

OFFICE OF THE ATTORNEY GENERAL
STATE OF INDIANA



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TODD ROKITA
ATTORNEY GENERAL

March 29, 2023

Peter Haytaian, President, Carelon
Rajat Puri, Chief Operating Officer, Carelon
Paul Marchetti, President, CarelonRx
Elevance Health, Inc.
220 Virginia Avenue
Indianapolis, IN 46204

Dear Messrs. Haytaian, Puri, and Marchetti:

We understand that Carelon is a subsidiary of Elevance Health (formerly Anthem Health) and is a consolidation of Elevance Health's healthcare service businesses. Carelon, among other services, provides telehealth and telepharmacy services. According to Carelon's website, it serves 1 in 3 people in the U.S., has a combined years' experience of 150 years, and employs 40K associates worldwide.¹

As chief legal officers of our States, we remain concerned about the distribution of abortion pills in our states. Recently, several state attorneys general sent a letter to national pharmacy chains that announced their intention to transport and sell abortion pills through the mail.² In the letter, the attorneys general warned these companies that the mailing of chemical abortion drugs is a violation of both state and federal law.

We thank you for not announcing your intention to distribute abortion pills, nor commencing distribution, and have no reason to doubt that you intend to fully comply with these laws. The laws pertaining to the mailing or shipment of abortion-inducing drugs in our states is clear. As attorneys general, we are fully committed to upholding these laws and to the protection of the health and welfare of the public.

First, federal law expressly prohibits using the mail to transport any drug that is "designed [...] or intended for producing abortion [...]" 18 U.S.C. § 1461. It is a crime to send these drugs by mail, and it is also a crime for a company to receive them "for the purpose of circulating." *Id.* at § 1461. In addition to providing for governmental enforcement, these statutes also directly authorize private parties to bring a lawsuit to redress violations. 18 U.S.C. § 1964(c). This is not

¹ CARELON, <https://www.carelon.com/> (last visited March 29, 2023).

² Letter from States Attorneys General to Danielle Gray, Exec. Vice President, Walgreens Boots Alliance. (February 1, 2023), https://ago.mo.gov/docs/default-source/press-releases/2023-02-01-fda-rule---walgreens-letter-danielle-gray.pdf?sfvrsn=ff1e6652_2.

some arcane regulation; it is a consumer protection statute. As many as one in five women³ who undergo medication abortion will experience a complication, including incomplete abortion, hemorrhage, and infection, many of which must be addressed through in-person follow-up care. Even with medical oversight, approximately one in twenty women⁴ who undergo medication abortion will need to seek care in hospital emergency departments, and approximately the same number will require surgical completion.⁵ When women obtain abortion pills by mail without a local provider to whom they can turn, the burden on the emergency medical system will increase.⁶

The Biden Administration recently ignored this harm to consumers and the plain meaning of these statutes by issuing an opinion concluding that section 1461 does not prohibit the mailing of abortion inducing drugs. *See* 46 Op. O.L.C. ___, at 1-2 (Dec. 23, 2022) (slip op.), <https://www.justice.gov/olc/opinion/file/1560596/download>. In support of this clearly political opinion, the Administration argues that the statute’s text should not be “taken literally.” Op. at 6. No authority cited in this opinion demonstrates that it is lawful for a company to send or distribute drugs that are specifically “designed [...] or intended for producing abortion [...]” 18 U.S.C. § 1461. Furthermore, the Opinion does not account for the Supreme Court’s recent decision that abortion is not a constitutional right. *See Dobbs v. Jackson Women’s Health Org.*, No. 19-1392, 597 U.S. ___ (2022).

The Supreme Court rejected similar anti-textual arguments made by the Biden Administration. *See e.g., Ala. Ass’n of Realtors v. Dep’t of Health and Human Servs.*, 141 S. Ct. 2485, 2486 (2021); *Terry v. United States*, 141 S. Ct. 1858, 1863 (2021). Courts do not ignore the plain text of statutes. And in any event, the Administration’s decision not to enforce these statutes does not prevent private parties from bringing a civil enforcement action, or the application of our state laws. *See* 18 U.S.C. § 1964(c).

Second, companies that mail or distribute abortion pills are also implicating state laws that prohibit abortion. *See, e.g.,* Ala. Code § 26-23H-4; Tex. Health & Safety Code § 171.001 *et seq.* Further, many states have abortion regulations that directly proscribe the distribution of chemical abortion drugs through the mail. *See, e.g.,* Ind. Code § 16-34-2-1; Mo. Rev. Stat. § 188.021.1; Tex. Health & Safety Code § 171.063(b-1). Indiana, as well as other states, specifically requires that the physician “dispense the abortion inducing drug in person and have the pregnant woman consume the drug in the presence of the physician.” *Id.* Moreover, Indiana bans the use of telehealth care for a medication abortion. Ind. Code §§16-34-2-1(d); 25-1-9.5-0.5. The number of

³ Niinimäki, Maarit MD, et al, *Immediate Complications After Medical Compared With Surgical Termination of Pregnancy*. *Obstetrics & Gynecology* 114(4):p 795-804, (October 2009), https://journals.lww.com/greenjournal/Abstract/2009/10000/Immediate_Complications_After_Medical_Compared.14.aspx.

⁴ Studnicki J, Harrison DJ, Longbons T, et al. *A Longitudinal Cohort Study of Emergency Room Utilization Following Mifepristone Chemical and Surgical Abortions, 1999–2015*, *Health Services Research and Managerial Epidemiology*, (August 2021), <https://journals.sagepub.com/doi/full/10.1177/23333928211053965>.

⁵ Raymond, E. G., Shannon, C., Weaver, M. A., & Winikoff, B., *First-trimester medical abortion with mifepristone 200 mg and misoprostol: a systematic review*, *Contraception*, (January 2023), <https://doi.org/10.1016/j.contraception.2012.06.011>.

⁶ *Fact Sheet: Risks and Complications of Chemical Abortion*, CHARLOTTE LOZIER INSTITUTE (July 19, 2022), <https://lozierinstitute.org/fact-sheet-risks-and-complications-of-chemical-abortion/>.

states passing this type of legislation is growing rapidly.⁷ Furthermore, other relevant abortion and healthcare-related state laws, including waiting periods, ultrasound requirements, or parental consent laws, that could be implicated in a business' decision to transport, mail, or fill prescriptions for abortion-inducing drugs. *See generally* Ind. Code § 16-34.

Engaging in such unlawful activity puts your consumers' health at risk. Chemical abortions can result in serious, even fatal, adverse events if contraindications such as ectopic pregnancy or advanced pregnancy are not ruled out via an in-person medical examination.⁸ Chemical abortions inflict harmful complications, so dangerous in fact that Indiana requires medical providers to report such complications. Ind. Code § 16-34-2-4.7. Medical providers must report to the Department of Health each case in which a person suffered from an abortion complication, including but not limited to instances of uterine perforation, cervical laceration, infection, hemorrhaging. Chemical abortions are over 50% more likely than surgical abortions to result in an emergency room visit within 30 days.⁹

Moreover, companies that mail abortion pills jeopardize informed consent, as they have no way of confirming that the consumer who ordered the pills is the same person who will end up taking them. Knowing that a company distributed or sold a product in violation of state and federal law is material information to a consumer. Failing to disclose such facts to the consumer implicates our consumer protection statutes that prohibit deception, unfair practices, and material omissions. *See, e.g.*, Ind. Code § 24-5-0.5.

As the chief legal officers of our states, we promise to rigorously enforce these and any other applicable state laws. We will do so regardless of whether the Biden Administration defends federal law. We thank you for your adherence to the law and encourage you to continue to follow the law by refraining from distributing chemical abortion drugs. Please do not hesitate to contact our offices if you have any questions.

Sincerely,



Todd Rokita
Indiana Attorney General

⁷ Prohibiting Chemical Abortions, S.F. 83, 67th Wyoming Legislature (2022), <https://www.wyoleg.gov/Legislation/2022/SF0083>; Prohibiting Certain Actions Relating to Abortifacient Drugs, S.F. 146, 90th Iowa General Assembly (2023), <https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=HF146>.

⁸ Aultman, Kathi et al., *Deaths and Severe Adverse Events after the use of Mifepristone as an Abortifacient from September 2000 to February 2019*, *Issues in Law & Medicine* Vol. 36,1 (2021), <https://pubmed.ncbi.nlm.nih.gov/33939340/>.

⁹ *Fact Sheet: Risks and Complications of Chemical Abortion*, CHARLOTTE LOZIER INSTITUTE (July 19, 2022), <https://lozierinstitute.org/fact-sheet-risks-and-complications-of-chemical-abortion/>.




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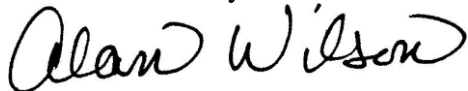
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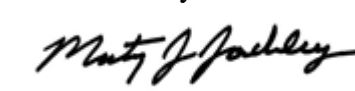
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