

118TH CONGRESS  
1ST SESSION

# S. 1698

To require group health plans and group or individual health insurance coverage to provide coverage for over-the-counter contraceptives.

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## IN THE SENATE OF THE UNITED STATES

MAY 18, 2023

Mrs. MURRAY (for herself, Ms. HIRONO, Ms. CORTEZ MASTO, Mr. BLUMENTHAL, Mrs. SHAHEEN, Mr. REED, Mr. SCHATZ, Mr. PADILLA, Mr. MERKLEY, Ms. WARREN, Mr. CARPER, Ms. BALDWIN, Mr. MURPHY, Mr. SANDERS, Ms. CANTWELL, Ms. STABENOW, Ms. DUCKWORTH, Mr. WHITEHOUSE, Mr. WELCH, Ms. SMITH, Mr. FETTERMAN, Mr. MENENDEZ, Mr. BENNET, Ms. HASSAN, Mr. BOOKER, Mr. KAINE, Mr. HEINRICH, Mr. VAN HOLLEN, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require group health plans and group or individual health insurance coverage to provide coverage for over-the-counter contraceptives.

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 “Affordability is Access  
5 Act of 2023”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to ensure timely access  
3 to affordable birth control by requiring coverage without  
4 cost-sharing for contraceptives that are approved, granted,  
5 or cleared by, or otherwise legally marketed under regula-  
6 tion by, the Food and Drug Administration for use with-  
7 out a prescription.

8 **SEC. 3. FINDINGS.**

9       The Senate finds the following:

10           (1) Birth control is critical health care that al-  
11 most all women, as well as many trans men and  
12 nonbinary people, will use at some point in their life-  
13 times.

14           (2) Access to the full range of reproductive  
15 health care, including birth control coverage as guar-  
16 anteed under Federal law, provides individuals with  
17 the opportunity to lead healthy lives and get the care  
18 they need to reach their goals.

19           (3) Contraceptive access is associated with  
20 health benefits for women, newborns, families, and  
21 communities and can lower the risk of harm to ma-  
22 ternal and infant health.

23           (4) An estimated 73 million women of reproduc-  
24 tive age (ages 15 through 49) live in the United  
25 States. Among the 46 million of such women who

1 are sexually active and not seeking children, 89 per-  
2 cent use a form of birth control.

3 (5) The birth control benefit enacted under the  
4 Patient Protection and Affordable Care Act (Public  
5 Law 111–148) has been a crucial step forward in  
6 advancing access to birth control and has helped en-  
7 sure 58 million women have the power to decide for  
8 themselves if and when to become pregnant.

9 (6) Despite legal requirements for birth control  
10 coverage and access to services, gaps remain for mil-  
11 lions of individuals. Nearly 1 in 5 women are not  
12 using their preferred method of contraception, and  
13 of those women, a quarter say it is because of cost.  
14 As a result, many women have gone without the  
15 birth control they want to use, also creating incon-  
16 sistent use. Access to birth control is particularly  
17 difficult for the 19 million women of reproductive  
18 age with lower incomes who live in contraceptive  
19 deserts and lack reasonable access to a health center  
20 that offers the full range of contraceptive methods.

21 (7) Due to systemic discrimination, people paid  
22 low wages, people of color, LGBTQ+ individuals,  
23 immigrants, and people with disabilities are more  
24 likely to face barriers to, and lack access to, health  
25 coverage and health care providers.

1           (8) There are numerous social and economic  
2 factors that make it harder to access birth control,  
3 including rising income and wealth inequality, gaps  
4 in insurance coverage, and barriers to accessing  
5 health providers.

6           (9) Leading health experts support over-the-  
7 counter birth control pills.

8 **SEC. 4. SENSE OF THE SENATE.**

9 It is the sense of the Senate that—

10           (1) in order to increase access to oral birth con-  
11 trol, such birth control must be both easier to obtain  
12 and affordable and, to make such birth control ei-  
13 ther easier to obtain or more affordable, but not  
14 both, is to leave unacceptable barriers in place;

15           (2) it is imperative that the entities that re-  
16 search and develop oral birth control and whose  
17 medical and scientific experts have developed clinical  
18 and other evidence that oral birth control for rou-  
19 tine, daily use is safe and effective when sold with-  
20 out a prescription, apply to the Food and Drug Ad-  
21 ministration for review and approval for sale of such  
22 birth control without a prescription;

23           (3) upon the receipt of such an application, the  
24 Food and Drug Administration should determine  
25 whether the oral birth control meets the rigorous

1 safety, efficacy, and quality standards for over-the-  
2 counter use under the Federal Food, Drug, and Cos-  
3 metic Act (21 U.S.C. 301 et seq.), and if the prod-  
4 uct meets those standards, the Food and Drug Ad-  
5 ministration should approve the application without  
6 delay; and

7 (4) if and when the Food and Drug Adminis-  
8 tration approves an oral birth control that is avail-  
9 able over-the-counter, such birth control should be  
10 covered by health insurance, without a prescription  
11 and without cost-sharing.

12 **SEC. 5. CLARIFYING COVERAGE REQUIREMENTS.**

13 The Secretaries of Health and Human Services,  
14 Labor, and the Treasury shall clarify that coverage of con-  
15 traceptives pursuant to section 2713(a)(4) of the Public  
16 Health Service Act (42 U.S.C. 300gg-13(a)(4)) includes  
17 coverage of over-the-counter contraceptives approved,  
18 granted, or cleared by the Food and Drug Administration,  
19 even if the enrollee does not have a prescription for the  
20 contraceptive.

21 **SEC. 6. RULES OF CONSTRUCTION.**

22 (a) NON-INTERFERENCE WITH FDA REGULA-  
23 TION.—Nothing in this Act shall be construed to modify  
24 or interfere with Food and Drug Administration processes  
25 to review or approve, or otherwise determine the safety

1 and efficacy of, and make available, non-prescription  
 2 drugs or devices, modify or interfere with the scientific  
 3 and medical considerations of the Food and Drug Admin-  
 4 istration, or alter any other authority of the Food and  
 5 Drug Administration.

6 (b) NON-PREEMPTION.—Nothing in this Act pre-  
 7 empts any provision of Federal or State law to the extent  
 8 that such Federal or State law provides protections for  
 9 consumers that are greater than the protections provided  
 10 for in this Act.

11 **SEC. 7. DUTIES OF RETAILERS TO ENSURE ACCESS TO CON-**  
 12 **TRACEPTION FOR USE WITHOUT A PRESCRIP-**  
 13 **TION.**

14 (a) IN GENERAL.—Any retailer that stocks contra-  
 15 ception that is approved, granted, or cleared by, or other-  
 16 wise legally marketed under regulation by, the Food and  
 17 Drug Administration for use without a prescription may  
 18 not interfere with an individual’s access to or purchase  
 19 of such contraception or access to medically accurate, com-  
 20 prehensive information about such contraception.

21 (b) LIMITATION.—Nothing in this section shall pro-  
 22 hibit a retailer that stocks over-the-counter contraceptive  
 23 products from refusing to provide an individual with such  
 24 contraceptive product that is approved, granted, or cleared  
 25 by, or otherwise legally marketed under regulation by, the

- 1 Food and Drug Administration if the individual is unable
- 2 to pay for the contraceptive product, directly, through in-
- 3 surance coverage, or through other payment mechanism.

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