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COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED EIGHTEENTH CONGRESS

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<http://veterans.house.gov>

October 19, 2023

The Honorable Denis R. McDonough
 Secretary
 U.S. Department of Veterans Affairs
 810 Vermont Avenue, NW
 Washington, DC 20420

Dear Secretary McDonough:

Thank you for your response dated October 11, 2023, to our letter regarding the interim final rule (IFR) entitled, "Reproductive Health Services, 87 Fed Reg 55287." However, we write to express our continued frustration with the Department of Veterans Affairs' (VA) lack of transparency regarding certain information pertaining to abortions provided to veterans and VA beneficiaries.

As a reminder, we specifically asked you to provide documents sufficient to identify:

1. the total number of abortions each Veteran Integrated Service Network (VISN) has performed;
2. the total number of medical abortions and surgical abortions at each VISN;
3. the trimester of each surgical and medical abortion;
4. the documented exception that provided for each abortion performed; and
5. in the case of a "health" determination, the documented condition that posed the threat.

Thus far, the VA has only been willing to provide the number of abortions that were medical or procedural and the abortion numbers by exception. Yet, significant concern still remains as to the broad and vague language defining "health" determinations.

Once again, we request VA provide a list of documented conditions that posed a threat to a woman's "health" as of October 11, 2023, in the 64 cases in which abortions were performed due to "health" reasons. Previously, VA indicated that providing the Committee with a more detailed explanation of the "health" condition that made an abortion procedure necessary would put the privacy of the veteran at risk. Then, your most recent letter claims that you do not collect specific information about the "health" condition and cannot provide the information without a review of the medical records of the veterans who received a procedure. Your recent letter also claims that to provide this information would violate the privacy of the patient; however, the Committee is not asking for a disclosure of the name, age, race, or address of the person who received the

procedure or a disclosure of any medical records to anyone at VA or to the House Committee on Veterans' Affairs. We are simply asking that the doctors who performed the abortion or referred a veteran to a non-department provider for the procedure review the records and provide data to VA on the specific condition that warranted the "health" determination necessitating an abortion for compilation and transmittal to Congress. Although the caselaw is clear that Congress's oversight authority is not limited by privacy laws, ((*Devine v. United States*, 202 F. 3d 547, 550-52 (2d Cir. 2000); *F.T.C. v. Owens-Corning Fiberglass Corp.*, 626 F.2d 966, at 970 (D.C. Cir. 1980); *Exxon Corp. v. F.T.C.* 589 F.2d 582, at 585-89 (D.C. Cir. 1978), cert. denied, 441 U.S. 943 (1979); *Ashland Oil Co. Inc., v. F.T.C.* 548 F.2d 977, at 979 (D.C. Cir. 1976)), the Committee is simply seeking *disaggregated data that contains no personally identifiable information (PII)*.

VA envisioned disclosing necessary medical data to the House Committee on Veterans' Affairs in a September 30, 2022, Privacy Notice, describing in part how veterans' healthcare information will be handled. As you know, VHA included the House Committee on Veterans' Affairs in the "health oversight agency" definition. The notice states: "We may disclose your health information to a governmental health care oversight agency (e.g. Inspector General; House Veterans' Affairs Committee) for activities authorized by law, such as audits, investigations, and inspections." As previously indicated, the Committee seeks the disaggregated data as part of its broad oversight of VHA. The data requested is critical to assessing whether the Committee needs to take legislative action to address the "health" reasons behind these abortion procedures that may show trends in the health circumstances of veterans. Such data would seem to be valuable to the largest integrated healthcare system in the country as well.

Finally, to ensure that it is clear that we are not seeking to violate any patient privacy and, in an effort to reach an accommodation that will let the Committee's legitimate investigation continue, the Committee is willing to accept the disaggregated data identifying the numbers associated with each of the qualifying "health" conditions for which these abortions were provided, without any association to VISN. If for some unforeseen reason patient privacy still remains a concern, Committee staff will accept an *in-camera* review at VA Central Office, where staff could view a list of "health" exceptions and the number of procedures performed under each exception. Failure to accommodate this request and provide access to this data by October 31, 2023, may result in the Committee taking further action on this matter, including scheduling a Committee vote to issue a subpoena. Thank you for your attention to this matter. Should you have any questions about this request please contact Christine Hill at Christine.Hill@mail.house.gov.

Sincerely,



Mike Bost
Chairman



Mariannette J. Miller-Meeks, M.D.
Chairwoman, Subcommittee on Health

Cc: The Honorable Mark Takano, Ranking Member