

118TH CONGRESS
2D SESSION

S. 4223

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 SENATE OF THE UNITED STATES

MAY 1, 2024

Mr. BOOKER (for himself, Ms. SMITH, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. KAINE, Mr. PADILLA, Mr. WHITEHOUSE, Mr. HEINRICH, Ms. DUCKWORTH, Ms. WARREN, Ms. ROSEN, Mr. MENENDEZ, Ms. BUTLER, Mr. MURPHY, Mr. VAN HOLLEN, Ms. HIRONO, Mrs. GILLIBRAND, Mrs. SHAHEEN, Mr. WARNER, Ms. BALDWIN, Mr. WYDEN, Ms. STABENOW, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) Family planning is basic health care. Access
4 to contraception helps people determine if and when
5 to become pregnant. Contraception is also a corner-
6 stone of reproductive autonomy and can help people
7 fulfill their educational, professional, and social aspi-
8 rations.

9 (2) As a result of the enactment of the Patient
10 Protection and Affordable Care Act (Public Law
11 111–148), approximately 151,600,000 individuals in
12 the United States were enrolled in private health in-
13 surance plans in the United States in 2020, includ-
14 ing 58,000,000 women between the ages of 19 and
15 64 who had coverage of contraceptive methods ap-
16 proved, cleared, or authorized by the Food and Drug
17 Administration without cost sharing under such
18 plans.

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

22 (4) According to the Centers for Disease Con-
23 trol and Prevention, nearly $\frac{2}{3}$ of women between the
24 ages of 15 and 49 are currently using a contracep-
25 tive method and among sexually active women who

1 were not seeking pregnancy, nearly 9 in 10 have
2 used contraception.

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

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

16 (7) Systemic racism and discrimination, as well
17 as lack of access to comprehensive sex education, ex-
18 acerbates severe health inequities and creates addi-
19 tional barriers to accessing contraception; for exam-
20 ple, due to high uninsured rates and barriers, His-
21 panic women with low incomes experience a signifi-
22 cantly higher rate of unintended pregnancy (58 per-
23 cent) compared to their White counterparts (33 per-
24 cent). In a 2023 study exploring challenges access-
25 ing contraceptive care among people who identified

1 as Asian American, Native Hawaiian, or Pacific Is-
2 lander, Black or African American, Indigenous, or
3 Latina/Latinx, 45 percent of respondents reported
4 experiencing at least one challenge accessing contra-
5 ception in the past year.

6 (8) In addition to preventing pregnancy, contra-
7 ceptives are used for a range of medical purposes,
8 such as treating abnormal uterine bleeding, irregular
9 menstrual cycles, and endometriosis, as well as for
10 people managing other chronic conditions, which are
11 generally higher in communities of color due to sys-
12 temic discrimination.

13 (9) The Food and Drug Administration has ap-
14 proved, cleared, or authorized multiple emergency
15 contraceptive methods as safe and effective in pre-
16 venting unintended pregnancy and has approved
17 over-the-counter access to some forms of emergency
18 contraception for all individuals, regardless of age. If
19 taken soon after unprotected sex or primary contra-
20 ceptive failure, emergency contraception can signifi-
21 cantly reduce a person's chance of unintended preg-
22 nancy. Additionally, in 2023, the Food and Drug
23 Administration approved the first over-the-counter
24 daily birth control pill which will give people of all

1 ages greater access to birth control options without
2 a prescription.

3 (10) Contraception is a protected fundamental
4 right in the United States and access to contracep-
5 tion should not be impeded by one individual's per-
6 sonal beliefs. Providers, including pharmacists, play
7 a key role in providing contraceptive services and
8 important information about prescription and over-
9 the-counter birth control options to people across the
10 country. It is critical that contraceptive care is pro-
11 vided to people of all ages in a supportive way that
12 is culturally appropriate and delivered without stig-
13 ma, bias, or delay.

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

1 (12) Since the Supreme Court decision in
 2 Dobbs v. Jackson Women’s Health Organization
 3 (142 S. Ct. 2228 (2022)), there have been increased
 4 reports of people being denied birth control at phar-
 5 macies.

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

11 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**
 12 **CONTRACEPTION AND MEDICATION RE-**
 13 **LATED TO CONTRACEPTION.**

14 Part B of title II of the Public Health Service Act
 15 (42 U.S.C. 238 et seq.) is amended by adding at the end
 16 the following:

17 **“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION**
 18 **OF CONTRACEPTION AND MEDICATION RE-**
 19 **LATED TO CONTRACEPTION.**

20 “(a) IN GENERAL.—Subject to subsection (c), a
 21 pharmacy that receives drugs or devices approved, cleared,
 22 or authorized by the Food and Drug Administration in
 23 interstate commerce shall maintain compliance with the
 24 following:

1 “(1) If a customer requests a contraceptive or
2 a medication related to a contraceptive that is in
3 stock, the pharmacy shall ensure that the contracep-
4 tive or the medication related to a contraceptive is
5 provided to the customer without delay.

6 “(2) If a customer requests a contraceptive or
7 a medication related to a contraceptive that is not
8 in stock and the pharmacy in the normal course of
9 business stocks contraception or the medication re-
10 lated to contraception, the pharmacy shall imme-
11 diately inform the customer that the contraceptive or
12 the medication related to a contraceptive is not in
13 stock and without delay offer the customer the fol-
14 lowing options:

15 “(A) If the customer prefers to obtain the
16 contraceptive or the medication related to a
17 contraceptive through a referral or transfer, the
18 pharmacy shall—

19 “(i) locate a pharmacy of the cus-
20 tomer’s choice or the closest pharmacy
21 confirmed to have the contraceptive or the
22 medication related to a contraceptive in
23 stock; and

24 “(ii) refer the customer or transfer
25 the prescription to that pharmacy.

1 “(B) If the customer prefers for the phar-
2 macy to order the contraceptive or the medica-
3 tion related to a contraceptive, the pharmacy
4 shall obtain the contraceptive or the medication
5 related to a contraceptive under the pharmacy’s
6 standard procedure for expedited ordering of
7 medication and notify the customer when the
8 contraceptive or the medication related to a
9 contraceptive arrives.

10 “(3) The pharmacy shall ensure that—

11 “(A) it does not operate an environment in
12 which customers are intimidated, threatened, or
13 harassed in the delivery of services relating to
14 a request for contraception or a medication re-
15 lated to contraception;

16 “(B) its employees do not interfere with or
17 obstruct the delivery of services relating to a re-
18 quest for contraception or a medication related
19 to contraception;

20 “(C) its employees do not intentionally
21 misrepresent or deceive customers about the
22 availability of contraception or a medication re-
23 lated to contraception or its mechanism of ac-
24 tion;

1 “(D) its employees do not breach medical
2 confidentiality with respect to a request for a
3 contraception or a medication related to contra-
4 ception or threaten to breach such confiden-
5 tiality; or

6 “(E) its employees do not refuse to return
7 a valid, lawful prescription for a contraception
8 or a medication related to contraception upon
9 customer request.

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

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

21 “(1) If it is unlawful to dispense the contracep-
22 tive or the medication related to a contraceptive to
23 the customer without a valid, lawful prescription and
24 no such prescription is presented.

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

4 “(3) If the employee of the pharmacy refuses to
5 provide the contraceptive or the medication related
6 to a contraceptive on the basis of a professional clin-
7 ical judgment.

8 “(d) RELATION TO OTHER LAWS.—

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

13 “(2) CERTAIN CLAIMS.—The Religious Free-
14 dom Restoration Act of 1993 shall not provide a
15 claim concerning, or a defense to a claim under, a
16 covered title, or provide a basis for challenging the
17 application or enforcement of a covered title.

18 “(e) PREEMPTION.—This section does not preempt
19 any provision of State law or any professional obligation
20 made applicable by a State board or other entity respon-
21 sible for licensing or discipline of pharmacies or phar-
22 macists, to the extent that such State law or professional
23 obligation provides protections for customers that are
24 greater than the protections provided by this section.

25 “(f) ENFORCEMENT.—

1 “(1) CIVIL PENALTY.—A pharmacy that vio-
2 lates a requirement of subsection (a) is liable to the
3 United States for a civil penalty in an amount not
4 exceeding \$1,000 per day of violation, not to exceed
5 \$100,000 for all violations adjudicated in a single
6 proceeding.

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

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

19 “(g) DEFINITIONS.—In this section:

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

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

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

11 “(4) The term ‘pharmacy’ means an entity
12 that—

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

16 “(B) employs one or more employees.

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

20 “(6) The term ‘professional clinical judgment’
21 means the use of professional knowledge and skills
22 to form a clinical judgment, in accordance with pre-
23 vailing medical standards.

24 “(7) The term ‘without delay’, with respect to
25 a pharmacy providing, providing a referral for, or

1 ordering contraception or a medication related to
2 contraception, or transferring the prescription for
3 contraception or a medication related to contracep-
4 tion, means within the usual and customary time-
5 frame at the pharmacy for providing, providing a re-
6 ferral for, or ordering other products, or transferring
7 the prescription for other products, respectively.

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

○