

114TH CONGRESS  
1ST SESSION

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To ensure timely access to affordable birth control for women.

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IN THE SENATE OF THE UNITED STATES

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Mrs. MURRAY (for herself, Mrs. BOXER, Mrs. SHAHEEN, Mr. REID, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. BENNET, Mr. BOOKER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. HIRONO, Mr. KAINE, Ms. KLOBUCHAR, Mr. LEAHY, Mrs. MCCASKILL, Mr. MERKLEY, Ms. MIKULSKI, Mr. MURPHY, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mr. FRANKEN, Ms. STABENOW, Ms. WARREN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To ensure timely access to affordable birth control for women.

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”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to ensure timely access  
8 to affordable birth control by requiring coverage without

1 cost-sharing for oral birth control for routine, daily use  
2 that is approved by, or otherwise legally marketed under  
3 regulation by, the Food and Drug Administration for use  
4 by women without a prescription.

5 **SEC. 3. FINDINGS.**

6 Congress makes the following findings:

7 (1) Access to the full range of health benefits  
8 and preventive services, including access to birth  
9 control, as guaranteed under Federal law, provides  
10 all people of the United States with the opportunity  
11 to lead healthier and more productive lives.

12 (2) Birth control is a critical health care benefit  
13 and service for women. Almost all women use birth  
14 control at some point in their lifetimes. The Centers  
15 for Disease Control and Prevention declared it one  
16 of the Ten Great Public Health Achievements of the  
17 20th Century.

18 (3) Birth control prevents and reduces unin-  
19 tended pregnancies and provides many health and  
20 socioeconomic benefits for women. Women with ac-  
21 cess to birth control are more likely to have higher  
22 educational and career achievement, and to earn  
23 higher wages.

24 (4) Affordability and timely access have long  
25 been barriers for women being able to use birth con-

1        trol. Many women struggle to obtain the birth con-  
2        trol they need because of cost or other access bar-  
3        riers, which has contributed to the high unintended  
4        pregnancy rate in the United States. A national sur-  
5        vey found that 1 in 3 women have struggled to af-  
6        ford birth control at some point in their lives, and  
7        as a result, have used birth control inconsistently.  
8        The rate is even higher for young women who are  
9        most likely to experience an unintended pregnancy.

10            (5) Three separate studies have found that lack  
11        of health coverage is significantly associated with re-  
12        duced use of prescription contraceptive methods, in-  
13        cluding birth control.

14            (6) The Patient Protection and Affordable Care  
15        Act (Public Law 111–148) sought to remove bar-  
16        riers to care and improve access by requiring all new  
17        health plans to cover recommended preventive serv-  
18        ices without cost-sharing, which include women’s  
19        preventive services, including all contraceptive meth-  
20        ods, including birth control and sterilization for  
21        women approved by the Food and Drug Administra-  
22        tion and related education and counseling.

23            (7) The Patient Protection and Affordable Care  
24        Act women’s preventive services benefit has signifi-  
25        cantly improved women’s access to birth control, in-

1 including oral birth control for routine, daily use. The  
2 Department of Health and Human Services has re-  
3 ported that, as of 2014, more than 55,000,000  
4 women are benefitting from coverage without cost-  
5 sharing for women's preventive services, including  
6 birth control, under the Patient Protection and Af-  
7 fordable Care Act. Women have saved more than  
8 \$483,000,000 in out-of-pocket costs for birth control  
9 with no copayments in 2012 compared to 2013, an  
10 average savings of \$269 per woman.

11 (8) The most appropriate method of birth con-  
12 trol varies according to each individual woman's  
13 needs, medical history, and stage of life. For in-  
14 stance, women may have medical contraindications  
15 that limit their ability to use certain birth control  
16 methods. It is critical that the full range of birth  
17 control methods approved by the Food and Drug  
18 Administration are available and covered without  
19 cost-sharing in order to ensure that each woman has  
20 access to the birth control method that best meet  
21 her needs.

22 (9) The determination as to whether a drug  
23 should be available for use without a prescription is  
24 appropriately and solely made by the Food and Drug  
25 Administration. To ensure the safety and efficacy of

1 a drug, including a drug available for over-the-  
2 counter use, the appropriate scientific and medical  
3 personnel at the Food and Drug Administration,  
4 often with input from independent advisory panels of  
5 experts, review clinical and other data relating to the  
6 safety and efficacy of the drug. This scientific and  
7 medical review can occur as part of the Food and  
8 Drug Administration's over-the-counter drug review  
9 for potential inclusion in a monograph as generally  
10 recognized as safe and effective, or as part of the re-  
11 view of a new drug application (or an abbreviated  
12 new drug application). As part of these regulatory  
13 processes, the appropriate scientific and medical per-  
14 sonnel review clinical and other data, including data  
15 generated in controlled clinical trials. The Food and  
16 Drug Administration also reviews consumer studies  
17 and monitors post-marketing safety data. All of  
18 these processes ensure that the appropriate scientific  
19 and medical personnel make the determination of  
20 safety, quality, and efficacy of drugs marketed to  
21 the people of the United States.

22 (10) Leading women's health experts, providers,  
23 and medical associations, including the American  
24 College of Obstetricians and Gynecologists and the  
25 American Academy of Family Physicians, support

1 full insurance coverage and increased access to oral  
2 birth control over-the-counter. In 2012, the Amer-  
3 ican College of Obstetricians and Gynecologists  
4 issued a Committee Opinion recommending approval  
5 by the Food and Drug Administration of certain  
6 forms of birth control for over-the-counter use to in-  
7 crease timely access to birth control. Furthermore,  
8 data demonstrates that birth control that is available  
9 over-the-counter has public support and would in-  
10 crease birth control usage and continuation. The  
11 Committee Opinion followed similar recommenda-  
12 tions made by leading reproductive health experts  
13 and published in the American Journal of Public  
14 Health.

15 (11) Research shows that birth control available  
16 over-the-counter, as an addition to, not a substitute  
17 for, the women’s preventive health benefit under the  
18 Patient Protection and Affordable Care Act, would  
19 increase accessibility for oral birth control for rou-  
20 tine, daily use.

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

22 It is the sense of the Senate that—

23 (1) in order to increase women’s access to oral  
24 birth control, it must be both easier to obtain and  
25 affordable and, to make it either easier to obtain or

1 more affordable, but not both, is to leave unaccept-  
2 able barriers in place for women;

3 (2) it is imperative that the entities that re-  
4 search and develop oral birth control and whose  
5 medical and scientific experts have developed clinical  
6 and other evidence that oral birth control for rou-  
7 tine, daily use is safe and effective for women when  
8 sold without a prescription, apply to the Food and  
9 Drug Administration for review and approval for  
10 sale of such birth control without a prescription;

11 (3) upon the receipt of such an application, the  
12 Food and Drug Administration should determine  
13 whether the oral birth control meets the rigorous  
14 safety, efficacy, and quality standards for over-the-  
15 counter use under the Federal Food, Drug, and Cos-  
16 metic Act (21 U.S.C. 301 et seq.), and if the prod-  
17 uct meets those standards, the Food and Drug Ad-  
18 ministration should approve the application without  
19 delay; and

20 (4) if and when the Food and Drug Adminis-  
21 tration approves an oral birth control that is avail-  
22 able over-the-counter, such birth control should be  
23 covered by health insurance, without a prescription  
24 and without cost-sharing.

1 **SEC. 5. ENSURING COVERAGE OF ORAL BIRTH CONTROL**  
2 **FOR USE WITHOUT A PRESCRIPTION.**

3 Section 2713(a)(4) of the Public Health Service Act  
4 (42 U.S.C. 300gg–13(a)(4)) is amended by inserting “(in-  
5 cluding oral contraceptives for routine, daily use approved  
6 by the Food and Drug Administration for use without a  
7 prescription, even if the individual does not have a pre-  
8 scription for such contraceptive)” after “additional pre-  
9 ventive care”.

10 **SEC. 6. RULES OF CONSTRUCTION.**

11 (a) **NON-INTERFERENCE WITH FDA REGULA-**  
12 **TION.**—Nothing in this Act (or the amendment made by  
13 this Act) shall be construed to modify or interfere with  
14 Food and Drug Administration processes to review or ap-  
15 prove, or otherwise determine the safety and efficacy of,  
16 and make available, non-prescription drugs or devices,  
17 modify or interfere with the scientific and medical consid-  
18 erations of the Food and Drug Administration, or alter  
19 any other authority of the Food and Drug Administration.

20 (b) **NON-PREEMPTION.**—Nothing in this Act (or the  
21 amendment made by this Act) preempts any provision of  
22 Federal or State law to the extent that such Federal or  
23 State law provides protections for consumers that are  
24 greater than the protections provided for in this Act.

1 **SEC. 7. DUTIES OF RETAILERS TO ENSURE ACCESS TO**  
2 **ORAL BIRTH CONTROL FOR USE WITHOUT A**  
3 **PRESCRIPTION.**

4 (a) **IN GENERAL.**—Any retailer that stocks oral birth  
5 control for routine, daily use that is approved by, or other-  
6 wise legally marketed under regulation by, the Food and  
7 Drug Administration for use without a prescription may  
8 not interfere with an individual’s access to or purchase  
9 of such birth control or access to medically accurate, com-  
10 prehensive information about such birth control.

11 (b) **LIMITATION.**—Nothing in this section shall pro-  
12 hibit a retailer that stocks oral birth control for routine,  
13 daily use from refusing to provide an individual with such  
14 oral birth control that is approved by, or otherwise legally  
15 marketed under regulation by, the Food and Drug Admin-  
16 istration if the individual is unable to pay for the birth  
17 control, directly or through insurance coverage.