

Clinical and Ethical Implications of Overturning Roe v. Wade: A Military Health Perspective

Lt. Col. Michael Frankel, Ph.D., M.B.A., M.P.A.

Maj. Mark Nikont, D.Min., M.B.E., M.Div.

Maj. Tiara N. Walz, M.H.A., M.B.A., F.A.C.H.E.

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Presenters

Army Lt. Col. Michael Frankel, Ph.D., M.B.A., M.P.A.

Health Services Comptroller, U.S. Army

Faculty Lecturer, Army Baylor Graduate Program

Baylor University

Joint Base San Antonio

Fort Sam Houston, Texas

Army Maj. Mark Nikont, D.Min., M.B.E., M.Div.

Chaplain, U.S. Army

Assistant Professor, Instructor

Army Baylor Graduate Program

Baylor University

Joint Base San Antonio

Fort Sam Houston, Texas

Army Maj. Tiara N. Walz, M.H.A., M.B.A., F.A.C.H.E.

Faculty Lecturer, Army Baylor Graduate Program

Baylor University

U.S. Army Medical Center of Excellence

Joint Base San Antonio

Fort Sam Houston, Texas

Army Lt. Col. Michael Frankel, Ph.D., M.B.A., M.P.A



LTC Mike Frankel, M.B.A., M.P.A., M.S., currently serves as a faculty lecturer in the Army-Baylor Graduate Program in Health and Business Administration. He teaches courses in finance, accounting, business law, and marketing. He is a doctoral candidate in business administration at the University of Oregon, with research in organizational behavior. He was awarded an M.B.A. and an M.P.A. from Syracuse University, where he was also awarded a graduate certificate in health service management and policy. He was awarded an M.S. in Environmental Management from the University of Maryland University College and a B.S. in Urban Rural, and Environmental Planning from Brigham Young University. Lt. Col. Frankel is a certified Lean Six Sigma Black Belt and Master Black Belt candidate with experience in process improvement, project management and mentorship, and teaching.

As a health services comptroller, Lt. Col. Frankel provides subject matter expertise in resource and human resource management, data and policy analysis, and strategic planning. His recent assignments include CFO/G8, Regional Health Command – Pacific, Fort Lewis, Wash.; CFO, Keller Army Community Hospital, West Point, N.Y.; and Assistant CFO, Landstuhl Regional Medical Center, Landstuhl, Germany. Lt. Col. Frankel is a Fellow in the American College of Healthcare Executives, a Certified Healthcare Financial Professional in the Healthcare Financial Management Association, and a Certified Defense Financial Manager with Acquisition identifier in the American Society of Military Comptrollers. He is also a member of the American Psychological Association, Society of Military Psychology, the Academy of Management, the Southern Management Association, and the Society for Industrial and Organizational Psychology.

Army Maj. Mark Nikont, D.Min., M.B.E., M.Div.



Chaplain (Major) Mark Nikont enlisted in the Army as a Food Service Specialist, and 4 years later retrained as a Voice Signal Interceptor, Russian Language. After 9 years of service, he left the Army and worked multiple jobs before answering a call to pastoral ministry in 1999. During his time as a Licensed Local Pastor in the United Methodist Church, he earned a Bachelor of Arts degree from Bellevue University and a Master of Divinity degree from Asbury Theological Seminary.

Chaplain Nikont returned to the Army as a Chaplain in June of 2008. He went to his first duty station at Ft. Hood, TX serving with the 2/82 FA BN where he also went on a combat deployment. After serving at Ft. Hood, he went to Ft. Leavenworth, KS where he served with the 705th MP BN (I/R). While at Ft. Leavenworth, he was selected for Clinical Pastoral Education at Brooke Military Medical Center in San Antonio, TX. After completing his training, he served at the Tripler Army Medical Center in Honolulu, HI.

In 2016, he earned a Doctor of Ministry degree from Erskine Theological Seminary. In 2020, he earned a Master of Bioethics degree from the University of Pennsylvania. After becoming promotable, he served as the BDE Chaplain for the 18th MP BDE in Vilseck, Germany.

He presently teaches Medical Ethics and Organizational Ethics in the Army-Baylor Graduate Program in Health and Business Administration at the Medical Center of Excellence on Fort Sam Houston, TX, and is an Assistant Professor at Baylor University and Lecturer at University of Nebraska Medical Center.

Army Maj. Tiara N. Walz, M.H.A., M.B.A., F.A.C.H.E.



MAJ Tiara Walz is an Assistant Professor at the Army Baylor University Graduate Program in Health and Business Administration since August 2022. She has over 13 years of service as a Medical Service Corps Officer. Her Ph.D. work focuses on chronic pain in the veteran population and how chronic pain impacts healthcare utilization and expenditures on an individual and systems level in the United States. She graduated from the Army Baylor program with her MHA and MBA in 2017.

MAJ Walz's research interests include addressing health disparities in the veteran population and other marginalized groups through policy, as well as how insurance, access, health behaviors, and stigma impact healthcare utilization and associated costs. MAJ Walz is a fellow of the American College of Healthcare Executives, and is also passionate about networking, healthcare leadership, and improving quality of life for service members, their families, and the veteran population in the US. She currently teaches Organizational Behavior and Theory, Health Policy, and Health Insurance at the Army Baylor MHA/MBA program.

Disclosures

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Learning Objectives

At the conclusion of this activity, participants will be able to:

1. Review legal limitations and policy concerning abortion from a military health perspective.
2. Discuss medical readiness and force readiness implications of changes in abortion law and policy.
3. Identify ethical implications and concerns associated with changes in abortion law and policy.

Legislative Background

- Roe v. Wade, 1973, based on the 14th Amendment and right to privacy
- Hyde Amendment, 1976, effective 1980, renewed annually in appropriations bills
 - Prohibited use of federal funds for abortions, “except where the life of the mother would be endangered if the fetus were carried to term.”
- Department of Labor, Health and Human Services (HHS), Education, Related Agencies Appropriations Act, 1994, signed by President Clinton
 - Expanded the category of abortions eligible under Medicaid to include rape and incest
 - States mandated to pay for abortion cases following rape or incest
- Hyde Amendment failed to become law under H.R. 7, 2017

[Roe v Wade, 1973](#)

[14th Amendment and Right to Privacy](#)

[Hyde Amendment, 1976](#)

[Dept. of Labor, Health and Human Services \(HHS\), Education, Related Agencies Appropriations Act, 1994](#)

[H.R.7,201](#)

Legislative Background, Cont.

Dobbs v. Jackson Women's Health, 2022, overturned Roe v. Wade

- The decision eliminated federal standards on abortion access as established by Roe v. Wade and Planned Parenthood v. Casey.
- Without codification at the federal level, each state can establish their own laws protecting or restricting abortion

Where does this leave the United States Military and its Service Members?

Why is there confusion within Military Treatment Facilities (MTFs) pertaining to women's reproductive health and abortion?

[Roe v. Wade](#)

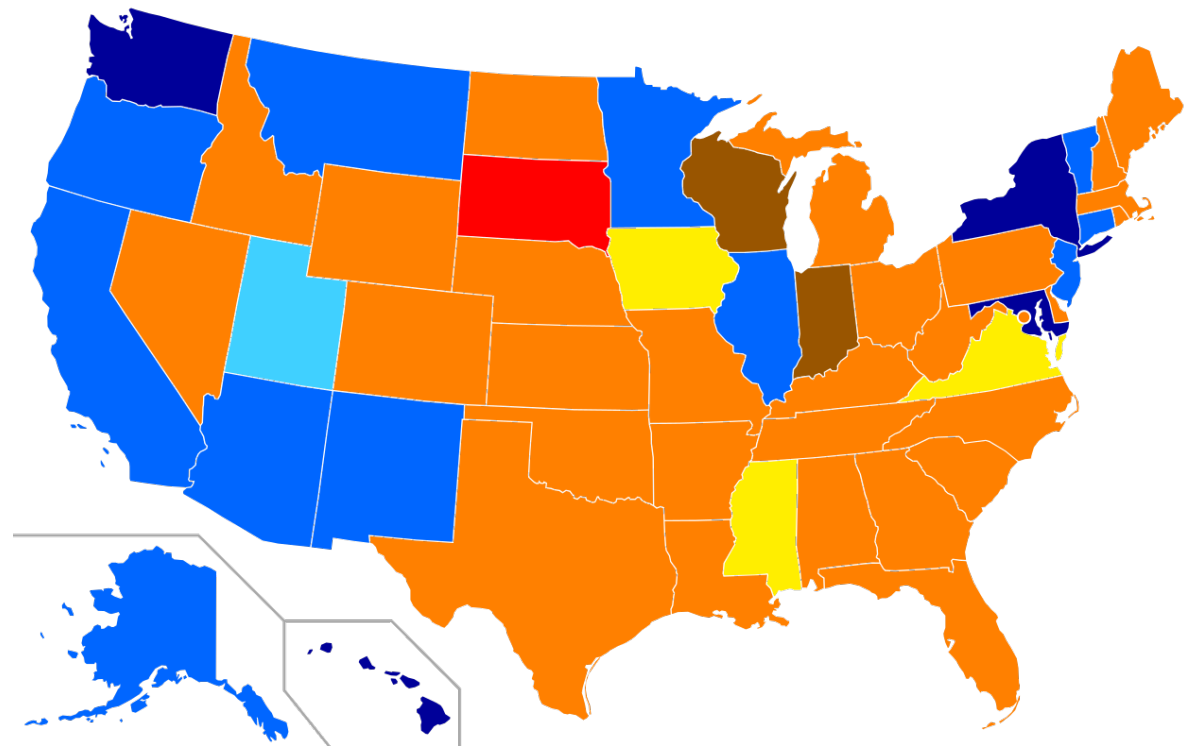
[Dobbs v. Jackson Women's Health, 2022](#)

[Planned Parenthood v. Casey](#)

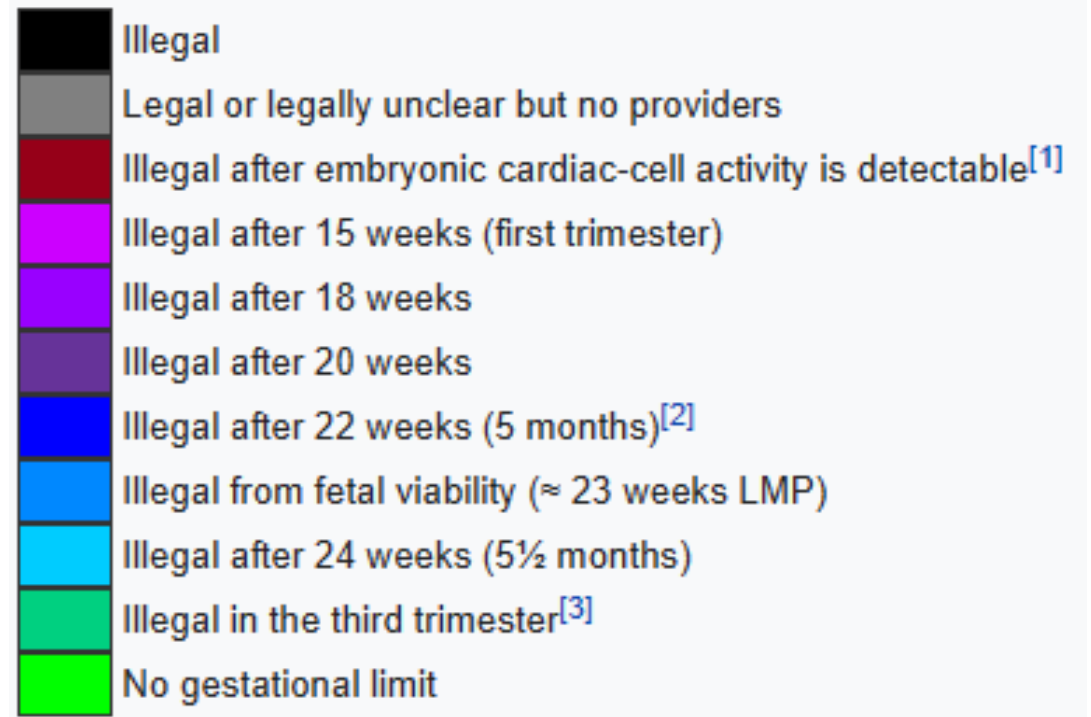
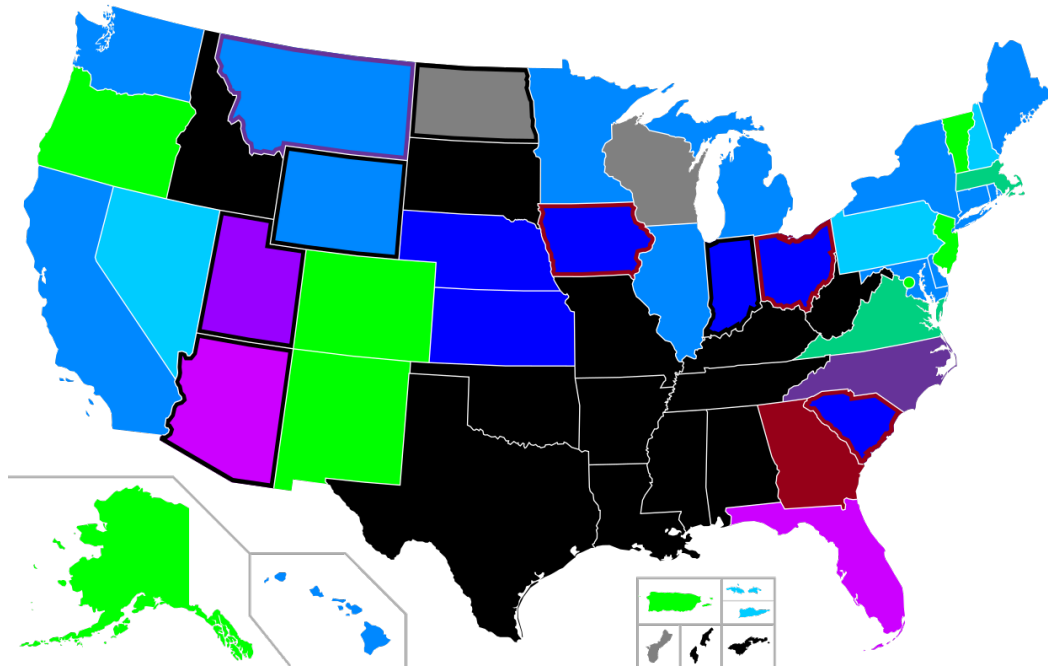


- Medicaid covers medically necessary abortion for low-income women through legislation.
- Medicaid covers medically necessary abortions for low-income women under court order.
- Medicaid denies abortion coverage for low-income women except for cases of rape, incest, life or health endangerment, or severe fetal abnormality.
- Medicaid denies abortion coverage for low-income women except for cases of rape, incest, life endangerment, or severe fetal abnormality.
- Medicaid denies abortion coverage for low-income women except for cases of rape, incest, or life or health endangerment.
- Medicaid denies abortion coverage for low-income women except for cases of rape, incest, or life endangerment.
- Medicaid denies abortion coverage for low-income women except for cases of life endangerment.

Medicaid Coverage as of September 2022



Abortion Legality of November 2022



For DoD: 10 USC 1093: Performance of abortions: restrictions

(a) Restriction on Use of Funds.

-Funds available to the Department of Defense (DoD) may not be used 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.

(b) Restriction on Use of Facilities.

-No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion 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.

- [10 USC 1093: Performance of abortions: restrictions \(house.gov\)](#)

10 USC 1093: Privately Funded Abortions at Military Hospitals

“Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense ("DOD") funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton.”

- [10 USC 1093: Performance of abortions: restrictions \(house.gov\)](https://www.house.gov/10-usc-1093)

TRICARE Covered Abortions

- TRICARE covers abortions ONLY when:
 - Pregnancy results from rape or incest
 - Life of the mother is at risk
 - NOTE: in both cases, a physician must certify the reason in the patient's record
- TRICARE covers medical and mental health services related to the covered abortion
- TRICARE Disclaimer: "This list of covered services is not all inclusive. TRICARE covers services that are medically necessary and considered proven. There are special rules or limits on certain services, and some services are excluded.
- <https://www.tricare.mil/CoveredServices/IsItCovered/Abortions>

TRICARE Covered Abortions

- TRICARE covered abortions authorized at:
 - Hospital outpatient departments
 - Freestanding ambulatory surgery centers
 - Individual providers
- TRICARE DOES NOT cover:
 - Services and supplies related to non-covered abortions
 - Counseling, referral, preparation, and follow-up for a non-covered abortion
 - Abortions for fetal abnormality or for psychological reasons
- <https://www.tricare.mil/CoveredServices/IsItCovered/Abortions>

Memorandum by Secretary Austin

20 October 22

To protect service members:

- Increased privacy protection – notify commanders of pregnancy at 20 weeks
- Providers may not notify/disclose reproductive health info to commanders
- Commanders are to enforce policies against discrimination/retaliation

To protect health care providers:

- Reimburse licensing fees for providers to become licensed in new state to support performance of official duties
- Develop a program to support providers subject to adverse actions for appropriately performing their duties

Memorandum by Secretary Austin

20 October 22

To support recruiting and retention:

- Create DoD policy allowing for administrative absence for non-covered reproductive health care
- Establish travel and transportation allowances for Service members and dependents to facilitate travel to access non-covered reproductive health care

To support family planning:

- MTFs will expand services to include dedicated hours for walk-in contraceptive care
- Conduct a comprehensive contraception education campaign, to include publicly displayed information
- Improve TRICARE and MHS websites to clarify types of care available following any abortion, covered or not covered and provide points of contact

Women in the DoD

- MHS serves 1.62 million women of reproductive age (15 – 45)
 - Servicemembers, retirees, dependents
- Unintended pregnancies 50% higher for active-duty women than civilian counterparts
- 46,000 active-duty women and 75,000 reserve component women assigned to states with laws that ban or restrict abortion (as of 7/22)
- DoD performed 93 covered abortions from 2016 to 2022 in MTFs
- <https://crsreports.congress.gov/product/pdf/IN/IN11960>

Impact on U.S. National Security

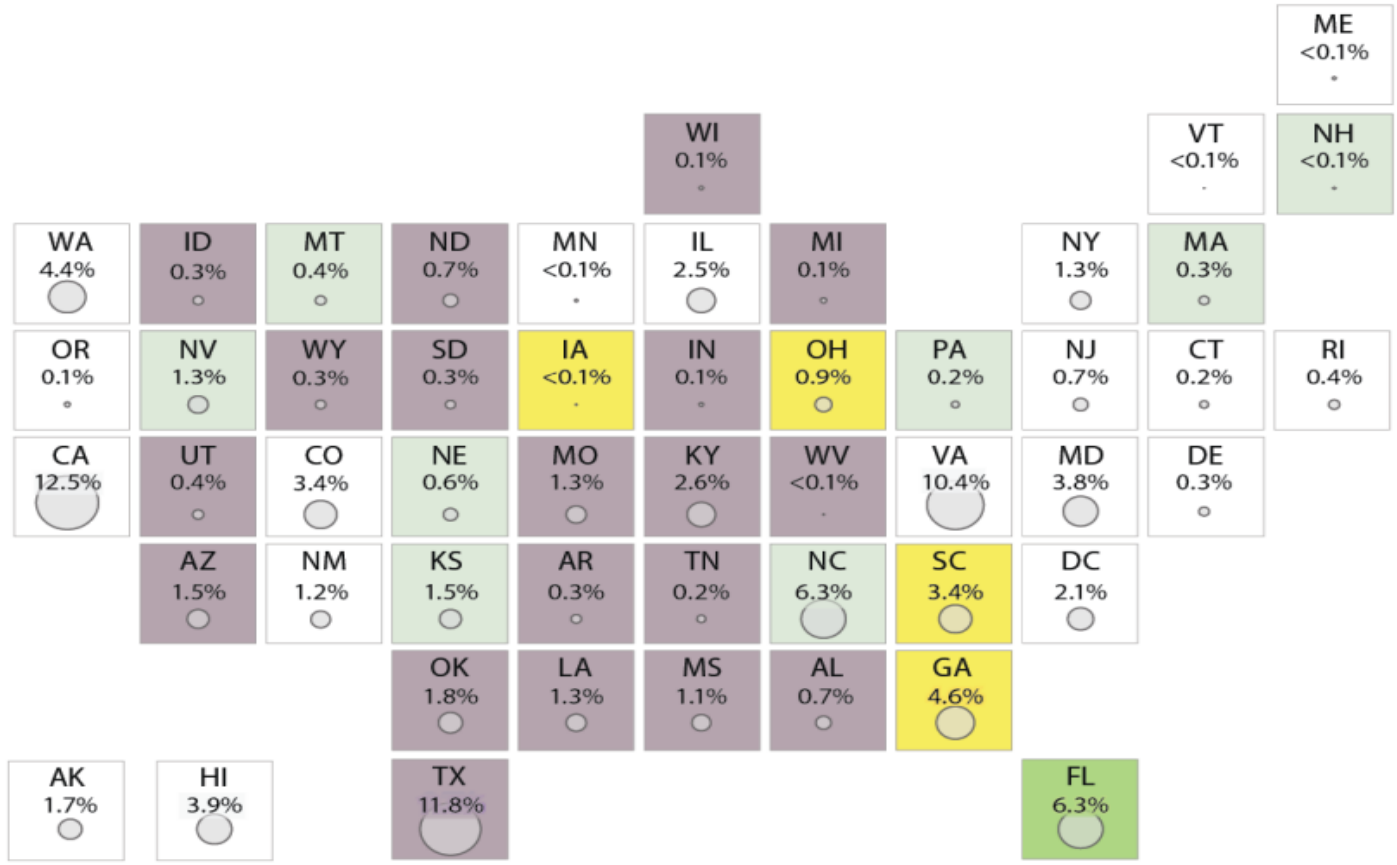
- 17.2% of the active-duty force are women
 - 6% face unintended pregnancies annually
- Limits women's access to reproductive health care
- Unintended pregnancies hurt readiness
- Neglects needs to female service members

Laws banning abortion*

% Share of female military population residing in state
As of July 31, 2022

Laws restricting abortion by gestational age** Weeks=gestational age

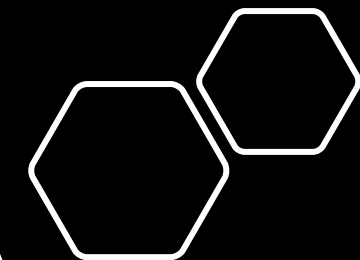
When heartbeat detected, generally at 6 weeks After 15 weeks After 20, 22, or 24 weeks



Laws existing, but not necessarily in effect, as of August 8, 2022.

* With limited exceptions in certain states for situations like rape, incest, and life of the mother. States may have additional laws restricting abortion based on gestational age.

** Earliest gestational age restriction is shown. States may have additional laws restricting abortion at later gestational ages.



Laws Banning Abortion

Legal Points

Federal law trumps state law in terms of care

DoD general counsel opined that appropriations can be expended to fund service member travel that DoD cannot perform (10/22)

A Military Patient's Perspective

- Memorandum by Secretary Austin protects service members – but for how long? How is this enforced?
 - Directs commanders to display objectivity and discretion
 - Changing landscape
- Overturning Roe v. Wade:
 - May empower clinicians and leaders in states with restricted access to abortion to dissuade service members from taking birth control, using contraceptives, and pursuing clinical abortions when needed for health-related reasons.
 - May lead to “slippery slope” of discrimination, stigma, shame, fear, and loss of trust and autonomy.

Scenario

- A female service member discloses a pregnancy to their commander, and the pregnant service member wishes to terminate her pregnancy. However, mission requirements have already forced the commander to deny another service member's elective surgery request.
 - What are some ethical concerns with this scenario?
 - Are commanders within their right to deny an “elective” abortion due to mission requirement?
 - What if denying the abortion puts the life of the service member at risk later in the pregnancy? Would there be legal action taken against the commander?

Final Thoughts

Key Takeaways

- What are you all seeing or hearing from commanders, service members, referral management offices, etc.?
- Research on women's health and mental health concerns while living in or PCSing to restricted states:
 - Beginning this summer
 - Will be qualitative, in-depth interviews
 - Video and audio recording
 - One-to-two-year project

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Questions?

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To receive CE/CME credit, you must register by 0825 ET on 24 February 2023 to qualify for the receipt of CE/CME credit or certificate of attendance. You must complete the program posttest and evaluation before collecting your certificate. The posttest and evaluation will be available through 9 March 2023 at 2359 ET. Please complete the following steps to obtain CE/CME credit:

- Go to URL: <https://www.dhaj7-cepo.com/content/feb-2023-ccss>
- Click on the REGISTER/TAKE COURSE tab.
 - If you have previously used the CEPO CMS, click login.
 - If you have not previously used the CEPO CMS click register to create a new account.
- Follow the onscreen prompts to complete the post-activity assessments:
- Read the Accreditation Statement
- Complete the Evaluation
- Take the Posttest
- After completing the posttest at 80% or above, your certificate will be available for print or download.
- You can return to the site at any time in the future to print your certificate and transcripts at: <https://www.dhaj7-cepo.com/>
- If you require further support, please contact us at: dha.ncr.j7.mbx.cepo-cms-support@health.mil

