services,'' and ''[p]reventive health services'' (38 U.S.C. 1701(5) and (6)). The definitions of ''hospital care'' and ''medical services'' in 38 U.S.C. 1701(5) and (6) do not list more specific types of care or services. And, in describing categories of hospital care and medical services, 38 U.S.C. 1701 and 1710 do not enumerate every conceivable or commonly prescribed care or service, whether such care or service involves specific care or services such as abortion, prescription drugs, or completion of specific medical forms such as life insurance applications. Rather, such care and services are generally described in the VA medical benefits package codified in 38 CFR 17.38(a).

The medical benefits package consists of a wide range of basic and preventive care, including inpatient and outpatient medical and surgical care, prescription drugs, emergency care, pregnancy and delivery services, and periodic medical exams. 38 CFR 17.38(a). Whether hospital care or medical services under the medical benefits package are considered needed are determinations that 38 U.S.C. 1701 and 1710 leave to the Secretary's discretion. See 38 U.S.C. 1710(a)(1) (''The Secretary . . . shall furnish hospital care and medical services which the Secretary determines to be needed[.]''). The Secretary can include or exclude care in the medical benefits package based on whether the Secretary determines that care is ''needed'' within the meaning of 38 U.S.C. 1710(a)(1)–(3). 38 CFR 17.38(c).

After the Supreme Court issued its decision in *Dobbs* v. *Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022), veterans living in States that ban or restrict abortions may no longer be able to receive needed medical services in their communities as a result of State restrictions. It is thus 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.

Additionally, the commenters' assertions that VA has never previously invoked its authority under 38 U.S.C. 1710 to authorize the provision of abortions are incorrect. Before the regulatory promulgation of the medical benefits package in 1999, which excluded the health care services permitted under the IFR, VA policy authorized the provision of certain abortions. VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a (July 26, 1977, partial rescission, expired on Jan. 7, 1999) (authorizing ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein). This was permitted under VA's authority to provide hospital care and medical services under 38 U.S.C. 1710 and 38 U.S.C. 1712 (former medical services authority), respectively. As explained in the IFR, VA did not explain the rationale behind the exclusion of abortions and abortion counseling from the medical benefits package when it was established in 1999, but at the time, *Roe* v. *Wade,* 410 U.S. 113 (1973) had been reaffirmed in relevant part by *Casey,* and VA was aware that veterans could access abortions in their communities. 87 FR 55288. Following the *Dobbs* decision, States began to ban or restrict abortion services and veterans living in those States were losing access to such medical care. *Id.* Thus, VA explained in the IFR that this policy change was essential for the lives and health of the veterans that VA serves. *Id.*

VA makes no changes to the rule based on the assertions raised in these comments, as discussed above.

In support of the claim that 38 U.S.C. 1710 does not authorize VA's provision of the health care services permitted under the IFR, some commenters cited to testimony presented during a June 2022 legislative hearing before the House of Representatives Veterans Affairs Committee Subcommittee on Health and minutes from an August 2019 meeting of the Advisory Committee on Women Veterans. VA makes no changes to the rule based on this comment.

Neither the testimony presented during the June 2022 legislative hearing before the House of Representatives Veterans Affairs Committee Subcommittee on Health nor the minutes from the August 2019 meeting of the Advisory Committee on Women Veterans suggests that VA lacks authority under 38 U.S.C. 1710 to provide the health care services permitted under the IFR. The passage that the commenter cites from the Advisory Committee on Women Veterans meeting minutes refers to language from page 20 of the August 2019 Advisory Committee on Women Veterans meeting minutes, which refers to an update on the Committee's recommendation that VA pursue a regulatory change to remove the exclusion of abortions in cases of threat to the life of the mother, sexual assault, and incest from the medical benefits package. The minutes state:

> VA has declined the ACWV's recommendation and will not change the medical benefits package regulations to remove the exclusion of abortions and abortion counseling services. VA believes that Congress, as the representatives of the will of the American people, must take the lead on this sensitive and divisive issue. VA will take no further action on the matter without a legal mandate, and will work with the House Veterans Affairs Committee to provide technical assistance on related legislation.

VA has never indicated that it lacks statutory authority to include abortion counseling and abortions in its medical benefits package in a circumstance in which the VA Secretary determined that such care was needed. And notably, VA made this statement in response to ACWV's recommendations before the Supreme Court issued its decision in *Dobbs*.

In addition, during the June 2022 legislative hearing, VA was discussing a single, standalone bill, H.R. 345, that would have overridden VA's regulatory exclusion of abortion counseling by requiring the Department to provide this service to a veteran as appropriate. VA stated, ''[T]he bill would not authorize VA to provide abortions; it would only allow VA to provide patient education.'' This statement does not mean that VA otherwise lacks authority to provide abortions, merely that VA was providing testimony on a legislative measure that, if enacted, would have only overridden VA's then-exclusion of abortion counseling codified in VA regulations. VA also notes that such legislative discussions in 2022 do not provide a basis to narrowly construe the scope of VA's pre-existing statutory authority. *See, e.g., Bostock* v. *Clayton Cnty., Georgia,* 140 S. Ct. 1731, 1747 (2020) (''[S]peculation about why a later Congress declined to adopt new legislation offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.'' (citing *Pension Benefit Guaranty Corporation* v. *LTV Corp.,* 496 U.S. 633, 650 (1990))).

One commenter, in further support of the assertion that VA did not have legal authority to issue the IFR, cited recent Supreme Court case law to argue that Federal agencies exceed their statutory authorities when they purport to find novel powers in long extant Federal statutes. *West Virginia* v. *Environmental Protection Agency,* 142 S. Ct. 2587 (2022); *National Federation of Independent Business* v. *Dept. of Labor,*

142 S. Ct. 661 (2022). But those cases are inapposite because, as discussed, clear statutory authority supports this rulemaking. Pursuant to VA's general treatment authority provided by Congress, VA ''shall furnish'' specified veterans with ''hospital care and medical services which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(1)–(2). For other veterans, the Secretary ''may,'' subject to certain limitations, ''furnish hospital care'' and ''medical services . . . which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(3). VA issued the IFR because the Secretary determined that 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.'' 87 FR 55288. The Secretary also determined that ''abortion counseling is needed so that veterans can make informed decisions about their health care.'' *Id.* at 55292. The Secretary thus ''determined that such medical care is 'needed' within the meaning of VA's general treatment authority,'' which ''means that such care may be provided if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.'' *Id.* at 55288. *See also* 38 U.S.C. 1781(a); 38 CFR 17.270(b); 87 FR 55290–92 (discussing the VA Secretary's authority and determinations regarding CHAMPVA beneficiaries).

The Secretary has previously exercised authority under 38 U.S.C. 1710 to amend 38 CFR 17.38 to add new services to the medical benefits package services. For example, VA added to the medical benefits package pregnancy and delivery services to the extent authorized by Federal law. See 64 FR 54217. VA also added newborn care as a service provided under the medical benefits package. See 76 FR 78569. Such care was authorized pursuant to 38 U.S.C. 1710 and 1786.

The decisions the commenter cites also are distinguishable because, as discussed above, this is not the first time that VA has relied on relevant statutory authority in this manner. As stated before, VA policy authorized the provision of certain abortions. VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a. (July 26, 1977, partial rescission, expired on Jan. 7, 1999)) (authorizing ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein).

The determination not to continue this medical service when the medical benefits package regulation was established in 1999 was based on a VA policy decision, not because VA's general treatment authority did not cover this medical service. Indeed, the fact that abortion was specifically excluded from the medical benefits package under 38 CFR 17.38(c) makes clear that VA has long held the position that abortion and abortion counseling is medical care that the Secretary is statutorily authorized, pursuant to his discretion, to include in the medical benefits package under § 17.38(a). Although VA maintained the exclusion on abortion care starting from the effective date of the medical benefits package in 1999 until 2022, as stated in the preamble to the IFR, Congress has authorized VA to amend its medical benefits package when the Secretary determines such change is warranted. Contrary to the commenter's assertion, VA's reading of 38 U.S.C. 1710 is not novel but supported by past readings of VA's medical care treatment authority; the commenter's cited case law is thus not applicable to this rulemaking. VA makes no changes to the rule based on this comment.

2. Conflict With Section 106 of the Veterans Health Care Act of 1992

Many commenters generally stated that the IFR violates section 106 of the Veterans Health Care Act of 1992 (VHCA), Public Law (Pub. L.) 102–585, 106 Stat. 4943, and that therefore VA should rescind the IFR. VA does not make any changes to the rule or rescind the IFR based on these comments. As explained in the preamble to the IFR, the VHCA barred the provision of abortion, infertility, and much of prenatal and delivery care but only under section 106 of the VHCA. It did not limit VA's authority to provide such services under any other statutory provision such as 38 U.S.C. 1710 or 38 U.S.C. 1712. Public Law 102–585, sec. 106(a). *See* 87 FR 55288–289. Moreover, in 1996, the Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA by enacting major changes to eligibility for VA health care, including by amending 38 U.S.C. 1710, and directing VA to establish a system of patient enrollment to manage the provision of care. *See* 87 FR 55289. The purpose behind eligibility reform was to replace the old system with a system where an enrolled veteran could receive whatever medical care and services are deemed needed. *See* House of Representatives Report No. 104–690, at 4 (1996). Consequently, for decades, VA has offered general pregnancy care and certain infertility services under 38 U.S.C. 1710, despite the VHCA's prohibition on providing such services under section 106. *Id.* VA has not relied on section 106 of the VHCA to provide such services or any other services.

Other commenters more specifically asserted that section 106 of the VHCA was still operable to prohibit abortion in VA health care programs, and provided more specific supporting rationale, as addressed below.

a. General Versus Specific Canon of Statutory Construction

Some commenters asserted that, under traditional rules of statutory construction, the more specific and targeted treatment of abortion in section 106 of the VHCA governs over the more general treatment of health care in the Veterans Health Care Eligibility Reform Act of 1996 and 38 U.S.C. 1710. As further explained below, this canon of construction is applicable when two statutory provisions are in conflict, but section 106 does not conflict with VA's authority to provide abortions under other statutory provisions such as 38 U.S.C. 1710 and 1712 (former medical services authority). Consequently, the focus of commenters on the general versus specific canon is mistaken, and VA does not make changes to the rule based on these comments.

By its plain terms, section 106 of the VHCA does not circumscribe the Secretary's authority to determine what hospital care and medical services are needed under 38 U.S.C. 1710. Section 106 affirmatively authorized VA to provide certain healthcare services to women, including ''[g]eneral reproductive health care,'' but provided that this authorization for general reproductive health care did ''not includ[e] *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.'' (emphasis added). The phrase ''under this section'' means that while section 106 bars the provision of any abortion or infertility or general pregnancy services under section 106 of the VHCA, it does not limit VA's authority to provide such services under any other statutory provision, such as VA's general treatment authority, 38 U.S.C. 1710. *See, e.g., Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees*

When Providing Certain Abortion Services, 46 Op. O.L.C., __, at *1, 7–8 (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf* (noting that the IFR represented a reasonable exercise of the VA Secretary's discretion to provide medical services).

Accordingly, the commenters' reliance on the ''general/specific canon'' is misplaced. Moreover, as the Supreme Court has acknowledged, the general/specific canon is not an absolute rule and can be overcome by textual indications that point to the general and specific provisions coexisting, rather than the specific governing the general. *See RadLAX Gateway Hotel* v. *Amalgamated Bank,* 566 U.S. 639, 646 (2012). In this case, section 106 specifies that abortions cannot be provided ''under this section'' of the VHCA, but it does not prohibit VA from providing abortions under other statutory provisions such as 38 U.S.C. 1710 and 1712 (former medical services authority).

VA's interpretation of section 106 in this respect has been long-standing. VA has never interpreted section 106 to prohibit the Department from providing health care under other statutory authorities. For example, as discussed above, VA continued to provide certain abortions as well as therapeutic surgical sterilizations, a type of infertility treatment, after the passage of section 106 and until promulgation of the final rule establishing VA's medical benefits package in October of 1999. *See* VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a. (July 26, 1977, partial rescission, expired on Jan. 7, 1999) (authorizing ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein).

A VA policy published in 1993 also demonstrates this long-standing interpretation of section 106. With VA's increased focus on health services available for women veterans, VA published VHA Directive 10–93–151, Health Care Services for Women Including General Reproductive Health Care for Women Veterans under the Women Veterans Health Program Act of 1992 (Pub. L. 102–585) (dated Dec. 6, 1993, rescinded Dec. 29, 1994). In para. 2.b. of this 1993 policy, VA squarely addressed section 106's relation to other treatment laws. Specifically, VA explained that the exclusions from ''general reproductive healthcare'' (set forth in section 106(a)(3)) ''do not constitute a ban on the Secretary's authority to provide infertility or abortion services as otherwise authorized under 38 United States Code (U.S.C.) Chapter 17.'' It also explained how the authorities granted in section 106 ''are not new,'' as VA medical centers ''have provided cancer screening to women for some time,'' and it further described how ''general reproductive health care'' is ''within the purview of gynecology.'' To this point, when later issuing the medical benefits package, VA included, within covered basic care, infertility services (such as reverse voluntary sterilization and infertility services other than in vitro fertilization) because they meet the criteria for inclusion, *i.e.,* ''care that is determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice.'' 64 FR 54207, 54210.

Similarly, VA has provided some infertility services (excluding in vitro fertilization (IVF) pursuant to 38 CFR 17.38(c)(2)) and pregnancy-related services under 38 U.S.C. 1710 for decades. See 87 FR 55289; see also 64 FR 54210; VHA Directive 10–93–151, December 6, 1993. Section 106 excludes ''infertility services'' and ''pregnancy care'' in addition to ''abortion'' from care provided under section 106. (We note that section 106 does not further define these terms.) Commenters' reliance on section 106 to object to VA's addition of abortion to care provided under 38 U.S.C. 1710 overlooks VA's longstanding provision of infertility services (excluding IVF) and pregnancy-related services under 38 U.S.C. 1710, which shows that section 106 does not limit VA's other healthcare authorities. And VA has long recognized that a veteran could be eligible for certain infertility services (excluding IVF) for a service-connected disability under (former) 38 U.S.C. 1712 (former authority under which outpatient medical services were provided prior to 1996), even though that veteran would have been ineligible for infertility services under section 106 of the VHCA. 87 FR 55289.

The IFR explained that Congress enacted the VHCA at a time when ''VA health care was subject to a patchwork of eligibility criteria, and care was largely linked only to service-connected conditions,'' and how ''[t]he VHCA, in relevant part, was designed to improve the health care services available to women veterans.'' 87 FR 55288–89. Section 106 of the VHCA, however, was effectively overtaken by a subsequent statutory and regulatory overhaul of VA's medical benefits system, which extended eligibility for hospital care and medical services. The Veterans' Health Care Eligibility Reform Act of 1996 established a system in which an eligible veteran could receive whatever medical care and services the Secretary determines are ''needed.'' 38 U.S.C. 1710; *see, e.g.,* H.R. Rep. No. 104–690, at 4 (1996); *see also id.* (''While the new standard is a simple one, more importantly, it employed 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.''); *id.* at 13 (''[The Act] would substitute a single, streamlined eligibility provision—based on clinical need for care—for the complex array of disparate rules currently governing veterans' eligibility for hospital and outpatient care.''). As explained in the IFR, ''[t]he Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA,'' and ''section 106's prohibition on providing certain services 'under this section' simply is no longer operative.'' 87 FR 55289–90.

b. VA's Interpretation of the Phrase ''But Not Including Under This Section'' in Section 106 of VHCA

Some commenters further asserted that VA's interpretation of the phrase ''but not including under this section'' in section 106 of the VHCA, as reiterated in the IFR (87 FR 55289), was invalid, arguing that such language does not limit abortion restrictions to only that healthcare for women veterans that was provided under section 106. In support of this assertion, the commenters proffered that certain prefatory language in section 106(a) qualifies the ''under this section'' language in section 106(a)(3) such that the exclusion on abortions there must be read to apply to all hospital care and medical services under chapter 17 of title 38.

VA does not make changes to the rule based on these comments, which misunderstand VA's statutory authority. The VHCA, in relevant part, was designed to improve the health care services available to women veterans. 102 Cong. Rec. 32,367 (1992). Section 106(a) of the VHCA stated that ''[i]n furnishing hospital care and medical services under chapter 17 of title 38, United States Code,''—prefatory language applicable to all of section 106—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.'' Public Law 102–585, sec. 106(a).

As explained above, the VHCA has been effectively overtaken by laws that Congress has subsequently enacted. But even taking section 106 on its own terms, the commenters' interpretation of section 106(a)'s prefatory language would render the important ''under this section'' qualifier in section 106(a)(3) a nullity, contrary to longstanding precedent. *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.,* 583 U.S. 109, 128–29 (2018) (''As this Court has noted time and time again, the Court is 'obliged to give effect, if possible, to every word Congress used.' '' (quoting *Reiter* v. *Sonotone Corp.,* 442 U.S. 330, 339 (1979)). If section 106(a)'s prefatory language precluded VA from providing abortion care under its other statutory authorities, then section 106(a)(3)'s ''under this section'' qualifier would be ''a dead letter.'' *United States* v. *Atl. Rsch. Corp.,* 551 U.S. 128, 137 (2007). By contrast, VA's longstanding interpretation of section 106 faithfully reads the statute '' 'as a whole.' '' *Id.* at 135 (quoting *King* v. *St. Vincent's Hospital,* 502 U.S. 215, 221 (1991)). In addition, VA finds support for this in the legislative history accompanying the enactment of section 106. See Joint Explanatory Statement on H.R. 5193, 1992 U.S.C.C.A.N. 4186, 4189–90 (noting ''[t]he inclusion of the phrase 'under this section' underscores the intent of the Committees not to limit such authority as the Secretary may have to provide any infertility services under Chapter 17.''). As explained, moreover, the commenters' interpretation is inconsistent with the plain meaning (and VA's decades-long interpretation) of the phrase ''under this section.''

c. VA's Furnishing of In-Vitro Fertilization Services

Commenters asserted that section 106 of the VHCA remains in effect to prohibit VA from furnishing the health care services permitted under the IFR, citing as evidence the proposition that VA required a special amendment, the ''Murray Amendment,'' to carve out an exception from section 106 of the VHCA so that VA could provide IVF services. The Murray Amendment is a reference to section 260 of Public Law 114–223, Division A, title II, enacted on September 29, 2016, and renewed in subsequent fiscal years. Section 260(a)(1) of Public Law 114–223 provides, notwithstanding any other provision of law, that the amounts appropriated or otherwise made available to VA for the Medical Services account may be used to provide fertility counseling and treatment using assisted reproductive technology to a covered veteran or the spouse of a covered veteran, subject to certain statutory and regulatory limitations.

VA does not make changes to the rule based on these comments. VA disagrees with the commenters' assertion that independent authority to provide IVF care was needed to supersede section 106. The Murray Amendment established new authority to provide fertility counseling and treatment using assisted reproductive technology not only to a covered veteran but also to the spouse of a covered veteran. It was needed because 38 U.S.C. 1710 does not extend, and never has extended, to a veteran's spouse. See 38 U.S.C. 1710 (referring only to veterans) and 38 U.S.C. 1781 through 1789 (VA's statutory authorities to provide health care to persons other than veterans, which do not extend IVF care to non-veterans). Independent authority was needed to authorize VA to also include the spouses of covered veterans in the VA-furnished IVF episode of care. But the Murray Amendment was not necessary to enable VA to provide infertility services to the veterans themselves under 38 U.S.C. 1710. And as explained above, section 106 has no impact on VA's authority to provide medical services pursuant to section 1710 or any statutory authority other than section 106 itself. In short, the Murray Amendment did not and does not implicate section 106 of the VHCA.

d. Effect of Deborah Sampson Act of 2020

Some commenters asserted that section 106 of the VHCA must prohibit VA from furnishing the health care services permitted under the IFR because the Deborah Sampson Act of 2020 (Pub. L. 116–315, title V, subtitle A) defined ''health care'' as ''the health care and services included in the medical benefits package provided by the Department before January 5, 2021,'' sec. 5101 of Public Law 116–315, and on January 4, 2021, the health care and services included in the medical benefits package provided by the Department did not include abortion or abortion counseling. The commenters argued that Congress thus approved of the exclusion of abortion and abortion counseling.

VA does not make changes to the rule based on these comments. The IFR explained that the Deborah Sampson Act of 2020, Public Law 116–315, title V, section 5001 (2021) ''created a central office to, inter alia, 'monitor[ ] and encourag[e] the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of health care services provided to women veterans by the Department.' '' 87 FR 55289 (quoting 38 U.S.C. 7310(b)(1)) (alterations in original). Congress defined ''health care'' for these purposes as ''the health care and services included in the medical benefits package provided by the Department as in effect on the day before the date of the enactment of this Act [Jan. 5, 2021].'' *Id.* (quoting 38 U.S.C. 7310 note). At the time, the medical benefits package included (and still includes) care that would have been excluded under the commenters' interpretation of section 106 of the VHCA, such as prenatal and delivery services.

The IFR stated that ''[g]iven that VA's medical benefits package as of that date included services that were excluded from the coverage of Section 106 of the VHCA, Congress ratified VA's interpretation that it may provide for these services pursuant to its authority under 38 U.S.C. 1710, notwithstanding section 106. Indeed, the fact that the Deborah Sampson Act of 2020 did not reference section 106 of the VHCA and only referenced VA's medical benefits package shows that Congress did not interpret section 106 of the VHCA as a limitation on VA's authority to provide care to 'women veterans.' '' 87 FR 55289.

Contrary to the commenter's assertion, the fact that VA had not, in its discretion, exercised its authority at the time of the Act to provide abortions or make exceptions to the regulatory exclusion on abortion does not mean that VA lacks statutory authority under 38 U.S.C. 1710 to determine that abortions in some cases constitute needed care and to accordingly amend its exclusion by regulation. As VA explained in the IFR, the Deborah Sampson Act of 2020 recognized 38 U.S.C. 1710 as a separate treatment authority unaffected and not limited by section 106. In fact, the terms of 38 U.S.C. 7310A(g)(2) as added by the Deborah Sampson Act of 2020 define, for purposes of VA's annual reporting requirement, gender-specific services to include: ''mammography, obstetric care, gynecological care, and such other services as the Secretary determines appropriate,'' some of which VA would not have authority to provide ''under the commenters' interpretation of section 106. *See also supra* I.B.2. Thus, section 106 and its limits on certain care under section 106 of Public Law 102–

585 were clearly not seen by Congress in promulgating the Deborah Sampson Act of 2020 as having any effect on VA's exercise of authority under 38 U.S.C. 1710.

Nothing in the Deborah Sampson Act of 2020 prohibits VA from removing exclusions from the medical benefits package under 38 U.S.C. 1710. VA recognizes that 38 U.S.C. 7310, Note, (Pub. L. 116–315, title V, section 5101(b)(2)) provides that: ''The references to health care and the references to services in sections 7310 and 7310A of title 38, United States Code, as added by paragraph (1), are references to the health care and services included in the medical benefits package provided by the Department as in effect on the day before the date of the enactment of this Act [Jan. 5, 2021].'' Congress did not, through that language, freeze in place the types of medical services that VA is authorized to provide under its general treatment authorities. Section 7310 of title 38, U.S.C. relates to the establishment of the Office of Women's Health within VHA and its mission, and 38 U.S.C. 7310A relates to annual reports on Women's Health to be submitted to Congress. Nothing in either statute prohibits VA from expanding the medical benefits package or services or from providing additional information beyond what is required under 38 U.S.C. 7310 and 7310A. And these sections impose no limits on VA's general treatment authority in 38 U.S.C. 1710.

To the contrary, some of the functions of the Office of Women's Health set forth in 38 U.S.C. 7310(b) are to promote the expansion and improvement of clinical activities of VHA with respect to the health care of women veterans and to carry out such other duties as the Under Secretary for Health may require. On its face, the function of the Office to ''expand and improve'' clinical activities of VHA contemplates VA's authority to modify the medical benefits package to include additional services with respect to the health care of women veterans.

e. Repeal of Section 106 of the VHCA

Some commenters asserted that section 106 has not been expressly repealed and further that repeals by implication are not favored, citing *Branch* v. *Smith,* 538 U.S. 254, 273 (2003), and *Posadas* v. *National City Bank,* 296 U.S. 497 (1936). VA does not make any changes to the rule based on these comments.

At the outset, VA notes that this issue is immaterial because, even if section 106 remained in force, it would not constrain VA's authority to provide services (whether abortions, prenatal care, or other services) limited under section 106 but authorized under other statutory provisions such as 38 U.S.C. 1710 and former 38 U.S.C. 1712. Rather, the limitation in section 106 regarding care ''under this section'' applies only to section 106.

Regardless, VA disagrees with commenters that section 106 remains in force. As discussed above and in the preamble to the IFR, the Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA by establishing a new standard to focus on medical necessity as ''the sole criterion of eligibility for VA hospital care and medical services.'' [1] The ''need for care'' test was meant to ensure ''that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished.'' [2] To the extent the commenters would construe section 106 of the VHCA to restrict VA's authority to provide a specific type of health care or service under separate statutory authorities, regardless of a finding of medical need, that restriction would irreconcilably conflict with VA's furnishing of any needed health care or services under 38 U.S.C. 1710. Indeed, for decades, VA has offered general pregnancy care and certain infertility services under 38 U.S.C. 1710 and has not relied on section 106 of the VHCA to provide such services or any other services.

3. Conflict With State Laws

Many commenters generally opined that the IFR violates State laws. VA does not make changes to the rule based on these comments.

The Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2., generally prohibits States from interfering with or controlling the operations of the Federal government, and therefore immunizes the Federal government from State laws that directly regulate it. ''[W]hen a federal agency 'perform[s] a federal function pursuant to a law validly enacted by Congress[,] . . . under the Supremacy Clause, the states may not prohibit or, by regulation, significantly burden the manner of its execution without the consent of the United States.' '' *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services,* 46 Op. O.L.C., __, at *4 (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf*. Applying this principle to VA's IFR, the Department of Justice's Office of Legal Counsel concluded that ''states may not restrict VA and its employees acting within the scope of their federal authority from providing abortion services as authorized by federal law, including VA's rule.'' *Id.* at *10.

Moreover, VA promulgated a regulation at 38 CFR 17.419 that explicitly preempts any State laws, rules, regulations, or requirements that conflict with a VA health care professional's practice within the scope of their VA employment. As explained in the IFR, consistent with § 17.419, VA has determined that State and local laws, rules, regulations, or requirements, to the extent those laws unduly interfere with Federal operations and the performance of Federal duties, are preempted. That includes laws that States and localities might attempt to enforce in civil, criminal, or administrative matters against VA employees. State and local governments lack legal authority to enforce such laws, rules, regulations, or requirements in relation to health care and medical services provided by VA employees acting within the scope of their VA authority and employment.

One commenter asserted that VA has no basis in Federal law to claim ''blanket preemption'' in States that prohibit or restrict abortion, and other commenters relatedly stated that VA must be specific with regards to its claim of Federal supremacy. Such comments noted specific kinds of State laws that they asserted VA must either adhere to or demonstrate are explicitly preempted. Other commenters stated that Federal agencies cannot preempt State law unless an explicit conflict exists.

VA does not make changes to the rule based on these comments. It is not clear what the commenter meant by ''blanket preemption.'' VA has been specific as to the scope of preemption; as VA previously confirmed in 38 CFR 17.419, and reiterated in the IFR, VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State law or license, registration, certification, or other requirements that unduly interfere with their practice. VA's regulation provides that, in order to ''provide the same complete health care and hospital service to beneficiaries in all States as required by 38 U.S.C. 7301, conflicting State laws, rules, regulations, or requirements pursuant to such laws are without any force or effect, and State governments have no legal authority to

[1] H.R. REP. NO. 104–690, at 11.

[2] Id. at 4.

enforce them in relation to actions by health care professionals within the scope of their VA employment.'' 38 CFR 17.419. Consistent with the Supremacy Clause and § 17.419, the IFR further explained that a State or local civil or criminal law that restricts, limits, or otherwise impedes a VA professional's provision of needed medical care within the scope of their VA employment, including the health care services permitted under the IFR, would be preempted. VA employees, including health care professionals who provide care and VA employees who facilitate that health care, such as VA employees in administrative positions who schedule abortion procedures and VA employees who provide transportation to the veteran or CHAMPVA beneficiary to the VA facility for reproductive health care, may not be held liable under State or local law or regulation for reasonably performing their Federal duties.

In response to comments that raised specific State requirements related to abortion, and further suggested that VA must show whether such requirements are specifically preempted, we do not make changes. As a general matter, VA determines whether a State law ''unduly interferes on a case-by-case basis.'' See Authority of VA Professionals to Practice Health Care, 85 FR 71838, 71842 (Nov. 12, 2020); Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services, 46 Op. O.L.C., __, at *10 (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf.* Accordingly, consistent with VA's existing regulations and the authorities discussed above, any State and local laws and regulations that VA determines would prevent or unduly interfere with VA health care professionals providing needed care as permitted by this rule, would be preempted.

Several commenters referenced a court case related to HHS's interpretation of the Emergency Medical Treatment and Labor Act (EMTALA), which VA believes meant to reference an injunction issued by the U.S. District Court for the Northern District of Texas, *Texas* v. *Becerra,* 623 F. Supp. 3d 696 (N.D. Tex. 2022), *aff'd,* 89 F.4th 529 (5th Cir. 2024), where the district court was interpreting the specific language of this different statute that applies to certain hospitals that receive Medicare funding. The court was not interpreting VA's statutory authority, or related statutory language applicable here, and its decision and reasoning are not applicable to VA's IFR.

One commenter asserted, without any supporting authority, that VA is required to show a compelling interest to preempt State laws. As VA explained in the IFR, pursuant to its authorities in 38 U.S.C. 1710 and 1781, VA implemented the IFR to avert imminent and future harm to veterans and CHAMPVA beneficiaries whose interests Congress entrusted VA to serve. As explained above, 38 CFR 17.419(c) preempts ''conflicting State laws, rules, regulations, or requirements pursuant to such laws'' to the extent the State law unduly interferes with VA's ability ''provide the same complete health care and hospital services to beneficiaries in all States'' including, but not limited to, abortion. VA takes no action based on this comment.

4. Conflict With the Holding in Dobbs and the Tenth Amendment

Some commenters stated that the *Dobbs* decision delegated abortion matters to States rather than the Federal government, and further that the Tenth Amendment of the United States Constitution limits VA's authority to preempt State law. VA takes no action based on these comments. The *Dobbs* decision overturned *Roe* v. *Wade,* 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania* v. *Casey,* 505 U.S. 833 (1992), and in no way affects VA's Federal statutory authority to develop regulations and policy related to the agency's own provision of needed medical care, including the health care services permitted under the IFR. VA furnishes hospital care and medical services determined to be needed pursuant to VA's general treatment authority for veterans (38 U.S.C. 1710), and pursuant to regulation through VA's medical benefits package (38 CFR 17.38). VA has determined that the health care services permitted by the IFR are needed. Similarly, VA has determined that providing access to such care is medically necessary and appropriate to protect the health of CHAMPVA beneficiaries. *See* 38 U.S.C. 1781; 38 CFR 17.270(b) (defining ''CHAMPVA-covered services and supplies'' as ''those medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded under [38 CFR 17.272(a)(1)] through (84)''). As explained above, the Supremacy Clause of the United States Constitution prohibits states from restricting Federal agencies and their employees acting within the scope of their Federal authority from providing abortion services. *See generally Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services,* 46 Op. O.L.C., __, (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf.*

The Tenth Amendment of the United States Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. VA is a Federal health care system, the operations of which are governed by Federal law, consistent with title 38, United States Code. VA's authority to furnish health care to veterans and CHAMPVA beneficiaries has been granted by Federal statute as described above. VA's issuing of the IFR does not encroach on any rights reserved to the States or to the people and is not a violation of the Tenth Amendment to the United States Constitution. The statement of preemption of conflicting State law under the IFR is consistent with 38 CFR 17.419(c) and lawful pursuant to the Supremacy Clause, U.S. Const. art. VI, cl. 2.

5. Conflict With Department of Defense Authorities

Commenters alleged that this rule violates 10 U.S.C. 1093 and that VA cannot or should not provide broader access to abortion counseling and abortions than DoD. Multiple of these commenters further asserted that it is hard to imagine that Congress intended for former members of the armed services and their dependents to have access to abortion under VA programs when current service members do not have such access under DoD programs, and one commenter incorrectly stated that VA Medical Centers are facilities within the control of DoD. VA does not make changes to the rule based on these comments.

Section 1093 of title 10 of the U.S. Code establishes that DoD may not use funds or facilities ''to perform abortions except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.'' Section 1093 applies only to the use of DoD funds and facilities, not to VA funds and facilities. VA notes, however, that the terms of 10 U.S.C. 1093 conflict with the assertions made by some commenters that active-duty members of the armed services can never receive abortions under DoD programs.

To the extent that some of these commenters raised the issue of dependents of service members having access to services in VA programs that they would not have under DoD programs for dependents, the statute governing VA's coverage for CHAMPVA beneficiaries specifically recognizes the possibility of differences in what care is covered under this VA program as opposed to the care covered under the similar DoD program, *i.e.,* TRICARE (Select). Congress did not require that VA furnish identical medical benefits to those not eligible for TRICARE (Select). Rather, the law directs VA to provide CHAMPVA beneficiaries with medical care ''in the same *or similar* manner and subject to the same *or similar* limitations as medical care'' furnished to DoD TRICARE Select beneficiaries. 38 U.S.C. 1781(b) (emphases added). Indeed, prior to the IFR, CHAMPVA was not identical to TRICARE (Select). *See, e.g.,* 87 FR 55290. For example, the former did not include access to abortions in cases of rape or incest, while the latter did. The IFR brought CHAMPVA more in line with TRICARE (Select) in this regard. The commenter does not address the statute's repeated use of the phrase ''or similar.'' That text recognizes differences may exist between the two programs' respective beneficiary populations and their needs. As VA explained in the IFR, VA has previously regulated to provide CHAMPVA benefits beyond those benefits offered by TRICARE (Select) if providing such health care would better promote the long-term health of CHAMPVA beneficiaries. 87 FR 55290. Further, CHAMPVA beneficiaries (unlike TRICARE (Select) beneficiaries) include family caregivers of veterans, not just eligible dependents. 38 U.S.C. 1720G(a)(3)(A)(ii)(IV). Consistent with the statute's plain meaning, VA provides CHAMPVA beneficiaries certain care that is ''similar,'' but not necessarily identical, to care provided to beneficiaries of TRICARE (Select). *See, e.g.,* 73 FR 65552 (November 4, 2008) (adding coverage for medically necessary prostheses because of significant conditions and removing exclusion of enuretic devices despite each not being covered by TRICARE (Select)); 87 FR 41594 (July 13, 2022) (providing coverage for annual physical exams, even though excluded in TRICARE (Select)).

6. Conflict With the Antideficiency Act

Commenters stated that VA is barred from providing or paying for abortion or abortion counseling pursuant to the Antideficiency Act. VA does not make changes to the rule based on these comments. The Antideficiency Act, 31 U.S.C. 1341(a), generally prohibits Federal agencies from making expenditures in excess of available appropriations or in advance of appropriations. Per 31 U.S.C. 1349(a) and 1350, there are penalties associated with violations of the Antideficiency Act.

In this case, the Antideficiency Act is not implicated because Congress appropriated funds to VA to perform authorized services. Per title II of division J of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), title II of division J of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) and title II of division J of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), funds appropriated for fiscal years 2022, 2023, and 2024 to the Medical Services appropriations account have been made available ''[f]or necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the Department.'' The Medical Community Care appropriations account for fiscal years 2022, 2023, and 2024, has been made available ''[f]or necessary expenses for furnishing health care to individuals pursuant to chapter 17 of title 38, United States Code, at non-Department facilities.'' Title II, Division J, Consolidated Appropriations Act, 2021 (Pub. L. 116–260); Title II, Division J, Consolidated Appropriations Act, 2022 (Pub. L. 117–103); Title II, Division J, Consolidated Appropriations Act, 2023 (Pub. L. 117–328). More specifically, the Medical Services appropriation is for necessary expenses of inpatient and outpatient VA beneficiary care provided by VA at VA facilities and Government facilities for which VA contracts. The Medical Community Care appropriation is for necessary expenses of providing healthcare to VA beneficiaries in the community—facilities other than VA facilities and Government facilities for which VA contracts.

As explained, an abortion is authorized care under 38 U.S.C. 1710, the IFR, and the medical benefits package when a health care professional determines it to be needed and in accord with generally accepted standards of medical practice and: (1) the life or the 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. Expenditures associated with such authorized care may be made from VA's Medical Services and—when appropriate—Medical Community Care accounts.

The IFR also authorizes the provision of medically necessary abortions and abortion counseling under VA's CHAMPVA program, 38 U.S.C. 1781, under the circumstances described in the rule. Medical Services and Medical Community Care account funds are used for the CHAMPVA program and may therefore be used for authorized counseling and care. Such expenditures are proper and do not violate VA's appropriations act or the Antideficiency Act.

7. Conflict With the Hyde Amendment

Some commenters stated that VA is barred from providing or paying for the health care services permitted under the IFR pursuant to what is referred to as the Hyde Amendment. VA does not make changes to the rule based on these comments.

VA is not subject to the Hyde Amendment, which addresses Federal funds available to the Departments of Labor, Health and Human Services, and Education in legislation on annual appropriations. Division H of Public Law 117–328; *see also* 87 FR 55290. Accordingly, VA is not barred by the Hyde Amendment from spending its funds to provide authorized health care services permitted by the IFR.

8. Conflict With the Assimilative Crimes Act and VA-Related Regulation

Some commenters asserted that the IFR violates the Assimilative Crimes Act, 18 U.S.C. 13, which allows the Federal government to prosecute a State crime as a Federal offense in limited circumstances when such offense has been committed on an area within the jurisdiction of the United States known as a Federal enclave and is not otherwise a Federal offense. These commenters appeared to assert that if a State makes it a crime to perform an abortion, any abortion performed in that State, in the absence of a Federal law prohibiting such performing of an abortion, would be unlawful under 18 U.S.C. 13 if performed on Federal property. Relatedly, one commenter alleged that the rule conflicts with 38 CFR 1.218(c)(3), which states that nothing contained in the rules and regulations set forth under 38 CFR 1.218(a) shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13, or any State or local laws and regulations applicable to the area in which the property is situated.

VA does not make changes to the rule based on these comments. As some of these commenters acknowledged, the Department of Justice's Office of Legal Counsel (OLC) has examined whether the Assimilative Crimes Act would apply to Federal employees performing their duties in a manner authorized by Federal law, while on a Federal enclave, which may include VA hospitals. OLC concluded that Federal employees engaging in such conduct would not violate that statute and could not be prosecuted by the Federal government under that law. *Application of the Assimilative Crimes Act to Conduct of Federal Employees Authorized by Federal Law,* 46 Op. O.L.C. __ (Aug. 12, 2022), *https://www.justice.gov/olc/file/1527726/download*. The reasoning in that opinion applies to VA employees on Federal enclaves who are providing care in accordance with their Federal duties authorized under the IFR. The commenter did not provide any response to this analysis, other than to reiterate the commenter's view that Federal law ''places significant limitations on abortions in VA programs.'' As explained, however, VA has statutory authority to provide the health care services permitted under the IFR.

Furthermore, the IFR is not in conflict with 38 CFR 1.218(c)(3), which provides, ''Nothing contained in the rules and regulations set forth in paragraph (a) of this section shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13 or any State or local laws and regulations applicable to the area in which the property is situated.'' Paragraph (a) of such section describes rules and regulations that apply at a property under the charge and control of VA, and to persons entering such property, including, for example, conduct related to gambling, use of service animals, creation of disturbances, and vehicular and pedestrian traffic. 38 CFR 1.218(a). This provision is unrelated to matters of medical practice or the provision of medical benefits. It does not subject VA and its employees to State or other local restrictions on any form of medical care that VA staff are authorized to furnish, including VA's provision of health care services permitted under the IFR. Additionally, because the Assimilative Crimes Act has no application to VA employees practicing within the scope of their VA practice, as explained above, the portion of 38 CFR 1.218(c)(3) referring to the Act has no application to care provided under the IFR.

9. Conflict With Interstate Prohibitions Under 18 U.S.C. 1461 and 1462

Commenters alleged that the IFR violates 18 U.S.C. 1461 and 1462. Section 1461, in pertinent part, prohibits the mailing of ''[e]very article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use'' and ''[e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose.'' Section 1462, in pertinent part, prohibits the knowing use of ''any express company or other common carrier or interactive computer service'' for transportation across State lines of ''any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use[.]'' These commenters also alleged that violation of these laws then support offenses under 18 U.S.C. 1961(1)(B) and 18 U.S.C. 552 (prohibiting Federal employees from aiding and abetting persons engaged in violation of laws prohibiting dealing in, among other things, the means for procuring abortion).

VA does not make changes to the rule based on these comments because the IFR is consistent with 18 U.S.C. 1461. In December 2022, OLC concluded that 18 U.S.C. 1461 does not prohibit the mailing of certain drugs that can be used to perform abortions where the sender lacks the intent that the recipient of the drugs will use them unlawfully. Because there are manifold ways in which recipients in every State may lawfully use such drugs, the mere mailing of such drugs to a particular jurisdiction is an insufficient basis for concluding that the sender intends them to be used unlawfully. *See Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions,* 46 Op. O.L.C., __, at 1 (Dec. 23, 2022), *https://www.justice.gov/d9/opinions/attachments/2023/01/03/2022-12-23_-_comstock_act_1.pdf*. In support of this conclusion, the OLC opinion explains that there are uses of these medications that State law does not prohibit, including mailing of abortion medications intended, for example, to be used pursuant to Federal authorities. Federal agencies, including VA, provide lawful abortions pursuant to their Federal authorities; therefore the mailing of abortion medications intended to be used lawfully pursuant to those authorities would not violate 18 U.S.C. 1461. This opinion further explains that the same analysis is applicable to the cognate provision 18 U.S.C. 1462. *Id.* at 2 n.3. Because any mailing or other transporting across State lines of certain medications or items under the IFR would not violate 18 U.S.C. 1461 or 1462, there is no subsequent potential offense under 18 U.S.C. 1961(1)(B) and 18 U.S.C. 552.

10. Conflict With the Major Questions Doctrine

Commenters alleged that this rule violates the major questions doctrine, referencing *West Virginia* v. *Environmental Protection Agency,* 142 S. Ct. 2587 (2022). Under such doctrine, an agency must identify clear congressional authorization for its exercise of authority in '' 'extraordinary cases' in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority.'' *Id.* at 2608 [alterations in original]. VA does not make changes to the rule based on these comments. As explained above, VA has not found ''a newfound power'' in an ''ancillary provision'' of the Veterans' Health Care Eligibility Reform Act of 1996, as the Supreme Court found the Environmental Protection Agency had done with the Clean Power Plan. *West Virginia,* 142 S. Ct. at 2602, 2610. Congress expressly delegated to the Secretary of Veterans Affairs the authority to ''furnish hospital care [and] medical services . . . which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(1)–(3). Identifying the medical services ''determine[d] to be needed'' for veterans is clearly within VA's authority. As discussed above, prior to promulgation of the final rule establishing VA's medical benefits package in October of 1999, VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a. (July 26, 1977, partial rescission, expired on Jan. 7, 1999), recognized the need for and authorized the provision of a ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein. The IFR is thus a traditional exercise of VA's established authority to determine what medical services are ''needed'' and, therefore, to decide what specific medical services VA will cover or provide under the medical benefits package.

Additionally, Congress has directed VA to 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 under TRICARE (Select). As

explained in the IFR, VA has previously deviated from TRICARE (Select) in amending its CHAMPVA regulations to provide services that best promote the long-term health of CHAMPVA beneficiaries while remaining sufficiently ''similar'' to TRICARE (Select). 87 FR 55290–55291. Thus, this IFR is also a traditional exercise of VA's authority to administer CHAMPVA and decide what medical services are medically necessary and appropriate for CHAMPVA coverage while remaining sufficiently ''similar'' to TRICARE (Select).

11. The Born Alive Infants Protection Act

One commenter inquired what VA will do to comply with its obligations under the Born Alive Infants Protection Act of 2002, and further stated that VA fails to explain what policies and procedures are in place to ensure that any children born alive after attempted abortions are given appropriate medical care in the same manner as other children born alive. The Born-Alive Infants Protection Act of 2002, Public Law 107–207, was enacted August 5, 2002, and is codified at 1 U.S.C. 8. The Act clarifies that, for purposes of any Act of Congress or any ruling, regulation, or interpretation of the various Federal agencies, the meaning of the words ''person,'' ''human being,'' ''child,'' or ''individual'' ''shall include any infant member of the species homo sapiens who is born alive at any stage of development.'' VA is subject to, and will continue to comply with, the provisions found in 1 U.S.C. 8. Additionally, VA is authorized to provide certain health care services to a newborn child of a woman veteran receiving care from VA. 38 U.S.C. 1784A and 1786. VA does not make changes to the rule based on this comment.

II. Comments That Raised Concerns With VA's Good Cause Analysis To Issue an IFR

VA issued an IFR, in which the changes to 38 CFR 17.38 and 17.272, were effective immediately upon publication, and the public comment period began on the date of publication. 87 FR 55287. VA found that good cause justified forgoing advance notice for public comment and a delayed effective date. 5 U.S.C. 553(b)(B), (d)(3). VA cited its urgent need to provide access to abortion counseling and to abortions in cases of rape or incest or where the life or health of the pregnant individual is in danger following *Dobbs.* After *Dobbs,* some States had begun to enforce existing abortion bans and restrictions on care and were proposing and enacting new bans and restrictions containing limited exceptions for medical necessity; some also included exceptions for pregnancy that is the result of rape or incest. These measures were creating urgent risks to the lives and health of pregnant veterans and CHAMPVA beneficiaries in those States. 87 FR 55294. VA received comments that opposed VA's issuance of an IFR based on general assertions that VA's good cause justification was insufficient, although only some of these comments directly addressed VA's good cause. VA notes at the outset that our request for comment in the IFR and issuance of this final rule have overtaken any assertions concerning a lack of good cause. In any event, VA addresses below the comments it received concerning VA's good cause for making the IFR effective immediately.

A. General Assertions That Good Cause Was Not Established

Some commenters asserted that VA's good cause justification was insufficient for general reasons unrelated to VA's rationales supporting good cause. Many of the duplicated form responses that VA received as comments asserted that the IFR violated the Administrative Procedure Act (APA) and stated that the APA requires that the public have an opportunity to provide comment on matters of public interest before a rule is effective. VA does not change course based on these comments. The APA, codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice and comment and provide at least a 30-day delay before the rules become effective. 5 U.S.C. 553(b), (d). However, an agency may forgo prior notice if the agency for good cause finds that compliance would be impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)) and may also bypass the APA's 30-day delayed effective date requirement if good cause exists (5 U.S.C. 553(d)(3)), or if the rule ''grants or recognizes an exemption or relieves a restriction'' (5 U.S.C. 553(d)(1)). VA found good cause under 5 U.S.C. 553(b)(B), ((d)(3), and also explained that the IFR removed certain restrictions (*see* 87 FR 55294–96), and therefore did not violate the APA in issuing the IFR.

Other commenters asserted that although a Federal agency is allowed to publish an IFR, VA did not demonstrate that it had good cause to do so. Because these commenters did not specifically assert or explain why they believed VA did not demonstrate good cause, VA does not change course based on these comments. As VA explained in the IFR, VA had good cause to make the IFR effective immediately because delaying its effectiveness would leave many veterans and CHAMPVA beneficiaries without access to needed and medically necessary and appropriate health care—abortions and abortion counseling that VA is able to provide under the IFR—thus putting their health and lives at risk. 87 FR 55295–96. Immediate effectiveness was critical following State actions to further ban or restrict abortion post-*Dobbs. Id.* These State bans and restrictions on abortion presented a serious threat to the health and lives of over one hundred thousand veterans and CHAMPVA beneficiaries who relied, or may rely in the future, on VA health care. *Id.* VA determined that such bans and restrictions would have an immediate detrimental impact on the lives and health of veterans and CHAMPVA beneficiaries who are unable to receive the care that was available in the community before the *Dobbs* decision, especially as State laws prompted providers to cease offering abortion services altogether. 87 FR 55295–55296. This detrimental impact is underscored by the potential harmful effects associated with being denied an abortion when an abortion is needed to protect the life or health of the pregnant individual or when the pregnancy is the result of an act of rape or incest. *Id.* As noted in the IFR, it was estimated that up to 53 percent of veterans of reproductive age may be living in States that either had already banned abortions or were soon expected to ban abortions, following *Dobbs.* 87 FR 55295. VA also estimated that nearly 50,000 CHAMPVA beneficiaries could have been impacted by such those then-current or expected bans. *Id.*

Some commenters asserted that the substantive provisions of the IFR were generally not in the public interest or in States' interests (for those States that have instituted more stringent restrictions on abortions or more burdensome requirements on abortion counseling), and therefore VA could not have provided adequate good cause. These commenters did not offer specific reasons why VA did not have good cause to issue the IFR; rather, they seemed to assert that because they deemed a substantive provision of an IFR to generally be against the public or States' interests, then a good cause justification must necessarily fail. In invoking the public interest prong of the good cause exemption, the question is not whether a substantive provision of a rule, itself, would be contrary to public interest in the minds of some, but

whether following ''ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest.'' *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 95 (D.C. Cir. 2012). For the reasons explained in the IFR, VA provided good cause for why providing advance notice and comment would be contrary to public interest. *See, e.g.,* 87 FR 55294–96.

B. Specific Assertions That Good Cause Was Not Established

Some commenters asserted that VA's good cause justification was insufficient for reasons more directly related to the reasons VA stated in finding good cause. These commenters did not agree with VA's statement of urgent need to provide access to the health care services permitted under the IFR following the ruling in *Dobbs,* which resulted in some States severely restricting and banning abortion. VA groups and summarizes such comments below.

Some commenters asserted that the IFR was not urgently needed because every, or nearly every, State that restricts abortion permits exceptions when the life of the pregnant individual would be endangered were the pregnancy carried to term, and further that some of those States also permit exceptions where the pregnancy was the result of rape or incest. These commenters generally seemed to assert that if many or enough of the States had similar exceptions for abortions as the IFR, then there could not be sufficient need among veterans to access the health care services permitted under the IFR from VA to support good cause.

VA does not change course based on these comments. The fact that some, but not all, States might permit similar access to care as VA is not sufficient to prevent endangerment to the life or health of pregnant individuals that VA serves. *See* 87 FR 55288 (concluding that care available under the IFR is needed and medically necessary and appropriate). In fact, even though some States may allow an abortion to prevent the endangerment to the life of a pregnant individual, they may not allow an abortion to prevent the endangerment to the health of a pregnant individual. When pregnant veterans and CHAMPVA beneficiaries face pregnancy-related complications that their VA health care providers have determined are putting their health or lives at risk or are pregnant due to an act of rape or incest, they must be confident that their providers can take the clinically necessary action to provide needed and medically necessary and appropriate health care. And even in States that restrict abortions subject to exceptions similar to VA's, abortion access is often subject to additional restrictions that VA, on the basis of its authorities and obligations, has not adopted, such as timeframe limitations, evidentiary requirements, or prerequisite procedures (such as mandatory waiting periods or required ultrasounds), which could delay delivery of care that is often time sensitive. VA must always ensure it can consistently meet the medical needs of veterans and CHAMPVA beneficiaries across its healthcare system. Even one State presents enough risk to the lives and health of veterans and CHAMPVA beneficiaries to support VA's good cause justification in the IFR. As the IFR states, ''[a]llowing even one preventable death of a veteran or CHAMPVA beneficiary by limiting access to abortions is unacceptable.'' 87 FR at 55296.

Commenters further asserted that VA's statements of good cause were not substantiated because VA did not cite specific cases where needed and medically necessary and appropriate care would not be permitted. In so doing, commenters argued that VA must conduct a more thorough analysis to more specifically identify those individuals who cannot get the care VA has found to be needed and medically necessary and appropriate. Those commenters are incorrect. VA explained that ''certain States have begun to enforce abortion bans and restrictions on care, and are proposing and enacting new ones.'' *Id.* at 55288; *see also id.* at 55293, 55295 (citing examples and describing the evolving legal landscape). VA also documented the pressing need to ensure that *all* of the veterans and CHAMPVA beneficiaries for which VA provides healthcare have access to needed and medically necessary and appropriate care. *Id.* at 55291–92.

Other commenters asserted that VA has not issued statements regarding, or otherwise does not have, a clear plan to implement the provisions of the IFR despite asserting an emergency to support good cause. These commenters seemed to argue that there can be no need to forgo notice and comment procedures and dispense with a delayed effective date if VA is not yet ready to implement the IFR on a large-scale level. That is incorrect: VA was prepared to offer health care services permitted under the IFR on the day the IFR was published.

To the extent commenters posit that abortion is harmful to patients or is never necessary—that abortions are, essentially, illegitimate medical services, thereby negating VA's good cause argument and grounds for publishing the IFR—the commenters failed to provide a rationale for, and to demonstrate the basis for, this position. The VA Secretary has determined that the health care services permitted under the IFR are needed pursuant to 38 U.S.C. 1710 and are medically necessary and appropriate pursuant to 38 U.S.C. 1781, as implemented by 38 CFR 17.270 *et seq.,* and VA has authority to provide these services under the terms of the IFR, as explained there. As non-exhaustive examples, the IFR identified conditions such as ''severe preeclampsia, newly diagnosed cancer requiring prompt treatment, and intrauterine infections, and . . . pre-existing conditions exacerbated by continuing the pregnancy,'' for which pregnancy termination ''may be the only treatment available to save the health or life of the pregnant individual.'' 87 FR 55295. In States that restrict access to abortion services, treatment delayed so VA could seek prior public comment would have been treatment denied.

Other commenters asserted that the timing of VA's publication of the IFR, being two months after publication of the *Dobbs* decision (and four months after such decision ''leaked'' as stated in the comments) was too late to justify VA's statement of need in support of its good cause. In support of this assertion, these commenters proffered that because VA was aware that the Supreme Court could overturn *Roe,* prior to the *Dobbs* decision, and because some States had taken anticipatory action prior to the *Dobbs* decision, VA would have issued the IFR sooner if there were an actual emergent need. VA does not change course based on these comments. The administrative process for VA to weigh policy, make decisions, draft a rulemaking, and have that rulemaking clear all required reviews prior to publication in the **Federal Register** can routinely take substantial effort and time. Indeed, the Supreme Court has found that an agency taking two months to prepare a 73-page rule did not constitute ''delay'' inconsistent with the Secretary's finding of good cause. *Missouri,* 142 S. Ct. at 654. Here, the publication of the IFR was completed at the earliest possible time and ensures that, irrespective of contrary State laws post-*Dobbs,* veterans and CHAMPVA beneficiaries can receive access to the needed and medically necessary and appropriate health care services permitted under the IFR.

One commenter opined that the IFR lacked good cause because VA has always provided care to pregnant individuals in life-threatening

circumstances, including treatment for ectopic pregnancies or miscarriages, which were covered under VA's medical benefits package prior to the IFR. In support, the commenter cited to Veterans Health Administration (VHA) Directive 1330.03, titled Maternity Health Care and Coordination, dated November 3, 2020. The commenter further stated that providing such lifesaving care to a pregnant individual is not an abortion and is already allowed. This commenter seemed to assert that because VA provided some lifesaving treatment to manage certain complications associated with pregnancy prior to the IFR, that there could not have been an emergency to warrant VA's issuance of the IFR. While VA agrees that the care identified by the commenter has been lawfully provided, as discussed herein and in the IFR (for example, see 87 FR 55291), there are many life- and health-endangering complications of pregnancy other than ectopic pregnancies and miscarriages where abortion would be the needed or necessary treatment, and prior to the IFR, VA's medical benefits package did not provide access to care in such circumstances.

One commenter opined that the IFR did not have good cause since it undermines what the commenter described as the ''pro-life policy stance'' of Congress and further disregards governmental interests, including ''interest in safeguarding preborn human life''. VA disagrees with the commenter's assertion and implemented the IFR pursuant to the authority Congress granted VA to furnish eligible veterans and CHAMPVA beneficiaries with medical services that VA determines to be needed and medically necessary and appropriate. 38 U.S.C. 1710, 1781; 87 FR 55291–55293. The changes made by the IFR were within the scope of the authority Congress has provided to VA.

III. Comments Asserting That the IFR Is Too Broad

Commenters raised concerns with various aspects of the IFR being overly broad so as to allow for abortions for reasons beyond the circumstances stated in the IFR. VA summarizes and addresses those comments below.

A. Lack of Definition of Abortion

One commenter opined that the IFR avoided clarity by not defining abortion. VA does not make changes to the rule based on this comment. VA does not specifically define in its regulations the other various types of care provided under the medical benefits package or covered by CHAMPVA. As the medical field is constantly evolving, attempting to define medical terms in regulation could be arbitrary or outdated based on evolving standards of practice and thus could result in unintended limitations on the provision of life and health-saving care. Therefore, and consistent with other treatments listed in such regulations, VA does not find it appropriate to define the term abortion in regulation.

B. The Term ''Health'' Is Too Broad or Not Defined

Several commenters asserted that the term ''health,'' in the context of the exception permitting abortion if a health care provider determines that the ''health'' of the pregnant individual would be endangered were the fetus carried to term, was too broad in scope. Some asserted that the lack of definition for the term ''health'' means VA will provide abortions in all circumstances, or, essentially, allow for ''elective abortions.'' Other commenters more specifically asserted that the Supreme Court broadly defined ''health'' for purposes of abortion as ''physical, emotional, psychological, familial, and the woman's age—relevant to the wellbeing of the patient. All these factors may relate to health.'' *Doe* v. *Bolton,* 410 U.S. 179, 192 (1973). These commenters argue that a rule permitting abortion for reasons of health without further qualification or limitation could be interpreted in a way that increases access to abortions beyond the scope stated in the IFR.

VA does not make changes to the term ''health'' or further define or characterize it in regulation based on these comments. VA has existing statutory and regulatory authorities that establish when needed care provided under the medical benefits package may be provided to an individual veteran and when medically necessary services are covered by CHAMPVA.

As explained in the IFR, VA's general treatment authority requires the Secretary to determine what ''hospital care and medical services'' are ''needed.'' 38 U.S.C. 1710. Consistent with this authority and under the IFR, VA provides an abortion to a veteran only if an appropriate health care professional determines that such care is in accord with generally accepted standards of medical practice and is needed to promote, preserve, or restore the health of the individual, consistent with the definitions set forth by existing VA regulations. 38 CFR 17.38(b).

With respect to CHAMPVA, VA provides beneficiaries with medical services and supplies if the services and supplies are ''medically necessary and appropriate for the treatment of a condition'' and ''not specifically excluded from program coverage.'' *See* 38 CFR 17.272(a). With respect to abortions, VA would provide or reimburse for the care only if the life or the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term or if the pregnancy is the result of an act of rape or incest. See *id.* at § 17.272(a)(64).

Because determining whether a pregnant individual's health is endangered necessarily requires an individualized assessment by a health professional, VA does not believe it is appropriate to define the term ''health'' in regulation. Attempting to define every single condition, illness, and other circumstance (and combination of such circumstances) that could be included under such a definition would likely be arbitrary and incomplete and thus could result in veterans and CHAMPVA beneficiaries not receiving needed and medically necessary and appropriate care.

C. Breadth of Determinations by, or Qualifications of, Health Care Professionals

One commenter asserted ''the phrase 'if determined to be needed by' a medical professional . . . allows abortion on demand'' because it generally allows a provider to say such care is ''needed for mental anguish or anxiety''. VA does not make changes to the rule based on this comment. As stated above, the IFR does not allow for abortions in all circumstances; rather, it allows only those permitted under the circumstances described in the IFR when the life or health of the individual would be endangered if the pregnancy were carried to term or when the pregnancy is the result of rape or incest. The decision of whether a veteran's health is endangered is a clinical decision made on an individual, case-by-case basis using the standard provided in 38 CFR 17.38(b) for the provision of health care to veterans. VA health care professionals consider a veteran's health in terms of the veteran's whole health when determining if care is needed to promote, preserve, or restore the health of the individual and is also in accord with generally accepted standards of medical practice, pursuant to 38 CFR 17.38(b). As to CHAMPVA beneficiaries, a determination is likewise performed on a case-by-case basis, with the health care provider determining if the care is medically necessary and appropriate for the treatment of a condition and not specifically excluded from program coverage. *See* 38 CFR 17.272(a).

Multiple commenters raised concerns that VA did not indicate in the IFR the qualifications or professional competence required for VA health care professionals to furnish the health care services permitted under the IFR. One commenter more specifically alleged that, to merely permit a ''health care professional'' (as that term was used in the preamble of the IFR) to determine the clinical need for an abortion would allow for personnel without any gynecological or obstetrical skill or experience to make such determination. One commenter more generally raised concerns about who determines whether the life of the pregnant individual is at risk and at what degree, and other commenters specifically requested that VA ensure only physician-led teams are making these clinical eligibility decisions.

VA does not make changes to the rule based on these comments. As a preliminary matter, VA regulations specify that care in the medical benefits package will only be provided if an ''*appropriate* health care professional[ ]'' determines that it is needed. 38 CFR 17.38(b) (emphasis added). VA health care professionals are not permitted to provide any medical care, including making determinations about needed care, beyond the scope of their VA practice, training, expertise, and demonstrated skills and abilities. 38 U.S.C. 7402 and 38 CFR 17.419. Regarding the expressed concerns about the term ''health care professional,'' or the lack of defined qualifications or occupations in the IFR to designate that a ''health care professional'' is permitted to determine whether an abortion is medically necessary, VA notes that the regulations revised by the IFR (38 CFR 17.38 and 38 CFR 17.272) only address the coverage of health care and not the provision of health care by a ''health care professional'' or the training or credentials they must possess. Therefore, this final rule will not specify particular occupations or qualifications for a VA health care professional to provide either abortion counseling or abortions under the circumstances identified through this rule. VA reiterates that only an appropriate health care professional can make determinations about what care is needed. A VA health care professional is not and will not be permitted to provide any medical care beyond the scope of their VA practice, training, expertise, and demonstrated skills and abilities in any context, including if providing either abortion counseling or abortions.

Regarding the comment that inquired about the degree of risk to life to be ascertained when determining whether an abortion is medically necessary, that determination is made by the appropriate health care professional on a case-by-case basis; VA will not establish a threshold degree of risk to life that is required before an individual is determined eligible for an abortion through VA because every case is clinically distinct. Regarding the requests that VA only permit decisions about the provision of abortions to be made by physician-led teams, VA restates from above that this final rule will not specify particular occupations or qualifications for a VA health care professional to provide either abortion counseling or abortions. VA does not intend for any occupation to perform clinical duties beyond their occupational training and expertise, and their practice will be consistent with generally accepted standards of care.

One commenter stated that the regulations were vague and can leave room for interpretation, and further suggested that VA have a service that would allow doctors or staff the ability to get a second opinion, feedback, and ability for quick determinations or assistance. VA does not make changes to the rule based on this comment. The IFR does not restrict VA health care professionals' ability to seek consultations for assistance with determinations of clinical necessity for any health care or service provided, to include the health care services permitted by the IFR.

D. Lack of Gestational Limits

Commenters raised concerns that the IFR did not establish gestational age limits beyond which an abortion would not be permitted, which they asserted will authorize VA to provide abortions for reasons beyond the circumstances permitted in the IFR. Most of these commenters did not offer specific support for this concern. Other commenters asserted that an abortion is only necessary up to a certain gestational age. One commenter specifically inquired about a gestational age limit for pregnancies that were the result of rape or incest, and relatedly other comments stated that some States that permit abortion in cases where the pregnancy is the result of rape or incest also have gestational age limits for such abortions. VA does not make changes to the rule based on these comments. As explained, the IFR does not permit the provision and coverage of abortions in all circumstances. The preamble to the IFR explains that VA has authority under 38 U.S.C. 1710 to furnish veterans with hospital care and medical services that the Secretary determines to be needed. 87 FR 55288. Consistent with this authority, VA would provide an abortion to a veteran only 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. This means that in either case such care may be provided only if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. 38 CFR 17.38(b)(1)–(3).

Additionally, VA has authority under 38 U.S.C. 1781 to provide CHAMPVA beneficiaries with medical care. 87 FR 55290. Pursuant to 38 CFR 17.270(b), VA provides those medical services that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded. Consistent with these authorities, VA would provide an abortion to a CHAMPVA beneficiary only if such care is medically necessary and appropriate when (1) the life or health of the pregnant beneficiary would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest. 38 CFR 17.272(a)(64).

The decision about whether a pregnancy endangers the veteran's or CHAMPVA beneficiary's life or health, and the needed care or medically necessary and appropriate treatment, must be made on a case-by-case basis by appropriate healthcare professionals consistent with 38 CFR 17.38 and 17.270(b). As life and health endangering pregnancy complications can arise throughout a pregnancy, imposing a time limit after which VA could not provide needed or medically necessary and appropriate care could be potentially dangerous to veterans and CHAMPVA beneficiaries and would be inconsistent with VA's authority to provide needed health care to veterans and medically necessary and appropriate health care to CHAMPVA beneficiaries and contrary to VHA's primary function to provide a complete medical and hospital service for the medical care and treatment of veterans. 38 U.S.C. 1710, 38 CFR 17.38; 38 U.S.C. 7301(b); 38 U.S.C. 1781; 38 CFR 17.270(b). Each patient's situation is different, and the decision about whether to continue a pregnancy that endangers the veteran or CHAMPVA beneficiary's life or health must be made on a case-by-case basis by the pregnant patient in consultation with appropriate health care professionals based on the

best medical evidence and accepted standards of medical practice. As to comments that specifically inquired about gestational age limits in cases where pregnancies are the result of rape or incest, we reiterate the statements above that establishing limits would be inconsistent with VA's authority to provide needed health care to veterans and medically necessary and appropriate health care to CHAMPVA beneficiaries and contrary to VHA's primary function to provide a complete medical and hospital service for the medical care and treatment of veterans. 38 U.S.C. 1710, 38 CFR 17.38, 38 U.S.C. 7301(b), 38 U.S.C. 1781, 38 CFR 17.270(b).

IV. Comments Related to the Exception for Abortion if the Life of the Pregnant Individual Would Be Endangered

The IFR revised 38 CFR 17.38(c)(1) to establish an exception for an abortion if the life of the pregnant veteran would be endangered if the pregnancy were carried to term. Below VA summarizes comments that specifically raised concerns with this exception, other than those already addressed in this rulemaking.

Commenters who opposed the IFR generally stated that it is rare that the life of a pregnant individual is truly threatened by pregnancy or delivery. VA does not make changes to the rule based on these comments as VA disagrees. Endangerment to even one veteran's life would be sufficient, and regardless, VA refers commenters to the discussion in the IFR that details how pregnant individuals may face life-threatening conditions, and abortion may be the only medical intervention available that can preserve their life. *See* 87 FR 55291. As noted in the IFR, while research has shown most pregnancies progress without incident, from 1998 to 2005, the U.S. maternal mortality rate associated with live births was 8.8 deaths per 100,000 live births, and maternal mortality rates have increased staggeringly since then. *Id.* A 2019 study reviewed mortality data from 2007 to 2015 from the National Association for Public Health Statistics and Information Systems, which includes information on all deaths in the 50 States and the District of Columbia (DC). *Id.* The data showed that, during this time, within 38 States and DC, the maternal mortality rate rose to 17.9 deaths of individuals per 100,000 live births. *Id.* Additionally, in 2020 and 2021, maternal mortality rates increased to 23.8 and 32.9 deaths per 100,000 live births, respectively. *Id.* The study identified abortion clinic closures and legislation restricting access to abortion as factors that likely contributed to this rise in maternal mortality rates. *Id.*

One commenter more specifically stated that the presence of underlying health conditions prior to pregnancy does not mean a patient's life is in danger when they are pregnant, and further asserted that such cases merely require more skill and attentiveness by a provider that specializes in obstetrics and gynecology. VA does not make changes to the rule based on this comment, which seems to be stating that a pregnancy can always be carried to term without the pregnant veteran's life ever being endangered by either preexisting health conditions or health conditions arising during pregnancy, if and when a correct approach is used by providers. This assertion is incorrect. As VA described in the IFR, there are circumstances in which abortion may be the only medical intervention available that can preserve a pregnant veteran's life. *See* 87 FR 55291. VA has amended the medical benefits package to allow VA to provide abortions in certain circumstances, including when an appropriate healthcare professional determines that such care is needed to save a pregnant veteran's life, which is critical now that some States are enforcing and enacting abortion restrictions that could result in the delay or denial of such life-saving treatment.

Relatedly, other commenters stated that the presence of health conditions (such as preeclampsia, as noted in one comment) in pregnant individuals are not life threatening as they can be resolved by the induction of labor or the performance of a c-section, and therefore an abortion is not necessary to preserve the pregnant individual's health or life. One commenter further asserted that a fetus is viable at approximately 24 weeks gestational age, and if the health of the pregnant patient was a concern, birth could be induced, or a cesarean section (c-section) performed, to save the life of both the pregnant patient and the child. VA does not make changes to the rule based on these comments. Similar to our response to related comments above, VA recognizes that there are circumstances in which abortion may be the only medical intervention available that can preserve a pregnant veteran's life, and the decision about the needed care or medically necessary treatment must be made on a case-by-case basis by appropriate healthcare professionals consistent with 38 CFR 17.38 and applying the applicable clinical standards discussed throughout this preamble.

V. Comments Related to the Exception for Abortion if the Health of the Pregnant Individual Would Be Endangered

Several commenters raised concerns about the exception for an abortion if the health of the pregnant individual would be endangered if the pregnancy were carried to term. Below VA summarizes comments that specifically raised concerns with this exception, other than as already addressed in this rulemaking.

One commenter suggested that VA revise the regulatory text in § 17.38(c)(1) to additionally include ''wellbeing'' because the addition of ''wellbeing'' would encompass mental and emotional health. This commenter raised concerns that the rule was not clear that mental health was included in the consideration of the ''health'' of the pregnant veteran as opposed to applying solely to physical health. Another commenter asked that VA acknowledge in the text of the rule that the exception for abortions for the health of the pregnant beneficiary includes mental health in addition to physical health. VA does not make any changes to the rule based on these comments. Both physical and mental health are included in the meaning of the term ''health'' under 38 CFR 17.38 and 38 CFR 17.272. *See also* 87 FR 55291 (explaining that both chronic medical and mental health conditions increase risks associated with pregnancy, and health care professionals may determine ''that these conditions (potentially in combination with other factors) render an abortion needed to preserve the health of a veteran[.]''). VA therefore does not believe it is necessary to revise the regulatory text as the commenters suggest. *See also supra* Part III.B above.

One commenter asserted the IFR implied that all pregnancies threaten the health of the pregnant individual, and that abortions would be permitted in all circumstances based on the threat to the pregnant individual's health. The commenter states that authorizing abortions when there is a threat to health is an ''ideological'' statement and not a medical determination. The commenter further requests that VA enumerate these ''threats to their health'' in writing. VA makes no changes to the rule based on this comment. See Section III.B. above. VA has determined that abortions may be authorized when carrying the pregnancy to term endangers the health of the pregnant individual and VA has authority to provide these services under the terms of the IFR, as explained in the IFR and herein. Further, medical

determinations regarding threats to health must be made by healthcare professionals on a case-by-case basis and be consistent with established standards of care.

VI. Comments Related to the Exception for Abortions in Cases of Rape or Incest

The IFR revised 38 CFR 17.38(c)(1) and 38 CFR 17.272(a) to establish an exception for an abortion if the pregnancy were the result of rape or incest. Below VA summarizes comments that specifically raised concerns with this exception other than as already addressed in this rulemaking.

A. Evidence of the Incident of Rape or Incest

Several commenters alleged that a person's statement that a pregnancy resulted from rape or incest is not sufficient evidence to support the provision of abortion, particularly as a provider has no obligation to confirm such statement.

VA does not make changes to the rule based on these comments. As VA explained in the IFR, the self-reporting from the pregnant veteran constitutes sufficient evidence, and the rule does not require a veteran or CHAMPVA beneficiary to present particular evidence such as a police report to qualify for this care. 87 FR 55294. This is consistent with longstanding VA policy to treat eligible individuals who experienced military sexual trauma without additional evidence of the trauma. *Id.* This approach is appropriate as it removes barriers to providing needed or medically necessary and appropriate care. *Id.* VA does not believe it is appropriate to require a provider to separately investigate or confirm the veteran or CHAMPVA beneficiary's self-reporting that an act of rape or incest occurred. Requiring such proof or confirmation could harm the provider-patient relationship, and it is unnecessary.

It is a part of routine practice for VA providers to take and rely on many types of patient-reported information (family, trauma, work, medical, legal, and other histories, for instance), as part of their clinical evaluations and assessments. For instance, VA providers make a clinical eligibility determination as to whether an individual is eligible for military sexual trauma-related treatment under 38 U.S.C. 1720D without requiring additional proof that this experience occurred, as already stated herein. See VHA Directive 1115(1), Military Sexual Trauma (MST) Program.

The comments misunderstand the function of the rape or incest exception. By operation of the IFR, patient self-reports of rape or incest constitute sufficient evidence for the VA provider to establish and document that this exception is met. 38 CFR 17.38(c)(1)(ii), 17.272(a)(64)(ii). There is no reason to treat these patient self-reports differently from self-reports supporting other sought-after medical care; nor do these comments provide any rationale for doing so. In any case where the rape or incest exception applies, the VA provider must still determine that an abortion meets the clinical standard set forth in 38 CFR 17.38(b) or 17.272(a), as applicable.

B. Assertions That Rape or Incest Exception Is Not Medically Necessary

One commenter opined that in the case of a pregnancy that is the result of rape or incest, an abortion can never be ''needed'' or ''medically necessary and appropriate'' and that patients who experience mental health issues following acts of rape or incest should be provided counseling and support, not abortions. VA does not make changes to the rule based on this comment. As VA explained in the IFR, VA has determined that abortions for pregnancies resulting from rape or incest, when sought by a pregnant veteran and clinically determined to be needed to promote, preserve, or restore the health of the veteran and in accord with generally accepted standards of medical practice, are needed consistent with the terms of 38 U.S.C. 1710. As noted in the IFR, there are severe health consequences associated with being forced to carry a pregnancy that is the result of rape or incest to term, including constant exposure to the violation committed against the individual which can cause serious traumatic stress and a risk of long-lasting psychological conditions. 87 FR 55292. Such consequences can have a particular impact on veterans, who report higher rates of sexual trauma compared with civilian peers. *Id.* In addition, veterans are more likely to have preexisting mental health conditions that would be compounded by the mental health consequences of being forced to carry a pregnancy to term if that pregnancy is the result of rape or incest. *Id.* In addition, for similar reasons to those discussed above and in the IFR, and because it is ''similar'' to the care offered under TRICARE (Select), *see* 38 U.S.C. 1781(b), VA has also determined, for purposes of 38 CFR 17.272(a), that access to abortion when the pregnancy is the result of an act of rape or incest is medically necessary and appropriate and so must be available to CHAMPVA beneficiaries. 87 FR 55292.

C. Investigation or Reporting

Commenters raised concerns about whether evidence of sexual abuse will be investigated or reported. To the extent these commenters might want VA to regulate such investigation or reporting for purposes of providing the health care services permitted under the IFR, VA does not make changes to the rule. For the reasons already explained herein, self-reports are sufficient to establish that an act of rape or incest occurred. Further, this approach is similar to how VA providers, who are not investigators, consider other types of patient self-reported information such as military sexual trauma; other trauma; and medical, personal, health information and history. VA will investigate claims of rape or incest to the extent they occurred on VA property or involved a VA employee, consistent with VHA Directive 5019.02, which relates to reporting of harassment, sexual assault, and other public safety incidents in VHA. Additionally, consistent with VHA Directive 1199(2), VA providers will report claims of abuse, as necessary and required by Federal law.

VII. Availability of the Health Care Services Permitted Under the IFR to Non-Veterans and Non-CHAMPVA Beneficiaries

A. Spina Bifida Health Care Benefits Program

One commenter inquired into whether the health care services permitted under the IFR will be available to beneficiaries in VA's Spina Bifida Health Care Benefits Program. VA considers this comment outside the scope of the rulemaking as VA did not amend the regulations for such program; only the regulations for the medical benefits package and CHAMPVA were amended by the IFR. VA makes no changes to the rule based on this comment.

B. Nonveterans

This same commenter inquired into whether the health care services permitted under the IFR will be available to nonveterans for emergency services on a humanitarian basis. VA is authorized to provide humanitarian care under 38 U.S.C. 1784 and medical screening and stabilization for an emergency medical condition under 38 U.S.C. 1784A, but VA considers this comment to be outside the scope of the rulemaking as VA only amended the regulations for the medical benefits

package and CHAMPVA, which determine care for veterans and CHAMPVA beneficiaries, respectively. VA makes no changes to the rule based on this comment.

C. ''Wives of Military Members''

Another commenter inquired whether ''wives of military members'' will be eligible for the health care services permitted under the IFR. To the extent such individuals have veteran status and are receiving their medical care through VA (specifically care included in the medical benefits package), or else are CHAMPVA beneficiaries, then they would be eligible for health care services in the circumstances permitted by the IFR. However, to the extent the commenter is referring to individuals who do not have veteran status or are not CHAMPVA beneficiaries, these individuals are not covered by the amendments made by the IFR. VA makes no changes to the rule based on this comment.

VIII. Comments That Stated Abortion Was Not Health Care or Is Otherwise Harmful

Many commenters stated that abortion is not health care. Some of these commenters did not provide any supporting rationale for this statement, while others asserted that abortion could not be health care because the practice of medicine is supposed to preserve life, not end life. VA does not make changes to the rule based on these comments. As VA explained in the IFR and herein, abortions are health care and may be needed to preserve the life or health of a pregnant individual. Pregnant individuals may face life and health-threatening conditions, where abortion may be the only medical intervention available that can preserve their health or life.[3] *See* 87 FR 55291.

Many commenters opposed VA providing access to abortions because they asserted that abortions can be harmful to pregnant individuals. Some commenters stated that abortions can result in emotional harm or complications for pregnant individuals but did not offer support, evidence, or a rationale for such assertions. Some commenters asserted similar opinions but posited distinct harms and cited certain literature. VA does not make changes to the rule based on these comments.

All medical care may pose a risk of complications to some patients. In every instance of care, medical practice requires practitioners to balance the risks of providing needed or medically necessary and appropriate care with the risks of not doing so, a calculation guided by clinical standards and informed by reliable data. The patient must then also balance the risks of receiving needed or medically necessary and appropriate care with the risks of not doing so, and VA obtains informed consent for any medical care pursuant to its existing informed consent requirements set forth in 38 CFR 17.32 (implementing 38 U.S.C. 7331). As explained in the IFR (87 FR 55291) and herein, research has shown that while most pregnancies progress without incident, pregnancy and childbirth in the United States can result in physical harm and even death for pregnant individuals.[4] Without access to comprehensive reproductive health care, including abortion, such individuals may experience conditions resulting from their pregnancy that can leave them at risk for loss of future fertility, significant morbidity, or death. In such instances, an abortion may be the only medical intervention that can preserve that individual's health or save their life.[5]

The health care profession understands that abortions are safe medical interventions.[6] A study available to the public and cited in the IFR addressed the rate of abortion complications and concluded that, contrary to the unsupported assertion by commenters, the most common type of complications from abortions are minor and treatable.[7] The scientific evidence also shows that the risk of complication or mortality from abortion is less than the risk of complication or mortality from other common clinical procedures.[8]

A 2018 consensus study report from the National Academy of Medicine (National Academies of Sciences, Engineering, and Medicine (NASEM)) reviewed the then available evidence on the safety and quality of legal abortions in the United States and concluded that having an abortion does not increase an individual's risk of secondary infertility, pregnancy-related hypertensive disorders, abnormal placentation, preterm birth, or breast cancer.[9] This review by NASEM also found that having an abortion does not increase a person's risk of depression, anxiety, or posttraumatic stress disorder.[10]

One commenter opined that allowing access to abortion counseling or abortions via telehealth is harmful. The commenter provides no evidence or rationale for this assertion. VA makes no changes to the rule based on this comment. Telehealth is widely implemented at VA to provide high-quality care to veterans and eligible beneficiaries, enhancing access to care in appropriate cases. *See* 38 U.S.C. 1730C. Abortion counseling as well as some abortions can be provided through telehealth in accord with generally accepted standards of medical practice. VA will only provide medical care, whether in-person or through telehealth, that is consistent with generally accepted standards of care.

Commenters also raised concerns that the rule did not include informed consent or standards for medical evaluations to ensure that an abortion would not lead to further medical complications or harm for women. VA does not make changes to the rule based on these comments. In determining whether to recommend *any* treatment or procedure, VA providers take into consideration all relevant clinical factors, that is, they conduct a medical evaluation based on a number of clinical factors. Decisions as to which treatment or procedures to recommend are clinical judgments made in accord with generally accepted standards of care. Informed consent is not required as part of the provider's individual undertaking of a differential diagnosis or decision process as to available and recommended treatment options. These clinical evaluation steps occur before the provider's professional recommendation is decided. Informed consent only applies to the receipt of

[3] Martha B. Kole, Jennifer Villavicencio, and Erika G. Werner, *Reproductive services for the patient at increased risk for morbidity and mortality during the second trimester.* Semin Perinatol, 44 (5), 151270 (2020).

[4] Elizabeth G Raymond & David A Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,* 119 Obstetrics & Gynecology 215, 216 (2012); see also Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues,* 128 Obstetrics & Gynecology 447 (2016) (finding a 26.6 percent increase in maternal mortality rates between 2000 and 2014).

[5] *Abortion Can Be Medically Necessary,* Am. College of Obstetricians and Gynecologists, Sep. 25, 2019. *http://www.acog.org/news/news-releases/2019/09/abortion-can-be-medically-necessary* (last visited Aug. 22, 2022).

[6] *Abortion Access Fact Sheet.* The American College of Obstetrics and Gynecology. 2023. *https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet* (last visited May 15, 2023).

[7] Desai Upadhyay, et al. *Incidence of emergency department visits and complications after abortion,* Obstet Gynecol; 125(1):175–183 (2105).

[8] *Abortion Access Fact Sheet.* The American College of Obstetrics and Gynecology. 2023. *https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet* (last visited May 15, 2023).

[9] *The Safety and Quality of Abortion Care in the United States.* National Academies of Sciences, Engineering, and Medicine (Mar. 2018), *https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states.*

[10] Id.

VA recommended treatment or procedures, which the patient can then decide to reject or accept. No medical treatment or procedure may be performed without the prior, voluntary, and fully informed consent of the patient. 38 CFR 17.32(b). 38 U.S.C. 7331; 38 CFR 17.32. As part of informed consent discussion, the practitioner must explain in plain language understandable to the patient the nature of the proposed procedure or treatment; expected benefits; reasonably foreseeable associated risks, complications, side effects; reasonable and available alternatives; and anticipated result if nothing is done, among other information. *See* 38 CFR 17.32(c)(2).

IX. Comments Related to Employee Rights and Protections and Rights of the Public

Commenters raised concerns related to employees' religious and conscience-based protections, including under the First Amendment, the Religious Freedom Restoration Act, the Public Health Service Act (including the Coats-Snowe Amendment), and Title VII of the Civil Rights Act of 1964. Commenters further asserted that VA is forcing VA employees to provide abortions that may be criminal offenses under State or local law, and one commenter specifically inquired whether any or all VA employees will be responsible for assisting with ''emergency abortions.'' VA does not make any changes to the rule based on these comments. In implementing the IFR and this rule, VA adheres to all applicable Federal laws relating to employee rights and protections, including protections based on an employee's religious or conscience-based objection to abortion. VA has a policy in place for reasonable accommodation requests, where employees may request to be excused from providing, participating in, or facilitating an aspect of clinical care, including reproductive health clinical care authorized by this rule. See, AUSHO Memorandum, *Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration* (Jan. 6, 2023). Pursuant to that policy, VA health care professionals that object to furnishing the care covered by this rulemaking to veterans or CHAMPVA beneficiaries may request to be excused from that care and such requests will be individually assessed under the applicable Federal law. If excusal is requested, supervisors should grant interim excusal for employees from duties or training regarding reproductive health care while requests are being processed.

Commenters also raised concerns regarding whether those providing the health care services permitted under the IFR, including VA employees and non-VA providers, would be protected by VA against State action, such as potential enforcement of State criminal, civil, or administrative penalties related to the provision of the health care services permitted under the IFR. To the extent a VA employee provides the health care services permitted under the IFR within the scope of their VA employment as authorized by Federal law, they could not legally be subject to adverse State actions. As described above, State and local laws, rules, regulations, and requirements that unduly interfere with health care professionals' practice will have no force or effect when such professionals are practicing health care while working within the scope of their VA employment. 38 CFR 17.419.

Moreover, as further described above, in circumstances where there is a conflict between Federal and State law, Federal law would prevail in accordance with the Supremacy Clause under Article VI, clause 2, of the U.S. Constitution. The Department of Justice's Office of Legal Counsel has issued an opinion confirming that States may not impose criminal or civil liability on VA employees who provide or facilitate abortions or related services in a manner authorized by Federal law, including this rule. *See* 46 Op. O.L.C. __ (Sept. 21, 2022); *www.justice.gov/olc/opinion/intergovernmental-immunity-department-veterans-affairs-and-its-employees-when-providing.* If States attempt to subject VA employees to legal action for appropriately carrying out their Federal duties the Department of Justice will support and provide representation to those employees.

Several commenters additionally asserted that performing an abortion would violate a VA health care professional's Hippocratic oath, where some of these comments further noted that this oath requires individuals who take it to ''do no harm'' in the practice of medicine. VA does not make changes to the rule based on these comments. An abortion would be provided pursuant to the rule to veterans only when determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice; and to CHAMPVA beneficiaries when medically necessary and appropriate.

Some commenters appeared to allege that the IFR violates their First Amendment rights and religious freedoms as members of the public, without providing rationale or support for such statements. Unlike the comments above that raised specific First Amendment and religious freedom concerns for VA health care professionals, these comments did not assert or explain why they believed the IFR violated their First Amendment rights or religious freedoms as members of the public. VA's IFR authorizes the provision of abortions and abortion counseling to veterans and CHAMPVA beneficiaries in certain circumstances. It does not limit the First Amendment rights or religious freedoms of the public.

X. Comments Specifically Concerning Abortion Counseling

The IFR revised 38 CFR 17.38(c)(1) and 17.272(a) to remove a prohibition on VA providing access to abortion counseling. Below VA summarizes comments that specifically raised concerns with this revision, other than as already addressed in this rulemaking.

A. Provision of Abortion Counseling

Multiple commenters raised various concerns about VA's provision of abortion counseling. The commenters stated that abortion counseling should be unbiased, and that VA should not ''direct'' pregnant individuals to have an abortion. The commenters further suggested that abortion counseling should include discussion of options other than abortion and should also include information about the negative effects of abortion. One commenter further implied that VA is not providing counseling about options other than abortion specifically for victims of rape or incest.

VA does not make changes to the rule based on these comments. Prior to the IFR, VA could not discuss abortion as an option with pregnant patients, but VA has always provided counseling to pregnant patients about pregnancy options such as carrying the pregnancy to term and adoption. Under the IFR, VA now provides the full range of pregnancy options counseling to individuals who are pregnant, which includes all options related to that individual's pregnancy and is not limited to discussing only the option of abortion. This is consistent with Centers for Disease Control and Prevention guidance.[11] As explained in the IFR,

[11] *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs.* Centers for Disease Control and

abortion counseling is part of pregnancy options counseling and is a component of comprehensive, patient-centered, high-quality reproductive health care, and is needed care for veterans, and medically necessary and appropriate for CHAMPVA beneficiaries, because such counseling will enable a pregnant individual to make a fully informed health care decision, just as counseling offered or covered by VA regarding other health care treatments enables the patient to make an informed decision. *See* 87 FR 55292–93. Such pregnancy options counseling is provided in a neutral, non-directive, and unbiased manner to ensure patients receive the most complete and accurate information regarding available treatment options. VA does not direct a patient towards a specific option when it conducts pregnancy options counseling. The rule also makes clear that VA's determinations that such counseling is needed care (as to veterans) and medically necessary and appropriate (as to CHAMPVA beneficiaries)—and the accompanying regulatory amendments—were not limited to instances in which the pregnancy is the result of rape or incest. *See, e.g., id* at 55293–94.

B. Post-Abortion Counseling

Another commenter suggested VA provide post-abortion counseling and support for the pregnant individual and their spouse. VA does not make changes to the rule based on this comment. To the extent a veteran requests counseling or mental health support from VA after an abortion or any other type of medical service, such care is available to veterans as part of the medical benefits package. VA would also cover such counseling and mental health support for CHAMPVA beneficiaries. However, and as explained herein, VA does not have authority to provide such counseling under the medical benefits package or CHAMPVA to non-veterans and non-VA beneficiaries, respectively.

XI. Comments Specific to CHAMPVA

Prior to the IFR, the CHAMPVA program at 38 CFR 17.272(a)(64) covered abortions for beneficiaries when the life of the beneficiary would be endangered if the pregnancy were carried to term. The IFR revised § 17.272(a)(64) to: (i) expand the exception on the exclusion of abortion to cover cases where the health of the pregnant CHAMPVA beneficiary would be endangered if the pregnancy were carried to term; and (ii) to establish an exception to the exclusion of abortion to cover cases where the pregnancy of the CHAMPVA beneficiary is the result of an act of rape or incest. Below VA addresses comments that specifically raised concerns with these changes to CHAMPVA, other than as already addressed in this rulemaking.

A. CHAMPVA and TRICARE

One commenter stated that VA does not have authority to provide medical care under the CHAMPVA program in the same manner as under the TRICARE program because TRICARE and CHAMPVA are separate programs and CHAMPVA covers medical care only to those specifically identified at 38 U.S.C. 1781(a). The commenter further stated that VA does not effectively argue that CHAMPVA and TRICARE coverage should be aligned. VA does not make any changes to the rule based on this comment. It appears that the commenter may misunderstand the CHAMPVA authority. VA has authority to furnish medical care to CHAMPVA beneficiaries pursuant to 38 U.S.C. 1781. Section 1781(b) establishes that VA must provide such care ''in the same or similar manner and subject to the same or similar limitations as medical care'' is provided by DoD under the TRICARE program.

Other commenters asserted that the IFR's changes to the CHAMPVA regulations were not the same or similar to what is permitted under TRICARE. Specifically, these comments noted that the exclusion to provide abortions if the health of an individual were endangered, as well as furnishing abortion counseling for any reason (and not just in those cases for which abortions would be covered by TRICARE), were too broad to be considered the same or similar to what is permitted under TRICARE. Notably, these comments also incorrectly argued that the CHAMPVA exception to protect the health of the pregnant individual without further qualification or limitation could be interpreted in a way that increases access to abortion services beyond the scope stated in the IFR.

VA does not make changes to the rule based on these comments. As explained in the IFR and herein, TRICARE (Select) provides coverage for abortions when the pregnancy is the result of an act of rape or incest, or when a physician certifies that the life of the woman would be endangered if the pregnancy were carried to term. 87 FR 55290. CHAMPVA regulations previously allowed for abortions only when a physician certifies that the abortion was performed because the life of the woman would be endangered if the pregnancy were carried to term. *See* 38 CFR 17.272(a)(64); 87 FR 55290. Pursuant to VA's authority in 38 U.S.C. 1781, VA amended the CHAMPVA regulations to better align coverage under CHAMPVA with coverage under TRICARE (Select). In this regard, VA amended its regulations to additionally provide coverage of abortions when the pregnancy is the result of an act of rape or incest. Although VA also revised the regulations to cover abortions when the health of the CHAMPVA beneficiary would be endangered if the pregnancy were carried to term, in contrast with coverage under TRICARE (Select), coverage under CHAMPVA must be provided in the ''same or similar'' manner and subject to the ''same or similar'' limitations as TRICARE (Select). 38 U.S.C. 1781(b); *see* 87 FR 55290. By referring to care that is ''similar,'' the statute permits VA flexibility to administer the program for CHAMPVA beneficiaries. If Congress had intended for VA to administer the program for CHAMPVA beneficiaries in a manner equivalent to TRICARE (Select), 38 U.S.C. 1781(b) simply could have required VA provide ''the same'' care in ''the same'' manner as TRICARE (Select); however, the statute recognizes that there will be differences in how VA administers CHAMPVA. VA determined that the care provided under this rule is similar to that provided by DOD under TRICARE (Select), which covers abortions to beneficiaries when there is a medical risk to the pregnant individual if the pregnancy were carried to term or if the pregnancy is the result of an act of rape or incest. *Id.* The flexibility to administer CHAMPVA in a manner ''similar'' to TRICARE (Select) also recognizes that VA serves a different population than TRICARE under a different authority. Section 1781(b) of 38 U.S.C. authorizes VA to provide care directly to CHAMPVA beneficiaries through VA facilities, and beneficiaries who receive care at a VA facility are eligible for the same medical services as a veteran. In exercising our discretion to provide care in a ''similar'' manner to TRICARE (Select), we have concluded it lies within our discretion to determine that abortions in the circumstances authorized by the IFR should be made available to all CHAMPVA beneficiaries, not just those who receive their care through VA facilities. As explained, it is important to provide medically necessary and appropriate abortion care when the health of the pregnant individual is endangered, as determined by an appropriate medical professional under

Prevention. April 25, 2014. *https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm?s_cid=rr6304a1_w* (last visited December 6, 2023).

generally accepted standards of care, to better promote the long-term health of CHAMPVA beneficiaries, which is consistent with VA's past practices related to implementing CHAMPVA.

Regarding the portion of these comments related to VA furnishing abortion counseling under CHAMPVA for any beneficiary and not just in those cases for which an abortion would be covered by TRICARE, we reiterate from above that VA finds this more comprehensive abortion counseling to be sufficiently similar to that under TRICARE (Select). VA's broader coverage may deviate for purposes of promoting the long-term health of CHAMPVA beneficiaries by covering the most complete and accurate information available regarding various pregnancy and health care options, regardless of whether CHAMPVA would cover any such abortion the beneficiary receives. *See also* 87 FR 55292–93.

B. CHAMPVA Care at VA Facilities

One commenter stated that 38 U.S.C. 1781 authorizes, but does not mandate, the provision of CHAMPVA care at VA facilities through the CHAMPVA In-House Treatment Initiative (CITI). The commenter suggested that VA ensure that VA facilities provide access to abortion to CHAMPVA beneficiaries through the CITI program, particularly in localities where abortions are banned or restricted. VA does not make changes to the rule based on this comment. The provision of CHAMPVA care at VA facilities through the CITI program is permissible under 38 U.S.C. 1781(b), which provides that those VA medical facilities that are equipped to provide CHAMPVA beneficiaries care may do so only to the extent they are not being utilized for the care of eligible veterans. Because the capacity, projected demands, and care needs of veterans at each VA Medical Center can fluctuate, VA cannot ensure that a certain number of VA facilities or facilities in any particular State or region will participate in the CITI program at any given time. However, where a VA facility operates a CITI program, it will provide the health care services permitted by the IFR to CHAMPVA beneficiaries who are eligible to receive care through CITI consistent with the IFR and to the extent that facility's resources are not being utilized for the care of eligible veterans. Further, it remains the case that the CITI program may expand to additional VA facilities if such facilities are equipped to provide the care and treatment and are not being utilized for the care of eligible veterans, without any revisions to VA regulations.

C. Provision of Abortions and Abortion Counseling to Those Under Age 18

One commenter asserted that VA should clarify that it is not requiring its health care professionals to perform any abortions on those under the age of 18, and that parental notification and consent is required for any abortion. Another commenter similarly stated that it was 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. VA makes no changes to the rule based on these comments.

In accordance with VHA Directive 1004.01, dated December 12, 2023, it is VA policy that if a patient is considered a minor under State law in the jurisdiction where the VA facility is located, then that patient is not presumed to have decision-making capacity for giving informed consent. As a result, for patients considered minors, consent would be obtained from the patient's parent or legal guardian, except as otherwise provided by law. And as also consistent with this VA policy, if the patient is not considered a minor under State law, for example, by virtue of a State court order awarding emancipation to the minor or automatic emancipation under State law based on certain events, parental notification and consent would not be required.

XII. Comments Related to Fatal Fetal Anomalies

One commenter recommends VA revise the rule to include an exception to allow abortions for fatal fetal anomalies. VA makes no changes based on this comment. The commenter provides no rationale for the proposal that abortions be provided absent the circumstances identified in the rule, or for a finding that the proposed expansion would constitute needed care (for veterans) or medically necessary and appropriate care (for CHAMPVA beneficiaries) under 38 U.S.C. 1710 and 1781. As explained herein and in the IFR, VA has determined that abortions are needed or medically necessary and appropriate care, as required under VA's statutory authorities, when the life or health of the pregnant veteran or CHAMPVA 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. It is up to the provider to determine if the specific clinical facts of the individual case establish that the carrying to term of a fetus with a fatal fetal anomaly would endanger the life or health of a pregnant veteran or CHAMPVA beneficiary. That is, it would be up to the provider to make the necessary clinical determination.

XIII. Comments Related to VA Mission and Funding

Several commenters opined that VA should not use its limited resources for abortion as VA facilities are for veteran care. These commenters expressed concerns regarding the impact of the health care services permitted under the IFR on VA's provision of other needed care. VA makes no changes to the rule based on these comments. As explained in the IFR and throughout this final rule, abortions can also be needed health care for veterans and medically necessary and appropriate for CHAMPVA beneficiaries. Pursuant to authorized appropriations, detailed above, VA receives and uses funding to furnish medical care authorized under the medical benefits package, which now includes abortions in certain circumstances and abortion counseling. VA's provision of the health care services permitted under the IFR does not impact or preclude VA's provision of all other needed health care.

XIV. Comments That VA Should Expand Access to Abortion

Several commenters opined that VA should permit access to abortions for any reason, not just in the circumstances identified in the IFR. One of these commenters asserted that VA's statutory authority permits abortion care in all circumstances, not just in cases where the life or health of the pregnant patient would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of rape or incest. Consistent with its authorities, and as discussed throughout this rule and the IFR, VA has removed exclusions for certain care that VA has, at this time, determined to be ''needed'' (for veterans) and ''medically necessary and appropriate'' (for CHAMPVA beneficiaries). We decline to change course based on these comments.

Some commenters supported a legislative change to permit VA to provide access to abortions for any reason. Those comments regarding Congress's ability to amend VA's statutory authority are outside the scope of this rulemaking.

Some commenters otherwise asserted that the IFR's framing of VA's regulatory changes as prohibitions on abortion with exceptions could be confusing, perhaps to the detriment of veterans or CHAMPVA beneficiaries. As discussed, given VA's statutory authorities and regulations concerning determinations that care is ''needed'' or ''medically

necessary and appropriate''—as well as a preexisting prohibition with ''exceptions'' for abortion care under VA's implementing regulations for CHAMPVA (38 CFR 17.272)—it was appropriate to regulate in this consistent manner. VA has and will continue to issue appropriate guidance to ensure that VA health care professionals understand that abortion is permitted under the exceptions as outlined in the IFR, and again directs veterans, CHAMPVA beneficiaries, and external stakeholders to VA's public-facing websites for clarifying information: *www.womenshealth.va.gov/WOMENSHEALTH/topics/abortion-services.asp.*

XV. Comments Outside the Scope of the IFR

Many commenters raised concerns that were outside the scope of the rulemaking, in addition to those noted above. VA has briefly summarized those concerns below; VA does not make any changes to the rule based on them.

A. Mandated Provision of Abortion or Any Related Reproductive Health Services

One commenter suggested VA clarify that ''the rule cannot mandate coverage for abortion or situationally for any related reproductive health services.'' To the extent the comment was simply asking VA to clarify this point, we reiterate that the covered health care and services permitted under the IFR are available to veterans and CHAMPVA beneficiaries when their health care provider determines they are needed or medically necessary and appropriate. The decision to pursue a particular course of treatment is the pregnant individual's decision, made in consultation with a provider, VA does not make that decision for the individual.

B. VA's Implementation of the IFR

Multiple commenters made statements or asked questions about VA's implementation plan(s) related to the IFR. VA finds comments related to VA's implementation beyond the scope of the IFR as these are administrative matters not controlled by the regulations that were revised by the IFR. Nonetheless, VA provides summaries and responses below for the purposes of transparency and as appropriate.

One commenter opined that VA must make explicit its plan to implement the rule. VA has made relevant information available on its website. *See www.womenshealth.va.gov/WOMENSHEALTH/topics/abortion-services.asp.* As stated there, VA is taking steps to guarantee veterans and CHAMPVA beneficiaries have access to abortion-related care, as authorized by this rule, anywhere in the country.

One commenter stated that a VHA website related to community care provisions (*https://www.va.gov/communitycare/programs/veterans/general_care.asp*) provided that VA facilities do not provide maternity care which suggests that veterans can only receive medical care related to pregnancy (and therefore abortions) through VA's community care providers. The commenter raised a concern about how eligible veterans would be able to access the health care services permitted under the IFR if they were solely available in the community and those community providers would be required to adhere to State law requirements. Relatedly, another commenter inquired whether VA will be providing the health care services permitted under the IFR within its VA medical facilities or referring individuals out to the community in other States.

VA does provide some maternity care services to veterans in VA medical facilities, and to the extent that VA can furnish the health care services permitted by the IFR directly, it will do so. Since the IFR published and became effective, VA has made efforts to ensure it has adequate capacity to provide abortion care at VA facilities, including abortion counseling. Regarding needed health care services permitted by the IFR that cannot be furnished in VA facilities (due to lack of resources such as staff or equipment, for instance), VA may refer such care to VA community care providers where that health care is available, consistent with existing VA regulations (see, for instance, 38 CFR 17.4000 *et seq.*).

Several commenters raised concerns that the IFR does not explain the types of abortion methods that will be permitted or prohibited by VA. As noted above, VA does not generally find it appropriate to regulate the types of methods of care or procedures that are permitted or prohibited. Doing so could unnecessarily restrict the provision of care, including abortions, and result in negative impact or harm to our patients. The type of abortion provided will vary on a case-to-case basis, and appropriate VA medical professionals must be able to determine, in accord with generally accepted standards of medical practice, how best to treat all individuals.

One commenter opined that VA should clarify in guidance that no additional administrative barriers should delay or impede access to the health care services permitted under the IFR determined to be appropriate by a health care professional. Neither the IFR nor this final rule adds administrative barriers to delay or impede access to the health care services permitted under the IFR. VA will ensure its health care professionals furnish this care consistent with the manner in which they furnish all other authorized health care.

One commenter inquired as to whether VA will have funding for the provision of this care, if VA will provide medication abortion, and if VA will have necessary providers available to provide this care. VA is using and will continue to use its current funding for the provision of health care authorized under 38 U.S.C. 1710 and 1781 to provide health care services in the circumstances permitted under the IFR. VA will ensure that experienced and trained VA providers are available to provide abortions, including medication abortion. Another commenter relatedly recommended that VA equip its pharmacists with the authority and infrastructure to support mail dispensary of medication abortion drugs. VA pharmacists do have the authority to mail medications.

Another commenter urged VA to include virtual counseling and medication abortion as part of the care authorized under the IFR. As explained previously in this rule, abortion counseling may be provided virtually through telehealth in accord with generally accepted standards of care. VA will provide medication abortions when needed and medically appropriate and in a manner consistent with Federal law.

Another commenter suggested that VA clarify that sexual assault survivors can receive the full range of health care without barriers, especially as the majority of sexual assaults are not reported, and survivors may distrust the police or fear retaliation from a known perpetrator. Veterans who are eligible for VA health care and CHAMPVA beneficiaries are able to receive the full range of health care authorized under the medical benefits package and CHAMPVA, respectively, regardless of whether they are a sexual assault survivor. VA notes that it has military sexual trauma coordinators at every VA medical facility that can further assist eligible individuals in accessing needed military sexual trauma care. For additional information, please see *www.va.gov/health-care/health-needs-conditions/military-sexual-trauma/.*

One commenter appeared to support VA's training of medical students and residents to provide the health care services permitted under the IFR.

Similar to the provision of all other health care provided by VA, medical students and residents may receive training from VA regarding the provision of the health care services permitted under the IFR. Such training would be conducted pursuant to an affiliation agreement between an educational institution and a VA facility, and under the clinical supervision of an appropriate health care professional.

One commenter stated that not all VA facilities are located on exclusive Federal property, and therefore it would seem necessary to alert individuals seeking an abortion at such a VA facility that VA cannot guarantee that such individuals would not be prosecuted under State law even though the VA medical provider would appear to be protected. The commenter further stated that a better option would be to have VA authorize transport at government expense of such an individual to a VA facility in a State that does not criminalize abortion. Relatedly, commenters inquired how VA will address State action concerns because not all veterans live in areas that permit abortion counseling or services and that there should be measures to ensure travel across State lines if necessary, and generally noted that VA needs to ensure that veterans feel safe in accessing abortion care.

For the portions of these comments that assert or question VA's jurisdiction or control of its facilities, any care or services furnished by VA in a manner authorized by Federal law, including by this rule, would preempt conflicting State law that would penalize VA employees for performing their Federal functions, regardless of any specific land ownership or leasing arrangements (for instance, such as if a VA facility is co-located to a State-sponsored academic institution).

To the extent these comments may raise concerns that needed abortion counseling or abortions cannot be furnished in VA facilities (due to lack of resources such as staff or equipment, for instance), VA reiterates from earlier in this discussion that VA may refer such care to VA community care providers where available.

Insofar as some comments concerned potential travel needed to obtain the health care services permitted under the IFR, veterans would have access to both Beneficiary Travel and Veterans Transportation Program benefits if so eligible under VA regulations at 38 CFR part 70.

Finally, insofar as commenters suggested that VA alert certain individuals seeking abortions that VA cannot guarantee that such individuals would not be prosecuted under State law, VA is a health care provider, and VA attorneys have no authority to provide any legal advice to veterans or CHAMPVA beneficiaries.

C. Suggested Alternatives to VA Providing Access to Abortion

Commenters asserted that instead of access to the health care services permitted under the IFR they believed pregnant individuals should be given the option of emotional and physical support throughout their pregnancies and post-partum experiences, specifically including prenatal medical attention. Other commenters similarly indicated that instead of providing access to abortions, VA should direct pregnant individuals to support groups that are available and, if such individuals do not wish to keep a child after giving birth, to help them through the adoption process. As with all comments discussed in this section, VA finds these comments to be beyond the scope of the IFR.

These commenters seem to assert that abortion would not be necessary if pregnant individuals were given more support during prenatal, pregnancy, or postpartum stages, or offered choices beyond abortion, which seems to assume that VA is providing access to abortion procedures for reasons other than medical necessity. However, the IFR permits abortions to be provided only when the life or health of the pregnant individual would be endangered if the pregnancy were carried to term or when the pregnancy is the result of an act of rape or incest. VA provides care to veterans when such care is determined by an appropriate health care professional to be needed to promote, preserve, or restore the health of the veteran and is in accord with generally accepted standards of medical practice, and provides care for CHAMPVA beneficiaries that is medically necessary and appropriate. The need for health care services permitted under the IFR would not be prevented by increased access to support groups or to a particular level of maternity care services. Moreover, VA's pregnancy options counseling, discussed above, includes abortion counseling and all other pregnancy options. The course of treatment is the pregnant individual's decision, made in consultation with a provider, and nothing in the IFR changes this.

To the extent the commenters might be expressing that lack of maternity care services could endanger a pregnant individual's life or health if the pregnancy were carried to term, maternity care services provided by VA include comprehensive pre- and post-partum care and services. VA will continue to provide comprehensive maternity care in addition to the health care services permitted by the IFR in the circumstances stated in the rule.

Regarding the request in the comments that VA assist pregnant individuals with the adoption process if they did not want to keep a child after giving birth, VA does provide pregnancy options counseling as part of its furnishing of maternity care services, and this pregnancy options counseling includes providing information on adoption.

Severability

The purpose of this section is to clarify VA's intent with respect to the severability of provisions of this rule. Each provision and portion of this rule is capable of operating independently. If any provision or portion of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. As explained in the IFR and above, VA amended its regulations because it determined that providing access to abortion-related medical care is needed to protect the lives and health of veterans and is medically necessary and appropriate care for CHAMPVA beneficiaries. For those same reasons, VA intends each aspect of the rule to operate and ensure that such care is available, even if one portion of the rule is invalidated. For example, if a provision of the rule concerning benefits for CHAMPVA beneficiaries were held invalid, other provisions concerning CHAMPVA beneficiaries, and provisions concerning the care available to Veterans under the medical benefits package, could and should continue to operate independently. The provisions authorizing abortions in cases where the life or health of the pregnant veteran or CHAMPVA beneficiary would be endangered if the pregnancy were carried to term could operate independently should the provision authorizing abortions in cases where the pregnancy is due to an act of rape or incest be held invalid, and vice versa. The provisions authorizing VA to provide abortions could continue to operate should the provisions authorizing VA to provide abortion counseling be held invalid. We emphasize that this is a non-exhaustive list of examples. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, the agency intends that

the rule remain applicable to all other circumstances.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comments submitted in response to the IFR (87 FR 55287) and, for the reasons set forth in the foregoing responses to those comments, has concluded that changes to the IFR are not warranted. Accordingly, based upon the authorities and reasons set forth in issuing the IFR (87 FR 55287), as supplemented by the additional reasons provided in this document in response to comments received, VA is adopting the provisions of the IFR as a final rule without changes.

Executive Order 13132, Federalism

Executive Order 13132 establishes principles for preemption of State laws when those laws are implicated in rulemaking or proposed legislation. The order provides that, where a Federal statute does not expressly preempt State law, agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

As discussed in the IFR, consistent with 38 CFR 17.419, State and local laws, rules, regulations, or requirements are preempted to the extent those laws unduly interfere with Federal operations or the performance of Federal duties. 87 FR 55293–55294. That includes laws that States and localities might attempt to enforce in civil, criminal, or administrative matters against VA health care professionals acting in the scope of their VA authority and employment and that would prevent those individuals from providing care authorized by 38 U.S.C. 1701, 1710, 1781, 1784A, 7301, and 7310, and VA's implementing regulations. State and local laws, rules, regulations, or requirements are therefore without any force or effect to the extent of the conflict with Federal law, and State and local governments have no legal authority to enforce them in relation to actions by VA employees acting within the scope of their VA authority and employment.

Because all State and local laws, rules, regulations, or requirements have no force or effect to the extent that they unduly interfere with the ability of VA employees to furnish reproductive health care while acting within the scope of their VA authority and employment, there are no actual or possible violations of such laws related to VA programs, operations, facilities, contracts, or information technology systems that would necessitate mandatory reporting by VA employees. 38 CFR 1.201–1.205. This rulemaking confirms VA's authority and discretion to manage its employees concerning the services that will be provided pursuant to this rulemaking.

Next, Executive Order 13132 requires that any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated. Under VA's regulations, State and local laws, rules, regulations, or other requirements are preempted only to the extent they unduly interfere with the ability of VA employees to furnish needed or medically necessary and appropriate health care to veterans and CHAMPVA beneficiaries while acting within the scope of their VA authority and employment. Therefore, VA believes that the rulemaking is restricted to the minimum level necessary to achieve the objectives of the Federal statutes.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *https://www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will not have a significant impact on a substantial number of small entities because the final rule does not directly regulate or impose costs on small entities and any effects will be indirect. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, see 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–21.

Congressional Review Act

Pursuant to the Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Health records, Medical devices, Medical research, Mental health programs, Veterans.

■ For the reasons stated in the preamble, the interim final rule amending 38 CFR part 17, which was published at 87 FR 55287 on September 9, 2022, is adopted as final.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on February 26, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

Michael P. Shores,

Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–04275 Filed 3–1–24; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, International Mail Manual* (IMM®) dated January 21, 2024, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This rule is effective March 4, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy, (202) 268–6592.

SUPPLEMENTARY INFORMATION: The *International Mail Manual* (IMM) provides our standards for all international mailing services and references for the applicable prices. It was issued on January 21, 2024, and was updated with *Postal Bulletin* revisions through December 28, 2023. It replaces all previous editions.

The IMM continues to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. It continues to: (1) increase the user's ability to find information; (2) increase the user's confidence that he or she has found the information they need; and (3) reduce the need to consult multiple sources to locate necessary information. The provisions throughout this issue support the standards and mail preparation changes implemented since the version of July 10, 2022. The *International Mail Manual* is available to the public on the Postal Explorer® internet site at *https://pe.usps.com.*

List of Subjects in 39 CFR Part 20

Administrative practice and procedure, Foreign relations, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 20.1 by revising paragraphs (a)(3) and (b) to read as follows:

§ 20.1 Incorporation by reference; Mailing Standards of the United States Postal Service, International Mail Manual.

(a) * * *

(3) *Inspection—NARA.* You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

(b) The Director of the Federal Register approved the IMM, updated January 21, 2024, for incorporation by reference as of March 4, 2024.

■ 3. Revise § 20.2 to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the *International Mail Manual* issued January 21, 2024 (incorporated by reference, see § 20.1), are applicable with respect to the international mail services of the Postal Service.

■ 4. Amend § 20.4 by adding an entry for ''IMM'' at the end of table 1 to read as follows:

§ 20.4 Amendments to the International Mail Manual.

* * * * *

TABLE 1 TO § 20.4—INTERNATIONAL MAIL MANUAL

International mail manual	Date of issuance
* * * * *	
IMM	January 21, 2024.

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–04420 Filed 3–1–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) dated January 21, 2024, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This rule is effective March 4, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy (202) 268–6592.

SUPPLEMENTARY INFORMATION: The *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) provides the United States Postal Service's official prices and standards for all domestic mailing services. The most recent issue of the DMM is dated January 21, 2024. This issue of the DMM contains all Postal Service domestic mailing standards and continues to: (1) increase the user's ability to find information; (2) increase confidence that users have found all the information they need; and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. The issue dated January 21, 2024, sets forth specific changes, including new standards throughout the DMM to support the standards and mail preparation changes implemented since the version issued on July 10, 2022.

Changes to mailing standards will continue to be published through **Federal Register** documents and the *Postal Bulletin* and will appear in the next online version available via the Postal Explorer® website at: *https://pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 111 as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

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

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101,