United States Conference of Catholic Bishops
Office of the General Counsel
3211 Fourth Street, NE
Washington, DC 20017
202.541.3000
usccb.org

Filed electronically

September 3, 2025

Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Re: Reproductive Health Services — Comment in Support of Proposed Rule (RIN 2900–AS31; 90 Fed. Reg. 36415 (Aug. 4, 2025); Comments due Sept. 3, 2025)

To Whom It May Concern:

The United States Conference of Catholic Bishops (USCCB) respectfully submits these comments in strong support of the Department of Veterans Affairs' (VA) proposed rule, "Reproductive Health Services," published at 90 Fed. Reg. 36415 (Aug. 4, 2025) (RIN 2900–AS31). The proposal would restore the long-standing exclusions of abortion and abortion counseling from the VA medical benefits package and from CHAMPVA, returning those programs to the status quo in place before September 8, 2022. That approach is faithful to VA's statutory authority, consistent with congressional policy, and better for veterans, their families, and the common good.

The USCCB opposed VA's 2022 interim final rule that newly authorized elective abortions and abortion counseling in VA programs.[1] We now support VA's proposal to reverse that departure and to re-establish the rules that had governed for more than two decades.

Summary

• Authority (§ 1710): The proposal correctly returns to the long-standing interpretation of 38 U.S.C. § 1710. From 1999 to 2022, VA excluded abortion and abortion counseling from "needed" care in the medical benefits package. The 2022 interim final rule was an unprecedented departure; the 2025 proposal lawfully restores the baseline.

• Congressional Limits: The proposal harmonizes VA's programs with Congress's design—especially § 106 of the Veterans Health Care Act of 1992 (VHCA), as well as the Armed Forces' limits at 10 U.S.C. § 1093, and the Anti-Deficiency Act.

[1] The comments filed by the USCCB on the 2022 interim final rule are available here: https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/2022.9.21.comments.VA_.regs_.final_.pdf.

• Post-*Chevron* Administrative Law: In light of *Loper Bright* and the major-questions doctrine (e.g., *West Virginia v. EPA*), VA's return to its historic interpretation avoids asserting authority over a matter of vast political significance without clear congressional authorization.[2]

• CHAMPVA Alignment: Restoring the exclusions is consistent with 38 U.S.C. § 1781's "same or similar" standard and with DoD's strict limits, while respecting that "similar" does not mean "identical."

• Federalism & Enclaves: Reinstating exclusions reduces avoidable conflicts with state criminal law on federal property under the Assimilative Crimes Act (18 U.S.C. § 13).

• Health, Ethics, and Care Focus: The proposal protects unborn children and properly centers pertinent VA care on clinically indicated treatment, including for ectopic pregnancy and miscarriage, high-quality prenatal/perinatal/postpartum care, perinatal palliative care, mental-health support, and wraparound services.

• Conscience and Religious Freedom: The final rule text should require VA facilities to maintain facility-level guidance for honoring conscience and religious freedom rights guaranteed by federal law.

I. VA's Authority Under 38 U.S.C. § 1710 to Define the "Medical Benefits Package"

Section 1710 authorizes VA to furnish "needed" hospital care and medical services to eligible veterans. From the establishment of the medical benefits package in 1999 until September 8, 2022, VA consistently interpreted "needed" to exclude abortion and abortion counseling. Nothing in § 1710 mentions abortion. Restoring the exclusion respects the statutory limits Congress enacted and avoids transforming § 1710 into a general authorization for an ethically and politically contested procedure that Congress has repeatedly regulated and limited in adjacent contexts.

VA's 2022 interim final rule and 2024 final rule deviated from that long-standing interpretation; this proposal appropriately returns to the pre-2022 baseline and thus reflects a reasonable construction rooted in text, structure, and history.

[2] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697 (2022).

II. The Proposal Aligns VA Policy With Governing Congressional Limits

A. VHCA § 106

Congress has spoken directly to the scope of covered women's health services in VA programs. Section 106 of the Veterans Health Care Act of 1992 identifies specified services but, by its terms, excludes abortions (subject to a narrow service-connected complication exception). As USCCB explained in 2022, § 106 applies to the furnishing of all medical services under chapter 17 of title 38—not merely to one subsection thereof—so VA may not circumvent § 106 by relocating abortion coverage elsewhere. The proposal respects § 106 by restoring the exclusion.

B. Congressional Ratification of the Pre-2022 Package

In the Deborah Sampson Act of 2020, Congress referenced VA's "medical benefits package … as in effect on the day before" enactment.[3] On that date, abortion and abortion counseling were not part of VA's package. The most natural inference is that Congress understood and accepted the pre-2022 exclusion. The proposal reinstates that same regime.

C. Consistency with 10 U.S.C. § 1093 and Related Appropriations Policy

Department of Defense programs may not fund or provide abortions except in narrow circumstances: cases of rape or incest, or when the life – as distinct from health alone – of the mother would be endangered.[4] When VA's 2022 interim final rule expanded CHAMPVA to provide for abortions for the health of the mother, it argued that expansion was compatible with 38 U.S.C. 1781(b)'s command that CHAMPVA benefits be "similar" to TRICARE,[5] even though the "health of the mother" standard has been construed to be nearly limitless. It stands to reason, then, that restoring VA's longstanding guardrails on abortion fits comfortably within 38 U.S.C. 1781(b)'s directive.

---

[3] Pub. L. No. 116-315, tit. V, subtit. A, § 5101, 134 Stat. 5026.
[4] 10 U.S.C. 1093 (prohibiting use of Department of Defense funds or facilities for the performance of 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").
[5] 87 Fed. Reg. 55287, 55290 ("VA, however, has determined that, overall, the relevant care provided under CHAMPVA will still be sufficiently 'similar' to that provided under TRICARE (Select). 38 U.S.C. 1781(b). Section 1781(b) does not require CHAMPVA and TRICARE (Select) to be administered identically.").

D. Anti-Deficiency Act

The Anti-Deficiency Act bars federal agencies from making expenditures for which there is no authorizing congressional appropriation.[6] Any federal employee who violates the Act is subject to administrative penalties (including suspension without pay and removal from office) and criminal penalties.[7] Reinstating the exclusion eliminates risks that VA will expend funds for abortion or abortion counseling without clear authority.

III. Administrative Law Considerations: Post-*Chevron*, Major Questions, and Reliance Interests

In light of the Supreme Court's decision in *Loper Bright*, *Chevron* deference is no longer available. Agencies must ground their interpretations in the best reading of statutory text, history, and structure. The major questions doctrine likewise cautions against asserting authority over matters of vast economic and political significance absent clear congressional authorization. Restoring the pre-2022 exclusions is not merely lawful, but prudent under this standard.

IV. Federal Enclaves, the Assimilative Crimes Act, and Respect for State Law

The Assimilative Crimes Act incorporates state criminal law on federal enclaves unless federal law preempts.[8] Where a state prohibits particular abortions, authorizing such procedures on federal property can create unnecessary conflict and litigation risk. Returning to the pre-2022 exclusions reduces friction, furthers cooperative federalism, and promotes legal clarity for VA facilities and clinicians.

V. Conscience and Religious Freedom

Inclusion of even a narrow category of abortions in the VA benefits package or CHAMPVA may create conflicts between what the proposed rule would permit and what VA health care workers' consciences or religious beliefs prohibit. VA should state in the final rule text, rather than merely in the preamble, that VA facilities must maintain facility-level guidance on their obligations to comply with Title VII's religious accommodation requirement, the conscience protections in the Coats-Snowe Amendment (42 U.S.C. § 238n), and the Religious Freedom Restoration Act (RFRA).

---

[6] 31 U.S.C. § 1341.
[7] 31 U.S.C. §§ 1349, 1350.
[8] 18 U.S.C. § 13.

VI. Protecting Women's Health and Unborn Children

USCCB supports VA's focus on care that serves women and their families: prompt and comprehensive treatment for ectopic pregnancies and management of miscarriages; high-quality prenatal, perinatal, and postpartum care; perinatal palliative care; mental-health support; and robust material and social services for mothers and families. These are positive goods that advance the well-being of veterans and dependents without taking unborn life.

USCCB requests that VA expressly affirm in the final preamble and guidance that treatment of life-threatening conditions like ectopic pregnancy and management of miscarriage are covered medical services distinct from abortion, and that VA issue associated coding/claims guidance to avoid unintended interference with life-saving obstetric care. We also request clarification that the exclusion of "abortion counseling" covers referrals or arrangements for abortion, while preserving clinically indicated counseling related to miscarriage management, ectopic pregnancy, prenatal care, perinatal palliative care, and mental-health services.

VII. Recommendations

USCCB respectfully requests that VA:

1. Finalize the proposed revisions to 38 C.F.R. § 17.38(c)(1) and § 17.272(a)(58) and (a)(78).
2. Include preamble text affirming that treatment of life-threatening conditions such as ectopic pregnancy and management of miscarriage remain covered and distinct from abortion; issue associated coding/claims guidance.
3. Require maintenance of facility-level guidance on compliance with Title VII, Coats-Snowe, and RFRA.

VIII. Conclusion

For the reasons above, USCCB strongly supports VA's proposal to reinstate the exclusions of abortion and abortion counseling from the VA medical benefits package and CHAMPVA. We urge the Department to finalize the rule and to adopt the clarifications requested above to ensure clarity, continuity of care, and respect for federalism and conscience.

Respectfully submitted,

William Quinn
General Counsel

Daniel Balserak
Assistant General Counsel