

U.S. Sens Baldwin, Warren, and Hirono: Urge the Biden Administration to take concrete actions to expand access to medication abortion

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“As states escalate bans and restrictions on abortion, there is more urgency than ever to take immediate steps to expand access to medication abortion”

WASHINGTON, D.C. – Today, U.S. Senators Tammy Baldwin (D-WI), Elizabeth Warren (D-MA), and Mazie Hirono (D-HI) sent a letter to the Department of Health and Human Services (HHS) urging concrete actions the Department can take to help meet President Biden’s goal of protecting and expanding access to medication abortion. This letter comes ahead of the deadline set by the President Executive Order Protecting Access to Reproductive Health Care Services.

For more than two decades, people have used Mifepristone and misoprostol for medication abortion. Years of research have shown that medication abortion is both safe and effective, and medication abortion now accounts for more than half of all abortions nationwide. Right-wing state legislatures across the country have passed laws banning the use of FDA-approved medication, further stripping away women’s access to abortion care and undermining the FDA’s authority to protect the nation’s public health.

In response to the Supreme Court’s devastating decision in *Dobbs v. Jackson Women’s Health Organization*, which overturned nearly 50 years of judicial

precedent, President Biden signed an Executive Order directing HHS to take action to protect access to medication abortion and to submit a report on those efforts within 30 days, which is this Sunday, August, 2022. Recommendations offered by the lawmakers could help the administration reach this goal.

In the letter, the lawmakers commended President Biden's executive order and outlined seven powerful steps that HHS could take in accordance with President Biden's order to expand access to medication abortion:

- **Enforce Federal Preemption of State Laws That Ban Medication Abortion.** A number of states currently have total abortion bans in place that prohibit the use of FDA-approved medications for abortion. The Department of Justice (DOJ), with HHS support, can intervene and challenge these laws that bar access to medication abortion.
- **Urgently Finalize Updated Risk Evaluation and Mitigation Strategy (REMS) for Mifepristone and Consider Lifting Remaining Medically Unnecessary REMS Restrictions.** In December 2021, FDA announced that it was modifying the existing REMS for Mifepristone, including the elimination of the medically unnecessary in-person dispensing requirement. FDA should work to finalize the updated REMS as quickly as possible. FDA should also follow the science and reconsider the remaining REMS to determine if any restrictions placed on the prescription and distribution of Mifepristone, including patient consent forms, are medically unnecessary.
- **Declare A Public Health Emergency Under the Public Readiness and Emergency Preparedness (PREP) Act.** A public health emergency declaration, which Secretary Becerra can declare under the PREP Act, could protect those involved in the administration or use of medication abortion from certain state restrictions, claims, and lawsuits, including efforts to sue physicians who prescribe or pharmacists who dispense medication abortion, or people who self-administer.
- **Strengthen Enforcement of Existing Abortion Requirements and Enhance State Medicaid Programs.** HHS, through the Centers for Medicare and Medicaid Services (CMS) plans to ensure all states comply with federal Medicaid requirements to cover eligible abortions in certain cases. President Biden's August 3 Executive Order directed HHS to explore the use of Medicaid funds to allow patients to travel across state lines for medical care. But the Administration can still go further. Disaster-Relief State Plan Amendments, which could be put in place after the declaration of a public health emergency

through Medicaid 1135 waivers, could enable states to expand the pool of people covered by their Medicaid programs, including out-of-state residents who leave their home states for medical reasons such as to seek medication abortion.

- **Ask FDA to Work with Drug Sponsors to Add a Miscarriage Indication for Mifepristone with misoprostol.** In coordination with drug sponsors, FDA can add a second indication to the Mifepristone with misoprostol label for the use of miscarriage management. Updating the Mifepristone with misoprostol label will help ensure that patients experiencing miscarriages are not unnecessarily denied access to this medication.
- **Eliminate Barriers to Importation.** Given the expected uptick in demand for medication abortion, which could potentially result in shortages, HHS should consider issuing clarifying guidance related to the personal importation of medication abortion, including by creating a carve-out from existing importation restrictions for medication abortion.
- **Expand Access to Medication Abortion for Veterans.** The Department of Veterans Affairs (VA) should immediately take action to ensure that all service members can access abortions and other critical reproductive health care. The VA should begin rulemaking to allow veterans and eligible dependents to receive abortions and all abortion-related services, allowing providers to offer medication abortion to the approximately 550,000 women veterans accessing care through the VA; and HHS should work with the VA to ensure veterans who travel out of state or out of the VA health system have access to quality and comprehensive reproductive health care.

“We support your efforts to take all possible actions to protect abortion access, and as you work to meet this goal, we urge you to consider these options, which we believe will have the greatest impact on expanding access to medication abortion across the nation,” **concluded the lawmakers.**

The full letter is available [here](#).

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