

Via electronic submission ([www.regulations.gov](http://www.regulations.gov))

September 27, 2022

Shareef Elnahal, MD  
Under Secretary for Health  
Department of Veterans Affairs  
810 Vermont Ave. NW  
Washington, DC 20420

**Re: RIN 2900-AR57—Reproductive Health Services**

Dear Dr. Elnahal:

The Association of American Medical Colleges (AAMC) welcomes this opportunity to comment on the Department of Veterans Affairs (VA) Interim Final rule entitled *Reproductive Health Services*, 87 Fed Reg 55287 (September 9, 2022). The AAMC strongly supports the interim final rule that amends regulations to allow coverage for medically necessary reproductive health services for VA and Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries and confirms that state laws and regulations that otherwise would prevent VA health care professionals from providing medically necessary abortion-related care, as permitted in the rule, are preempted.

The AAMC is a nonprofit association dedicated to improving the health of people everywhere through medical education, health care, medical research, and community collaborations. Its members comprise all 156 accredited U.S. medical schools; 14 accredited Canadian medical schools; approximately 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and nearly 80 academic societies. Through these institutions and organizations, the AAMC leads and serves America's medical schools and teaching hospitals and the millions of individuals across academic medicine, including more than 191,000 full-time faculty members, 95,000 medical students, 149,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences. Following a 2022 merger, the Alliance of Academic Health Centers and the Alliance of Academic Health Centers International broadened the AAMC's U.S. membership and expanded its reach to international academic health centers.

The AAMC and our member teaching hospitals and health systems and medical schools have a long-standing and unique relationship with the VA for 75 years dating back to the end of World War II. Today, the VA has affiliations with over 1,800 individual institutions, comprising nearly 8,000 individual programs across more than 40 health professions. VA's physician education program is conducted in collaboration with 153 of 156 MD granting medical schools and all 37 DO granting medical schools. Each year, the VA helps train more than 20,000 individual

medical students and more than 48,000 individual medical residents within its walls. As a system, the VA represents the largest training site for physicians, and is the second largest single funder of graduate medical education (GME). More than 110 medical schools have affiliation agreements with VA Medical Centers where faculty are jointly appointed. The VAs ongoing commitment to medical education has roots in developing a robust medical workforce to meet the needs of Veterans, including reproductive health care.

### **Expansion of Reproductive Health Services Coverage**

After the *Dobbs v. Jackson Women's Health Organization* Supreme Court (142 S. Ct. 2228 (2022)) decision overturning *Roe v. Wade*, some states have begun to enforce abortion bans and restrictions on care and are proposing to enact new restrictions, which are creating risks for people who are pregnant. These restrictions limit Veterans' access to the full scope of reproductive health care in certain states. We support the VA's decision in the interim final rule to include in its medical benefits package coverage of abortion counseling and access to abortions when the life or the health of the pregnant Veteran or CHAMPVA beneficiary is at risk or in the case of rape or incest. This will enable VA and CHAMPVA beneficiaries' access to medically necessary and appropriate reproductive health care through the VA, no matter where they live. To protect the life and health of Veterans and CHAMPVA beneficiaries, access to abortions and abortion counseling is critical.

### **Preemption and Related Principles**

**The AAMC commends the VA for clarifying that state and local laws and regulations that would prevent VA health care professionals from providing needed abortion-related care as permitted in its rule, are preempted by the VA's authority under federal law.**

Historically, VA has operated as a national health care system that authorizes VA health care professionals at VA medical facilities to practice in any state as long as they have a valid license, registration, certification, or fulfill other state requirements in at least one state. In doing so, VA health care professionals practice within their scope of their VA employment regardless of any state requirements that would restrict practice. We strongly support the VA's authority to allow health care professionals to practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any state license, registration, certification, or other requirements that unduly interfere with their practice.<sup>1</sup>

Additionally, we commend the VA for further clarifying that **no** VA employees, "including health care professionals who provide care and VA employees who facilitate that health care, such as VA employees in administrative positions..." may be held liable under state or local law or regulation for reasonably performing their federal duties. As stated in the rule, the Supremacy Clause in the Constitution generally immunizes the federal government from state laws that directly regulate or discriminate against it unless such state regulation is authorized by federal law. Therefore, states should not be permitted to impose criminal or civil liability on VA employees who as part of their VA employment perform their duties in a manner authorized by federal law.

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<sup>1</sup> 85 Fed. Reg 71838 (November 12, 2020). 38 CFR 17.419.

This clarification is especially important at this time since states and localities have begun to enforce abortion bans and restrictions on care after the *Dobbs* decision. Some of these state laws would subject physicians and other health care professionals to criminal and civil penalties and loss of licensure for performing abortions, even when the health and safety of the veteran is of serious concern. Such restrictions create risks to the lives and health of pregnant veterans, CHAMPVA beneficiaries, and other persons in those states and have a chilling effect on the provision of needed care for beneficiaries. Restrictive state laws severely limit a patient's access to comprehensive reproductive health care, interfere in the patient-physician relationship, and override the clinician's responsibility to provide the best medical care for every patient. Furthermore, such laws impose a great burden on historically and economically marginalized and disadvantaged populations, including some Veterans and CHAMPVA beneficiaries, who already suffer from limited access to our health care system.

Physicians, nurses, and other qualified personnel must be able to work directly with their patients to make decisions about the most appropriate care. They need to exercise their medical judgment to determine when an abortion is medically necessary to protect the health or safety of people who are pregnant. If these restrictive state laws were to apply, physicians, nurses, and other health care professionals would be put in impossible situations of trying to ensure the health and well-being of their patients while fearing criminal prosecution or loss of licensure for doing so.

It is crucial that medical students and resident physicians who wish to have comprehensive training in the full spectrum of reproductive health care have that option available. All medical schools currently require students to complete a clerkship in obstetrics and gynecology, though training in providing abortions and related care is not required. OB-GYN programs are required to provide residents with training or access to training on the provision of abortions, though residents with objections may opt out of performing induced abortions. Resident physicians in VA affiliated programs spend a significant amount of their training at VA facilities. While training at VA medical centers, residents, and other health professional trainees hold appointments with the VA. They work with appropriate supervision and are in effect, part of the VA workforce and should be covered by the same federal pre-emption as all other VA employees while treating patients at VA facilities.

Giving medical students and residents the opportunity to be trained in abortions and abortion-related care will help to support the availability of well-trained health care professionals in abortion care at a critical time. This will enable Veterans and CHAMPVA beneficiaries to receive quality care when it is medically appropriate. At a time when the opportunities for such training are contracting and even disappearing in many parts of the country, it will also mean that should those providers leave the VA in the future to practice medicine, their patients will have access to providers who are well-trained in delivering these services.

Under Secretary Elnahal

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The AAMC appreciates your consideration of the above comments. Should you have any questions, please contact Gayle Lee at [galee@aamc.org](mailto:galee@aamc.org).

Sincerely,

*Rosha C. McCoy MD*

Rosha Champion McCoy, MD, FAAP  
Acting Chief Health Care Officer

cc: David J. Skorton, MD  
CEO and President