

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND / ODESSA DIVISION**

STATE OF TEXAS, AND MAYO
PHARMACY INC., A NORTH DAKOTA
CORPORATION.,

Plaintiffs;

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Human Services;
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES OFFICE
FOR CIVIL RIGHTS,

Defendants.

No. 7:23-cv-00022-DC

NOTICE

In Plaintiffs' Response to Defendants' Motion to Dismiss, plaintiffs cited and attached as an exhibit a tweet from defendant Xavier Becerra, Secretary of Health and Human Services, regarding investigations of pharmacy chains CVS and Walgreens. *See* ECF No. 37, at 6; ECF No. 37-1. Defendants respectfully submit this Notice to inform the Court that on June 16, 2023, defendant United States Department of Health and Human Services issued a press release announcing the closing of these investigations, attached as an exhibit to this filing and also available online. *See* U.S. Dep't of Health & Human Servs., HHS Office for Civil Rights Resolves Complaints with CVS and Walgreens to Ensure Timely Access to Medications for Women and Support Persons with Disabilities, <https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/agreements/cvs-walgreens/index.html> (June 16, 2023).

Dated: June 21, 2023


Respectfully submitted,

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HHS Office for Civil Rights Resolves Complaints with CVS and Walgreens to Ensure Timely Access to Medications for Women and Support Persons with Disabilities

Today, the U.S. Department of Health and Human Services' Office for Civil Rights (OCR) announced steps voluntarily taken by CVS and Walgreens to improve timely access to medications to support persons with disabilities, women experiencing miscarriages and early pregnancy loss, and those seeking access to contraceptives. OCR received complaints against pharmacies for denying and delaying lawful access to medications, such as methotrexate and misoprostol. Other women filed complaints based on delays in accessing emergency contraceptives. None of the medications were prescribed in violation of State laws banning or restricting abortion or were for the purpose of abortion. All of the medications reported in the complaints were prescribed to women who were experiencing pregnancy loss, have disabilities, or were seeking access to contraceptives. In the aggregate, the complaints alleged that the pharmacies had delayed or denied filling prescriptions to treat conditions unrelated to abortion, due to the gender or age of the woman who was prescribed the medication. Since *Dobbs v. Jackson Women's Health*


Organization, women across the country have reported delays in accessing medication for purposes unrelated to abortion. OCR's action today resolves the complaints against CVS and Walgreens.

"Access to timely medication is critical to all Americans, including women with disabilities and women experiencing pregnancy loss, and we've taken steps to ensure they are not discriminated against in accessing care," said Melanie Fontes Rainer, Director of the HHS Office for Civil Rights. "The overturning of *Roe v. Wade* is causing chaos in our health care system, including in our pharmacies, where health care providers are suddenly being asked to not only provide health care, but also become legal experts in navigating the patchwork of abortion bans. Women with disabilities, women experiencing pregnancy loss or seeking contraceptives should not be subjected to delays or discriminatory behavior simply because of their gender. CVS and Walgreens are taking voluntarily steps to help patients navigate this new reality."

On July 13, 2022, OCR released guidance to pharmacies reminding them of their obligations under civil rights laws. The guidance makes clear that as recipients of federal financial assistance, including Medicare and Medicaid payments, pharmacies are prohibited under law from discriminating based on race, color, national origin, sex, age, and disability in their programs and activities. Pharmacies are obligated not to discriminate on these grounds with regard to supplying lawfully prescribed medications; making determinations regarding the suitability of prescribed medications for a patient; and advising a patient about prescribed medications and how to take them.

OCR provided technical assistance to CVS and Walgreens to ensure women, including women with disabilities, receive timely access to lawfully prescribed medications. As a result, the pharmacies implemented new processes to promote access to medication by preventing potential delays. Process improvements made as result of OCR's technical assistance include but are not limited to multiple actions.

- Establishing specialized teams to provide internal guidance and to respond to complaints about commonly prescribed medications such as those referenced above. These teams safeguard against discrimination at the pharmacy level.
- Launching new trainings on reproductive health care to guide pharmacy team decision-making and interactions with customers.

- Creating direct paths for customers to submit complaints about commonly prescribed medications such as those referenced above and increasing access to existing complaint portals by prominently displaying them on pharmacy websites. See, e.g., Walgreens Access to Services Policy:
<https://www.walgreens.com/topic/information/access-to-services.jsp>
<<https://www.walgreens.com/topic/information/access-to-services.jsp>>  </disclaimer.html>; Walgreens' Civil Rights Coordinator Dedicated Line: (866) 412-1790; CVS Patients and Prescribers Dedicated Line: (877) 287-7867.
- Monitoring denials of medication related to reproductive health care to help ensure patients are receiving timely access to their lawfully prescribed medications, in conformance with the pharmacies' civil rights obligations.
- Implementing policies and procedures to evaluate potential accommodations where pharmacy colleagues object to dispensing prescription medication.

None of these voluntary steps require CVS or Walgreens to dispense drugs for the purpose of abortion.

If you believe that you have been discriminated against in programs or activities that HHS directly operates or to which HHS provides federal financial assistance, you may file a complaint for yourself or someone else at: <https://www.hhs.gov/civil-rights/filing-a-complaint/index.html> <<https://www.hhs.gov/civil-rights/filing-a-complaint/index.html>>.

Content created by Office for Civil Rights (OCR)

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