

United States Senate

WASHINGTON, DC 20510

February 28, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma:

As Ranking Member of the Senate Finance Committee with jurisdiction over the Medicaid program, which provides essential health care services to over 25 million women across the United States, I write regarding a recent report from the United States Government Accountability Office (GAO). The report entitled, “CMS Action Needed to Ensure Compliance with Abortion Coverage Requirements,” highlights alarming information about the lack of coverage for statutorily mandated health care services and drugs in a number of state Medicaid programs.¹

In 1990, during my time on the House Small Business Committee, I held a groundbreaking hearing to end the anti-science stigma blocking women from accessing RU486—more commonly known today as mifepristone, also by its brand name, Mifeprex. I then introduced a bill to lift the import ban on RU486. After a 10-year fight, the drug finally became available in the United States in 2000, under the brand name Mifeprex. Shortly thereafter, it became a covered outpatient drug under the Medicaid drug rebate program.²

The GAO report highlights a number of concerning findings including that South Dakota is not in compliance with federal law by not ensuring access to abortions in cases of rape or incest under its state Medicaid program as is required under federal law. However, in light of my longstanding work in the RU486 space, I am particularly concerned by the finding in the report that *fourteen* state Medicaid programs reported that they do not cover Mifeprex.³

¹ GAO, CMS ACTION NEEDED TO ENSURE COMPLIANCE WITH ABORTION COVERAGE REQUIREMENTS (Jan. 2019), <https://www.gao.gov/assets/700/696338.pdf>.

² DEP'T OF HEALTH & HUMAN SERVS., HEALTH CARE FIN. ADMIN., CTR. FOR MEDICAID & STATE OPERATIONS, SMDL# 01-018, (Mar. 2001), <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/smd033001.pdf>.

³ See *supra* note 1 at 15 (the fourteen states includes the District of Columbia).

Mifeprex is a FDA-approved drug.⁴ The drug's manufacturer, Danco, also participates in the Medicaid Drug Rebate Program, under which all states and the District of Columbia receive rebates. Furthermore, as stated in the GAO report, Mifeprex does not meet any of the categorical exclusions that would permit a state Medicaid agency to exclude the drug from coverage.⁵ States are therefore statutorily required to cover Mifeprex under Medicaid. Without access to this safe and effective drug, women seeking a Medicaid-covered, abortion may not be able to choose the procedure that is best for them including a non-surgical option like Mifeprex.

The Centers for Medicare & Medicaid Services (CMS) is charged with proper administration and oversight of the Medicaid Drug Rebate Program with the responsibility to ensure that Medicaid beneficiaries have access to all medically necessary, covered outpatient drugs. Accordingly, I request that you reply by March 8, 2019 with a description of the steps CMS is undertaking to ensure that women have access to all appropriate, medically necessary covered outpatient drugs, including Mifeprex. Thank you in advance for your prompt attention to this matter.

Sincerely,



Ron Wyden
Ranking Member
United States Committee on Finance

⁴ U.S. FOOD & DRUG ADMIN., MIFEPREX (MIFEPRISTONE) INFO., <https://www.fda.gov/Drugs/DrugSafety/ucm111323.htm> (last accessed Feb. 2019) (Mifeprex is approved, in a regimen with misoprostol, to end an early pregnancy within the first ten weeks).

⁵ See *supra* note 1 at 16.