

118TH CONGRESS
2D SESSION

H. R. 9104

To amend the Public Health Service Act to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception and medication related to contraception, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2024

Ms. KELLY of Illinois (for herself, Ms. DELBENE, Mr. FOSTER, Ms. BUSH, Mr. SARBANES, Mr. VEASEY, Ms. NORTON, Ms. BROWNLEY, Ms. STEVENS, Ms. SCANLON, Mr. SHERMAN, Ms. GARCIA of Texas, Mr. CARTWRIGHT, Mr. GREEN of Texas, Mrs. WATSON COLEMAN, Mr. ALLRED, Ms. STANSBURY, Ms. SEWELL, Ms. WASSERMAN SCHULTZ, Mr. TAKANO, Ms. WILSON of Florida, Mr. KILMER, Ms. CASTOR of Florida, Mr. KILDEE, Mr. POCAN, Ms. BARRAGÁN, Mr. THANEDAR, Ms. CROCKETT, Mr. VARGAS, Ms. SALINAS, Ms. MCCOLLUM, Mr. TONKO, Mrs. CHERFILUS-MCCORMICK, Ms. CLARKE of New York, Mr. LARSON of Connecticut, Ms. KAMLAGER-DOVE, Ms. LEE of California, Ms. STRICKLAND, Ms. WILLIAMS of Georgia, Mr. MFUME, Mr. BERA, Ms. MATSUI, Ms. LOIS FRANKEL of Florida, Mr. DESAULNIER, Mr. LEVIN, Ms. PORTER, Ms. BLUNT ROCHESTER, Mr. TRONE, Ms. McCLELLAN, Ms. ADAMS, Mr. ESPAILLAT, Mr. IVEY, Mr. NICKEL, Mr. STANTON, Mr. PHILLIPS, Mr. GARAMENDI, Ms. OCASIO-CORTEZ, Mr. GOTTHEIMER, Ms. DEGETTE, Mr. SWALWELL, Mr. SCHIFF, Mr. FROST, Mr. MOULTON, Mr. COHEN, Ms. CHU, Mr. CONNOLLY, Mrs. RAMIREZ, Ms. TLAIB, Mrs. TRAHAN, Mr. JOHNSON of Georgia, Mr. DELUZIO, Mr. GOLDMAN of New York, Mr. GOMEZ, Mrs. FOUSHEE, Mr. LIEU, Mr. ROBERT GARCIA of California, Mr. NEGUSE, Mr. MULLIN, Mr. EVANS, Mr. CASE, Ms. TITUS, Ms. SHERRILL, Ms. DELAURO, Ms. KUSTER, Ms. CARAVEO, Mr. KENNEDY, Ms. SCHOLTEN, Mr. KIM of New Jersey, Ms. OMAR, and Mrs. HAYES) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception and 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 people determine if and when
10 to become pregnant. Contraception is also a corner-
11 stone of reproductive autonomy and can help people
12 fulfill their educational, professional, and social aspi-
13 rations.

14 (2) As a result of the enactment of the Patient
15 Protection and Affordable Care Act (Public Law
16 111–148), approximately 151,600,000 individuals in
17 the United States were enrolled in private health in-
18 surance plans in the United States in 2020, includ-
19 ing 58,000,000 women between the ages of 19 and
20 64 who had coverage of contraceptive methods ap-
21 proved, cleared, or authorized by the Food and Drug

1 Administration without cost-sharing under such
2 plans.

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

6 (4) According to the Centers for Disease Con-
7 trol and Prevention, nearly $\frac{2}{3}$ of women between the
8 ages of 15 and 49 are currently using a contracep-
9 tive method, and among sexually active women who
10 were not seeking pregnancy, nearly 9 in 10 have
11 used contraception.

12 (5) Although the Centers for Disease Control
13 and Prevention included family planning in its pub-
14 lished list of the Ten Great Public Health Achieve-
15 ments in the 20th Century, people in the United
16 States face a myriad of barriers in accessing birth
17 control, including cost, geography, immigration sta-
18 tus, language access, discrimination, and stigma.
19 These contraceptive barriers are rooted in systemic
20 inequities, structural racism, and other forms of op-
21 pression in our health care system and society.

22 (6) In 2019, approximately 2,293,000 preg-
23 nancies, nearly 42 percent of all pregnancies, in the
24 United States were unintended.

1 (7) Systemic racism and discrimination, as well
2 as lack of access to comprehensive sex education, ex-
3 acerbates severe health inequities and creates addi-
4 tional barriers to accessing contraception; for exam-
5 ple, due to high uninsured rates and barriers, His-
6 panic women with low-incomes experience a signifi-
7 cantly higher rate of unintended pregnancy (58 per-
8 cent) compared to their White counterparts (33 per-
9 cent). In a 2023 study exploring challenges access-
10 ing contraceptive care among people who identified
11 as Asian American, Native Hawaiian, or Pacific Is-
12 lander, Black or African American, Indigenous, or
13 Latina/Latinx, 45 percent of respondents reported
14 experiencing at least one challenge accessing contra-
15 ception in the past year.

16 (8) In addition to preventing pregnancy, contra-
17 ceptives are used for a range of medical purposes,
18 such as treating abnormal uterine bleeding, irregular
19 menstrual cycles, and endometriosis, as well as for
20 people managing other chronic conditions, which are
21 generally higher in communities of color due to sys-
22 temic discrimination.

23 (9) The Food and Drug Administration has ap-
24 proved, cleared, or authorized multiple emergency
25 contraceptive methods as safe and effective in pre-

1 venting unintended pregnancy and has approved
2 over-the-counter access to some forms of emergency
3 contraception for all individuals, regardless of age. If
4 taken soon after unprotected sex or primary contra-
5 ceptive failure, emergency contraception can signifi-
6 cantly reduce a person’s chance of unintended preg-
7 nancy. Additionally, in 2023, the Food and Drug
8 Administration approved the first over-the-counter
9 daily birth control pill which will give people of all
10 ages greater access to birth control options without
11 a prescription.

12 (10) Contraception is a protected fundamental
13 right in the United States and access to contracep-
14 tion should not be impeded by one individual’s per-
15 sonal beliefs. Providers, including pharmacists, play
16 a key role in providing contraceptive services and
17 important information about prescription and over-
18 the-counter birth control options to people across the
19 country. It is critical that contraceptive care is pro-
20 vided to people of all ages in a supportive way that
21 is culturally appropriate and delivered without stig-
22 ma, bias, or delay.

23 (11) Reports of pharmacists refusing to fill pre-
24 scriptions for contraceptives, including emergency
25 contraceptives, or provide emergency contraception

1 over-the-counter have surfaced in States across the
2 Nation, including Alabama, Arizona, California, the
3 District of Columbia, Georgia, Illinois, Louisiana,
4 Massachusetts, Michigan, Minnesota, Missouri, Mon-
5 tana, New Hampshire, New Mexico, New York,
6 North Carolina, Ohio, Oklahoma, Oregon, Rhode Is-
7 land, Tennessee, Texas, Washington, West Virginia,
8 and Wisconsin.

9 (12) Since the Supreme Court decision in
10 *Dobbs v. Jackson Women’s Health Organization*
11 (142 S. Ct. 2228 (2022)), there have been increased
12 reports of people being denied birth control at phar-
13 macies.

14 (13) In 2022, the Department of Health and
15 Human Services issued guidance clarifying that re-
16 fusing to dispense birth control can be sex discrimi-
17 nation under section 1557 of the Patient Protection
18 and Affordable Care Act (42 U.S.C. 18116).

19 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**
20 **CONTRACEPTION AND MEDICATION RE-**
21 **LATED TO CONTRACEPTION.**

22 Part B of title II of the Public Health Service Act
23 (42 U.S.C. 238 et seq.) is amended by adding at the end
24 the following:

1 **“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION**
2 **OF CONTRACEPTION AND MEDICATION RE-**
3 **LATED TO CONTRACEPTION.**

4 “(a) IN GENERAL.—Subject to subsection (c), a
5 pharmacy that receives drugs or devices approved, cleared,
6 or authorized by the Food and Drug Administration in
7 interstate commerce shall maintain compliance with the
8 following:

9 “(1) If a customer requests a contraceptive or
10 a medication related to a contraceptive that is in
11 stock, the pharmacy shall ensure that the contracep-
12 tive or the medication related to a contraceptive is
13 provided to the customer without delay.

14 “(2) If a customer requests a contraceptive or
15 a medication related to a contraceptive that is not
16 in stock and the pharmacy in the normal course of
17 business stocks contraception or the medication re-
18 lated to contraception, the pharmacy shall imme-
19 diately inform the customer that the contraceptive or
20 the medication related to a contraceptive is not in
21 stock and without delay offer the customer the fol-
22 lowing options:

23 “(A) If the customer prefers to obtain the
24 contraceptive or the medication related to a
25 contraceptive through a referral or transfer, the
26 pharmacy shall—

1 “(i) locate a pharmacy of the cus-
2 tomer’s choice or the closest pharmacy
3 confirmed to have the contraceptive or the
4 medication related to a contraceptive in
5 stock; and

6 “(ii) refer the customer or transfer
7 the prescription to that pharmacy.

8 “(B) If the customer prefers for the phar-
9 macy to order the contraceptive or the medica-
10 tion related to a contraceptive, the pharmacy
11 shall obtain the contraceptive or the medication
12 related to a contraceptive under the pharmacy’s
13 standard procedure for expedited ordering of
14 medication and notify the customer when the
15 contraceptive or the medication related to a
16 contraceptive arrives.

17 “(3) The pharmacy shall ensure that—

18 “(A) it does not operate an environment in
19 which customers are intimidated, threatened, or
20 harassed in the delivery of services relating to
21 a request for contraception or a medication re-
22 lated to contraception;

23 “(B) its employees do not interfere with or
24 obstruct the delivery of services relating to a re-

1 quest for contraception or a medication related
2 to contraception;

3 “(C) its employees do not intentionally
4 misrepresent or deceive customers about the
5 availability of contraception or a medication re-
6 lated to contraception or its mechanism of ac-
7 tion;

8 “(D) its employees do not breach medical
9 confidentiality with respect to a request for con-
10 traception or a medication related to contracep-
11 tion or threaten to breach such confidentiality;
12 or

13 “(E) its employees do not refuse to return
14 a valid, lawful prescription for contraception or
15 a medication related to contraception upon cus-
16 tomer request.

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

23 “(c) REFUSALS PURSUANT TO STANDARD PHAR-
24 MACY PRACTICE.—This section does not prohibit a phar-
25 macy from refusing to provide a contraceptive or a medi-

1 cation related to a contraceptive to a customer in accord-
2 ance with any of the following:

3 “(1) If it is unlawful to dispense the contracep-
4 tive or the medication related to a contraceptive to
5 the customer without a valid, lawful prescription and
6 no such prescription is presented.

7 “(2) If the customer is unable to pay for the
8 contraceptive or the medication related to a contra-
9 ceptive.

10 “(3) If the employee of the pharmacy refuses to
11 provide the contraceptive or the medication related
12 to a contraceptive on the basis of a professional clin-
13 ical judgment.

14 “(d) RELATION TO OTHER LAWS.—

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

19 “(2) CERTAIN CLAIMS.—The Religious Free-
20 dom Restoration Act of 1993 shall not provide a
21 claim concerning, or a defense to a claim under, a
22 covered title, or provide a basis for challenging the
23 application or enforcement of a covered title.

24 “(e) PREEMPTION.—This section does not preempt
25 any provision of State law or any professional obligation

1 made applicable by a State board or other entity respon-
2 sible for licensing or discipline of pharmacies or phar-
3 macists, to the extent that such State law or professional
4 obligation provides protections for customers that are
5 greater than the protections provided by this section.

6 “(f) ENFORCEMENT.—

7 “(1) CIVIL PENALTY.—A pharmacy that vio-
8 lates a requirement of subsection (a) is liable to the
9 United States for a civil penalty in an amount not
10 exceeding \$1,000 per day of violation, not to exceed
11 \$100,000 for all violations adjudicated in a single
12 proceeding.

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

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

25 “(g) DEFINITIONS.—In this section:

1 “(1) The term ‘contraception’ or ‘contraceptive’
2 means any drug or device approved, cleared, or au-
3 thorized by the Food and Drug Administration to
4 prevent pregnancy.

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

8 “(3) The term ‘medication related to contracep-
9 tion’ or ‘medication related to a contraceptive’
10 means any drug or device approved, cleared, or au-
11 thorized by the Food and Drug Administration that
12 a medical professional determines necessary to use
13 before or in conjunction with contraception or a con-
14 traceptive.

15 “(4) The term ‘pharmacy’ means an entity
16 that—

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

20 “(B) employs one or more employees.

21 “(5) The term ‘product’ means a drug or device
22 approved, cleared, or authorized by the Food and
23 Drug Administration.

24 “(6) The term ‘professional clinical judgment’
25 means the use of professional knowledge and skills

1 to form a clinical judgment, in accordance with pre-
2 vailing medical standards.

3 “(7) The term ‘without delay’, with respect to
4 a pharmacy providing, providing a referral for, or
5 ordering contraception or a medication related to
6 contraception, or transferring the prescription for
7 contraception or a medication related to contracep-
8 tion, means within the usual and customary time-
9 frame at the pharmacy for providing, providing a re-
10 ferral for, or ordering other products, or transferring
11 the prescription for other products, respectively.

12 “(h) EFFECTIVE DATE.—This section shall take ef-
13 fect 31 days after the date of enactment of this section,
14 without regard to whether the Secretary has issued any
15 guidance or final rule regarding this section.”.

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