

117TH CONGRESS
1ST SESSION

H. R. 6005

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to contraception, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2021

Mrs. CAROLYN B. MALONEY of New York (for herself, Ms. PORTER, Ms. KELLY of Illinois, Mrs. HAYES, Ms. SPEIER, Ms. BROWNLEY, Ms. BONAMICI, Mr. COOPER, Ms. NORTON, Mr. WELCH, Mr. CONNOLLY, Mr. AUCHINCLOSS, Ms. JACOBS of California, Ms. SCHAKOWSKY, Mr. SIRES, Ms. LOIS FRANKEL of Florida, Ms. UNDERWOOD, Ms. WILLIAMS of Georgia, Mr. DEFazio, Ms. NEWMAN, Mrs. LAWRENCE, Mr. GRIJALVA, Ms. PINGREE, Ms. LEE of California, Ms. STRICKLAND, Mr. DANNY K. DAVIS of Illinois, Mr. BLUMENAUER, Mr. LOWENTHAL, Mr. ESPAILLAT, Mrs. KIRKPATRICK, Ms. TITUS, Ms. JACKSON LEE, Ms. DEGETTE, Ms. ESCOBAR, Mr. TAKANO, Mrs. MCBATH, Mrs. WATSON COLEMAN, Mr. LARSON of Connecticut, Ms. CASTOR of Florida, Mr. GOMEZ, Mr. SMITH of Washington, Ms. PRESSLEY, Mrs. FLETCHER, Ms. MENG, Mrs. NAPOLITANO, Mr. PAPPAS, Ms. MOORE of Wisconsin, Ms. SEWELL, Mr. TORRES of New York, Mr. DEUTCH, Ms. MANNING, Ms. ADAMS, Mrs. TRAHAN, Ms. CLARKE of New York, Ms. WILSON of Florida, Ms. OMAR, Mr. HUFFMAN, Mr. GALLEG0, Mr. MORELLE, Ms. VELÁZQUEZ, Mr. DESAULNIER, Ms. ROSS, Ms. SCANLON, Mr. DOGGETT, Mr. RASKIN, Mr. KAHELE, Ms. SCHRIER, Mr. CROW, Mr. LIEU, Ms. JOHNSON of Texas, Ms. CHU, Mr. BOWMAN, Ms. LEGER FERNANDEZ, Ms. DELAURO, Mr. CICILLINE, Mr. PAYNE, Mr. SOTO, Mr. GARCÍA of Illinois, Mr. BROWN of Maryland, Mr. TRONE, Ms. TLAIB, Ms. KUSTER, Mr. CARSON, Mr. MCNERNEY, Mr. NADLER, Ms. BASS, Mr. VEASEY, Ms. DEAN, Mr. NEGUSE, Mr. KHANNA, Ms. GARCIA of Texas, Mr. LAWSON of Florida, Mr. COHEN, Mr. SARBANES, Ms. MATSUI, Mr. JOHNSON of Georgia, Mr. GREEN of Texas, Ms. MCCOLLUM, and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to contraception, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Access to Birth Control
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) Family planning is basic health care. Access
9 to contraception helps prevent unintended pregnancy
10 and control the timing and spacing of planned
11 births.

12 (2) As a result of the enactment of the Patient
13 Protection and Affordable Care Act (Public Law
14 111–148), approximately 64,300,000 women had
15 coverage of the full range of Food and Drug Admin-
16 istration-approved contraceptive methods without
17 cost sharing in 2020.

18 (3) The Patient Protection and Affordable Care
19 Act saved women \$1,400,000,000 on birth control
20 pills alone in 2013.

1 (4) According to the Centers for Disease Con-
2 trol and Prevention, nearly $\frac{2}{3}$ of women between the
3 ages of 15 and 49 are currently using a contracep-
4 tive method.

5 (5) Although the Centers for Disease Control
6 and Prevention included family planning in its pub-
7 lished list of the Ten Great Public Health Achieve-
8 ments in the 20th Century, the United States still
9 has one of the highest rates of unintended preg-
10 nancies among industrialized nations.

11 (6) Each year, approximately 2,800,000 preg-
12 nancies, nearly half of all pregnancies, in the United
13 States are unintended.

14 (7) Access to birth control helps people achieve
15 their goals of whether, and when, to get pregnant.
16 Studies show that when people are unable to access
17 contraceptive care that fits their lives, they are more
18 likely to face unintended pregnancies.

19 (8) Contraceptives are used for a range of med-
20 ical purposes in addition to preventing pregnancy,
21 such as treating abnormal cycles and endometriosis.

22 (9) The Food and Drug Administration has ap-
23 proved multiple emergency contraceptive methods as
24 safe and effective in preventing unintended preg-
25 nancy and has approved over-the-counter access to

1 some forms of emergency contraception for all indi-
2 viduals, regardless of age. If taken soon after unpro-
3 tected sex or primary contraceptive failure, emer-
4 gency contraception can significantly reduce a per-
5 son's chance of unintended pregnancy.

6 (10) Legal contraception is a protected funda-
7 mental right in the United States and should not be
8 impeded by one individual's personal beliefs.

9 (11) Reports of pharmacists refusing to fill pre-
10 scriptions for contraceptives, including emergency
11 contraceptives, or provide emergency contraception
12 over-the-counter have surfaced in States across the
13 Nation, including Alabama, Arizona, California, the
14 District of Columbia, Georgia, Illinois, Louisiana,
15 Massachusetts, Michigan, Minnesota, Missouri, Mon-
16 tana, New Hampshire, New Mexico, New York,
17 North Carolina, Ohio, Oklahoma, Oregon, Rhode Is-
18 land, Tennessee, Texas, Washington, West Virginia,
19 and Wisconsin.

20 (12) One-third of women have experienced a
21 delay in accessing their contraception because of the
22 ongoing coronavirus pandemic. The Centers for Dis-
23 ease Control and Prevention recognizes the impor-
24 tance of access to contraception, particularly during
25 the pandemic.

1 (13) Pregnant people have a much higher risk
2 of dying once infected with COVID–19, which high-
3 lights the importance of people being able to make
4 and exercise decisions about whether and when to
5 become pregnant.

6 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**
7 **FDA-APPROVED CONTRACEPTION AND MEDI-**
8 **CATION RELATED TO CONTRACEPTION.**

9 Part B of title II of the Public Health Service Act
10 (42 U.S.C. 238 et seq.) is amended by adding at the end
11 the following:

12 **“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION**
13 **OF FDA-APPROVED CONTRACEPTION AND**
14 **MEDICATION RELATED TO CONTRACEPTION.**

15 “(a) IN GENERAL.—Subject to subsection (c), a
16 pharmacy that receives Food and Drug Administration-
17 approved drugs or devices in interstate commerce shall
18 maintain compliance with the following:

19 “(1) If a customer requests a contraceptive or
20 a medication related to a contraceptive that is in
21 stock, the pharmacy shall ensure that the contracep-
22 tive or the medication related to a contraceptive is
23 provided to the customer without delay.

24 “(2) If a customer requests a contraceptive or
25 a medication related to a contraceptive that is not

1 in stock and the pharmacy in the normal course of
2 business stocks contraception or the medication re-
3 lated to contraception, the pharmacy shall imme-
4 diately inform the customer that the contraceptive or
5 the medication related to a contraceptive is not in
6 stock and without delay offer the customer the fol-
7 lowing options:

8 “(A) If the customer prefers to obtain the
9 contraceptive or the medication related to a
10 contraceptive through a referral or transfer, the
11 pharmacy shall—

12 “(i) locate a pharmacy of the cus-
13 tomer’s choice or the closest pharmacy
14 confirmed to have the contraceptive or the
15 medication related to a contraceptive in
16 stock; and

17 “(ii) refer the customer or transfer
18 the prescription to that pharmacy.

19 “(B) If the customer prefers for the phar-
20 macy to order the contraceptive or the medica-
21 tion related to a contraceptive, the pharmacy
22 shall obtain the contraceptive or the medication
23 related to a contraceptive under the pharmacy’s
24 standard procedure for expedited ordering of
25 medication and notify the customer when the

1 contraceptive or the medication related to a
2 contraceptive arrives.

3 “(3) The pharmacy shall ensure that—

4 “(A) it does not operate an environment in
5 which customers are intimidated, threatened, or
6 harassed in the delivery of services relating to
7 a request for contraception or a medication re-
8 lated to contraception;

9 “(B) its employees do not interfere with or
10 obstruct the delivery of services relating to a re-
11 quest for contraception or a medication related
12 to contraception;

13 “(C) its employees do not intentionally
14 misrepresent or deceive customers about the
15 availability of contraception or a medication re-
16 lated to contraception or its mechanism of ac-
17 tion;

18 “(D) its employees do not breach medical
19 confidentiality with respect to a request for a
20 contraception or a medication related to contra-
21 ception or threaten to breach such confiden-
22 tiality; or

23 “(E) its employees do not refuse to return
24 a valid, lawful prescription for a contraception

1 or a medication related to contraception upon
2 customer request.

3 “(b) CONTRACEPTIVES OR MEDICATION RELATED TO
4 A CONTRACEPTIVE NOT ORDINARILY STOCKED.—Noth-
5 ing in subsection (a)(2) shall be construed to require any
6 pharmacy to comply with such subsection if the pharmacy
7 does not ordinarily stock contraceptives or medication re-
8 lated to a contraceptive in the normal course of business.

9 “(c) REFUSALS PURSUANT TO STANDARD PHAR-
10 MACY PRACTICE.—This section does not prohibit a phar-
11 macy from refusing to provide a contraceptive or a medi-
12 cation related to a contraceptive to a customer in accord-
13 ance with any of the following:

14 “(1) If it is unlawful to dispense the contracep-
15 tive or the medication related to a contraceptive to
16 the customer without a valid, lawful prescription and
17 no such prescription is presented.

18 “(2) If the customer is unable to pay for the
19 contraceptive or the medication related to a contra-
20 ceptive.

21 “(3) If the employee of the pharmacy refuses to
22 provide the contraceptive or the medication related
23 to a contraceptive on the basis of a professional clin-
24 ical judgment.

25 “(d) RELATION TO OTHER LAWS.—

1 “(1) RULE OF CONSTRUCTION.—Nothing in
2 this section shall be construed to invalidate or limit
3 rights, remedies, procedures, or legal standards
4 under title VII of the Civil Rights Act of 1964.

5 “(2) CERTAIN CLAIMS.—The Religious Free-
6 dom Restoration Act of 1993 (42 U.S.C. 2000bb et
7 seq.) shall not provide a claim concerning, or a de-
8 fense to a claim under, a covered title, or provide a
9 basis for challenging the application or enforcement
10 of a covered title.

11 “(e) PREEMPTION.—This section does not preempt
12 any provision of State law or any professional obligation
13 made applicable by a State board or other entity respon-
14 sible for licensing or discipline of pharmacies or phar-
15 macists, to the extent that such State law or professional
16 obligation provides protections for customers that are
17 greater than the protections provided by this section.

18 “(f) ENFORCEMENT.—

19 “(1) CIVIL PENALTY.—A pharmacy that vio-
20 lates a requirement of subsection (a) is liable to the
21 United States for a civil penalty in an amount not
22 exceeding \$1,000 per day of violation, not to exceed
23 \$100,000 for all violations adjudicated in a single
24 proceeding.

1 “(2) PRIVATE CAUSE OF ACTION.—Any person
2 aggrieved as a result of a violation of a requirement
3 of subsection (a) may, in any court of competent ju-
4 risdiction, commence a civil action against the phar-
5 macy involved to obtain appropriate relief, including
6 actual and punitive damages, injunctive relief, and a
7 reasonable attorney’s fee and cost.

8 “(3) LIMITATIONS.—A civil action under para-
9 graph (1) or (2) may not be commenced against a
10 pharmacy after the expiration of the 5-year period
11 beginning on the date on which the pharmacy alleg-
12 edly engaged in the violation involved.

13 “(g) DEFINITIONS.—In this section:

14 “(1) The term ‘contraception’ or ‘contraceptive’
15 means any drug or device approved by the Food and
16 Drug Administration to prevent pregnancy.

17 “(2) The term ‘employee’ means a person hired,
18 by contract or any other form of an agreement, by
19 a pharmacy.

20 “(3) The term ‘medication related to contracep-
21 tion’ or ‘medication related to a contraceptive’
22 means any drug or device approved by the Food and
23 Drug Administration that a medical professional de-
24 termines necessary to use before or in conjunction
25 with contraception or a contraceptive.

1 “(4) The term ‘pharmacy’ means an entity
2 that—

3 “(A) is authorized by a State to engage in
4 the business of selling prescription drugs at re-
5 tail; and

6 “(B) employs one or more employees.

7 “(5) The term ‘product’ means a Food and
8 Drug Administration-approved drug or device.

9 “(6) The term ‘professional clinical judgment’
10 means the use of professional knowledge and skills
11 to form a clinical judgment, in accordance with pre-
12 vailing medical standards.

13 “(7) The term ‘without delay’, with respect to
14 a pharmacy providing, providing a referral for, or
15 ordering contraception or a medication related to
16 contraception, or transferring the prescription for
17 contraception or a medication related to contrac-
18 tion, means within the usual and customary time-
19 frame at the pharmacy for providing, providing a re-
20 ferral for, or ordering other products, or transferring
21 the prescription for other products, respectively.

22 “(h) EFFECTIVE DATE.—This section shall take ef-
23 fect on the 31st day after the date of the enactment of

- 1 this section, without regard to whether the Secretary has
- 2 issued any guidance or final rule regarding this section.”.

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