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**ATTORNEY GENERAL**

February 16, 2023

Danielle Gray
Executive Vice President
Walgreens Boots Alliance, Inc.
108 Wilmot Road
Deerfield, IL 60015

Sam Khichi
Executive Vice President
CVS Health
One CVS Drive
Woonsocket, RI 02895

Dear Ms. Gray and Mr. Khichi:

The Attorneys General of California, Oregon, Washington, Arizona, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, and Vermont are committed to defending access to reproductive healthcare, including abortion and contraceptives, after the U.S. Supreme Court overturned the federal constitutional right to abortion last summer. Thus, we welcome the opportunity to work with pharmacies like yours to expand access to reproductive healthcare. To that end, we appreciate your recent announcement of your intention to start offering mifepristone and misoprostol, often referred to as medication abortion, in your retail pharmacies, consistent with state and federal law. We write to share our support for your efforts to ensure continued access to this critical—and sometimes lifesaving—medicine, without undue restrictions.

We recognize that not all states support full and equal access to reproductive healthcare, and that some of these anti-abortion states recently sent you a letter questioning the legality of your plan to fill prescriptions for mifepristone and misoprostol.[1] It is our understanding from

[1] Letter from Andrew Bailey, Attn'y Gen. of Mo., to Danielle Gray, Exec. Vice President of Walgreens Boots Alliance, Inc. (Feb. 1, 2023) 2023-02-01-fda-rule---walgreens-letter-danielle-gray.pdf

your public statements that while you are committed to making these medications available as broadly as possible in your pharmacies in response to the FDA's recent actions, you are equally committed to doing so in compliance with both state and federal law. To the extent the anti-abortion states' letter implies otherwise, that is simply not accurate.

The anti-abortion states' letter claims that the distribution of mifepristone and misoprostol is impermissible under a set of laws dating back to the 1870s, sometimes referred to as the Comstock Act. This claim is misguided and disregards over a century's worth of legal precedent. As extensively detailed in the Office of Legal Counsel's recent memorandum opinion, since the early twentieth century, federal courts have repeatedly and consistently held that the Comstock Act does *not* categorically prohibit mailing items that can be used to terminate a pregnancy, and does not apply unless the sender intends the recipient to use them *unlawfully*.[2] And Congress has repeatedly ratified this longstanding judicial construction of the Act, which has been followed by the U.S. Postal Service for many decades.[3] Mifepristone and misoprostol are safe, effective medications that are used *lawfully* for a variety of purposes that comport with federal and state law. They are FDA-approved for use in terminating a pregnancy through ten weeks gestation, which is a protected right under many states' laws.[4] In short, the antiquated legal theory the anti-abortion states attempt to revive is meritless and has been repeatedly and consistently rejected.

The anti-abortion states' letter also makes several inaccurate factual statements. According to these anti-abortion states, "[a]bortion pills are far riskier than surgical abortions" and providing this medicine "increase[s] . . . coerced abortions."[5] These claims are utterly false.

First, these medications are exceedingly safe. The overwhelming medical consensus, based on numerous clinical studies, is that medication abortion is "a safe and effective method of providing abortion."[6] Likewise, the FDA has determined that the use of mifepristone and

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(mo.gov); Letter from Andrew Bailey, Attn'y Gen. of Mo., to Tom Moriarty, Gen. Couns. of CVS Health (Feb. 1, 2023) 2023-02-01-fda-rule---cvs-letter-tom-moriarty.pdf.

[2] *See Memorandum Opinion for the General Counsel United States Postal Service*, 46 Op. O.L.C. __, at 5 (Dec. 23, 2022), 2022-12-23_-_comstock_act_1.pdf (justice.gov) (gathering cases).

[3] *Id.*

[4] *Information about Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. Food & Drug Admin., https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/information-about-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation.

[5] Bailey, *supra* note 1, at 2.

[6] *Medication Abortion Up to 70 Days of Gestation*, Am. C. Obstetricians & Gynecologists (ACOG) Comm. on Prac. Bulls.—Gynecology & Soc'y Fam. Plan. (Mar. 2014), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/10/medication-abortion-up-to-70-days-of-gestation (reaffirmed 2023); *The Safety and Quality of Abortion Care in the United States*, Nat'l Acads. Scis., Eng'g & Med. (NASEM) (2018),

misoprostol is "safe and effective for the medical termination of early pregnancy."[7] Studies have repeatedly shown that complication rates are extremely low for both medication and surgical abortion and that those rates are comparable for both methods up to 10 weeks gestation.[8] Moreover, when medication is taken at home, rather than in-person at a medical clinic, it is equally safe.[9] And the FDA has accordingly recognized that in-person dispensing in a healthcare setting is not necessary.[10]

Second, there is absolutely *no* evidence that providing abortion medications leads to "coerced abortion." Indeed, increasing abortion access, including access to these medications, empowers individuals seeking abortion to make the personal and confidential choice of which method of abortion is better for them based on factors including accessibility, medical history, age, cost, and a desire to avoid surgery.[11] Many pregnant people choose medication abortion over surgical abortion because it can offer a more private and flexible option.[12] Studies have shown that a broad range of women across demographics support the availability of abortion medications and would recommend that method to another woman needing an abortion.[13]

Finally, limiting access to medication abortion disproportionately impacts groups already underserved by the healthcare system, including people of color, low-income people, people with

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https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states.

[7] *Supra* note 2, at 17.

[8] *See The Safety and Quality of Abortion Care*, *supra* note 6, at 10, https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states.

[9] Daniel Grossman & Kate Grindlay, *Safety of Medical Abortion Provided Through Telemedicine Compared With in Person*, Obstetrics & Gynecology (Oct. 2017), https://journals.lww.com/greenjournal/Fulltext/2017/10000/Safety_of_Medical_Abortion_Provided_Through.16.aspx.

[10] *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. Food & Drug Admin., https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation (explaining that the in-person dispensing requirement for mifepristone was removed in 2023).

[11] Pak Chung Ho, *Women's perceptions on medical abortion*, Contraception (July 2006), https://pubmed.ncbi.nlm.nih.gov/16781253/.

[12] Stephen Fielding, et al., *Having an abortion using mifepristone and home misoprostol: a qualitative analysis of women's experiences*, Persp. on Sex Reprod. Health. (Feb. 2003), https://pubmed.ncbi.nlm.nih.gov/11990637/.

[13] S. Clark, et al., *Is medical abortion acceptable to all women: the impact of sociodemographic characteristics on the acceptability of mifepristone-misoprostol abortion*, J. Am. Med. Women's Ass'n (1972), https://pubmed.ncbi.nlm.nih.gov/10846333/; Ho, supra note 11.

disabilities, LGBTQ individuals, and those who live in rural areas.[14] Thus, the real "reproductive coercion" is state officials determining how, if, and when a pregnant person can make decisions about their own body, including terminating a pregnancy. Furthermore, restricting access to medication abortion does not protect patients' health, safety, and well-being, but instead results in people delaying their care and seeking abortions through unsafe means. By contrast, ensuring access to medication abortion as early as possible, when it is safest and least expensive, decreases complications, helps lower healthcare costs, and eases the burdens on the healthcare system overall.

In a time when access to abortion is under attack—now more than ever in the past 50 years—we stand in full support of pharmacies like Walgreens and CVS becoming FDA-certified to dispense and mail these essential medications and to make them available as broadly as possible.

Sincerely,

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[14] *The Disproportionate Harm of Abortion Bans: Spotlight on Dobbs v. Jackson Women's Health*, Ctr. for Reprod. Rts. (Nov. 29, 2021), https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-disproportionate-harm/.

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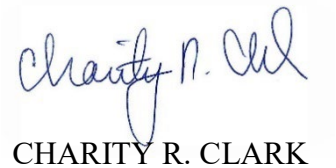

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