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ATTORNEY GENERAL RAOUL FILES BRIEF TO MAINTAIN SAFE ACCESS TO REPRODUCTIVE HEALTH CARE DURING PANDEMIC

Chicago — Attorney General Kwame Raoul, as part of a coalition of 23 attorneys general, today filed a brief opposing the enforcement of a federal requirement restricting access to medication abortions and miscarriage treatment via telehealth. The attorneys general point out that the requirement forces women to choose between their reproductive health and increasing their risk of contracting COVID-19.

Raoul and the coalition filed an amicus brief in support of the plaintiffs in American College of Obstetricians and Gynecologists v. FDA, which is pending before the U.S. Court of Appeals for the 4th Circuit. In 2020, a lower court issued a preliminary injunction halting a Food and Drug Administration (FDA) requirement that forced patients to appear in person in a clinical setting to receive the drug mifepristone for early abortions. In today's brief, Raoul and the coalition urge the court to uphold that relief for abortion patients, and modify the injunction to cover patients seeking mifepristone to treat miscarriages.

"Women should not be forced to weigh their reproductive health against the risk of exposing themselves and their loved ones to COVID if they seek the care they need," Raoul said. "We must ensure that women have access to medical care via telehealth, which is essential to protecting their right to safe, reproductive health care while also supporting states' efforts to mitigate the spread of COVID-19."

Since COVID-19 began to spread across the United States in early 2020, more than 27 million Americans have contracted the disease, resulting in more than 476,000 deaths. In Illinois alone, more than 1.1 million residents have been confirmed positive, and more than 20,000 have died. In response, officials in Illinois and across the nation have acted to mitigate the spread of the virus by limiting face-to-face contact and reducing in-person social gatherings, as limiting interpersonal contact is central to the ability of states to control the spread of the virus, maintain hospital capacity, and save lives.

The challenged FDA requirement forces patients to appear in person in a clinical setting to receive mifepristone. In today's brief, Raoul and the coalition argue that enforcement during the current public health crisis will harm patient safety and the public interest in at least two ways: by conditioning access to essential reproductive health care on an increased risk of virus infection, and by undermining states' ongoing efforts to manage the crisis through measures that limit unnecessary in-person contacts, such as telehealth.

By utilizing telehealth to reduce unnecessary person-to-person contacts, states can safely provide access to essential reproductive care while reducing the risk of the virus' spread, and safely commence reopening even as the pandemic continues. In fact, Raoul and the coalition argue that telehealth should be used whenever appropriate in the judgment of the provider and consistent with standards of care, because it maximizes the number of capable health care workers providing necessary medical treatment, while protecting health care staff and patients. And in the context of reproductive care, the counseling required prior to a medication abortion is routinely and safely provided through telehealth in order to reduce in-clinic interactions.

Additionally, the coalition argues that many patients will need to travel long distances – sometimes up to 200 miles – in order to reach a clinic that dispenses mifepristone, especially if they reside in rural and medically-underserved locations, therefore increasing the likelihood of coming into contact with an individual who has contracted COVID-19.

Mifepristone is the first and only FDA-approved medication for pregnancy termination, and it is also used to treat patients who have experienced a miscarriage. Since its approval, 3 million patients in the United States have used the medication. According to the FDA, this medication "has been increasingly used as its efficacy and safety have become well-established by both research and experience."

Today's brief follows up on three previous amicus briefs filed in this case by Raoul and a coalition of states – in the U.S. District Court for the District for Maryland, in the U.S. Court of Appeals for the Fourth Circuit, and in the U.S. Supreme Court – asking those courts to issue or leave in effect a preliminary injunction suspending the FDA's in-person requirements for mifepristone.

Joining Attorney General in filing the amicus brief are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington.