



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Senator Mazie K. Hirono
United States Senate
Washington, D.C. 20510

Dear Senator Hirono,

This letter responds to your letter to the Department of Justice (“Department”) dated September 21, 2022, regarding the Department of Veterans Affairs (“VA”) interim final rule on access to abortion services.

Earlier this month, VA issued an interim final rule that provides veterans and certain other VA beneficiaries access to abortion services in cases where an abortion is necessary to protect a patient’s life or health, or where the pregnancy is the result of rape or incest. VA determined that this rule is necessary to ensure that veterans and other VA beneficiaries have access to needed reproductive health services, no matter where they live. As part of the interagency review process, the Department determined that the rule is a lawful exercise of VA’s authority.

As the Attorney General has stated, federal agencies may continue to provide reproductive health services to the extent authorized by federal law, and federal employees who carry out their duties by providing such services must be allowed to do so free from the threat of liability. Indeed, the Department’s Office of Legal Counsel (“OLC”) has concluded that states may not impose criminal or civil liability on VA employees—including doctors, nurses, and administrative staff—who provide or facilitate abortions or related services in a manner authorized by federal law, including VA’s interim final rule. The Supremacy Clause of the U.S. Constitution bars state officials from penalizing VA employees for performing their federal functions, whether through criminal prosecution, license revocation proceedings, or civil litigation. An OLC opinion published earlier today that reflects these conclusions is enclosed.

The Attorney General has made clear that the Department will work with VA to use every tool at its disposal to protect access to reproductive services. Consistent with that commitment, the Department will support and provide representation to VA employees who are subject to legal actions for appropriately carrying out their duties under VA’s interim final rule. And the Department will defend VA’s rule against any legal challenge.

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We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Carlos Felipe Uriarte
Assistant Attorney General