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(Original Signature of Member)

119TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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.

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**IN THE HOUSE OF REPRESENTATIVES**

Ms. KELLY of Illinois introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**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”.

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 con-  
3           traception or a medication related to contracep-  
4           tion or threaten to breach such confidentiality;  
5           or

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