117TH CONGRESS
2D SESSION
S. 4347
To require group health plans and group or individual health insurance coverage to provide coverage for over-the-counter contraceptives.

IN THE SENATE OF THE UNITED STATES
MAY 26, 2022
Mrs. MURRAY (for herself, Ms. HIRONO, Ms. CORTEZ MASTO, Mr. BROWN, Ms. BALDWIN, Mr. REED, Mr. SCHATZ, Mr. BLUMENTHAL, Mr. MARKEY, Ms. SMITH, Mr. MENENDEZ, Mr. KANE, Mr. MERKLEY, Mr. SANDERS, Ms. CANTWELL, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Mr. HENNICH, Ms. KLOBUCHAR, Mr. WYDEN, Ms. STABENOW, Mr. BOOKER, Ms. ROSEN, Ms. WARREN, Mrs. SHAHEEN, Ms. DUCKWORTH, Ms. HASSAN, Mr. BENNET, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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”.
SEC. 2. PURPOSE.

The purpose of this Act is to ensure timely access to affordable birth control by requiring coverage without cost-sharing for oral birth control for routine, daily use that is approved by, or otherwise legally marketed under regulation by, the Food and Drug Administration for use without a prescription.

SEC. 3. FINDINGS.

The Senate finds the following:

(1) Birth control is critical health care that almost all women will use at some point in their lifetimes.

(2) Access to the full range of reproductive health care, including birth control coverage as guaranteed under Federal law, provides people with the opportunity to lead healthy lives and get the care they need to reach their goals.

(3) Family planning has well-documented health benefits for women, newborns, families, and communities and can lower the risk of harm to maternal and infant health.

(4) An estimated 72,000,000 women of reproductive age (ages 15 through 44) live in the United States, of which nearly 70 percent are at risk of having an unintended pregnancy. Sixty-five percent of women of reproductive age are using a contracep-
tive method and 12 percent of women at risk for un-
intended pregnancy are not using contraception. The
rates of non-use of contraception are highest among
those between 15 and 19 years old.

(5) The birth control benefit enacted under the
Patient Protection and Affordable Care Act (Public
Law 111–148) has been a crucial step forward in
advancing access to birth control and has helped en-
sure 62,100,000 women have the power to decide for
themselves if and when to start a family.

(6) Despite legal requirements for birth control
coverage and access to services, gaps remain for mil-
lions of people. A national survey found that 1 in 3
women have struggled to afford birth control at
some point in their lives, and as a result, have used
birth control inconsistently. Access to birth control is
particularly difficult for people who live in contra-
ceptive deserts and lack reasonable access to a
health center that offers the full range of contracep-
tive methods.

(7) Health disparities persist among people
with low incomes, people of color, LGBTQ people,
immigrants, and people who lack access to health
coverage and health care providers.
(8) There are numerous social and economic barriers that make it harder to access birth control, including rising income and wealth inequality, gaps in insurance coverage and challenges accessing health providers.

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

SEC. 4. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) in order to increase access to oral birth control, such birth control must be both easier to obtain and affordable and, to make such birth control either easier to obtain or more affordable, but not both, is to leave unacceptable barriers in place;

(2) it is imperative that the entities that research and develop oral birth control and whose medical and scientific experts have developed clinical and other evidence that oral birth control for routine, daily use is safe and effective when sold without a prescription, apply to the Food and Drug Administration for review and approval for sale of such birth control without a prescription;

(3) upon the receipt of such an application, the Food and Drug Administration should determine whether the oral birth control meets the rigorous
safety, efficacy, and quality standards for over-the-counter use under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), and if the product meets those standards, the Food and Drug Administration should approve the application without delay; and

(4) if and when the Food and Drug Administration approves an oral birth control that is available over-the-counter, such birth control should be covered by health insurance, without a prescription and without cost-sharing.

SEC. 5. CLARIFYING COVERAGE REQUIREMENTS.

The Secretaries of Health and Human Services, Labor, and the Treasury shall clarify that coverage of contraceptives pursuant to section 2713(a)(4) of the Public Health Service Act (42 U.S.C. 300gg–13(a)(4)) includes coverage of over-the-counter contraceptive methods approved by the Food and Drug Administration, even if the enrollee does not have a prescription for the contraceptive.

SEC. 6. RULES OF CONSTRUCTION.

(a) Non-Interference With FDA Regulation.—Nothing in this Act shall be construed to modify or interfere with Food and Drug Administration processes to review or approve, or otherwise determine the safety and efficacy of, and make available, non-prescription...
drugs or devices, modify or interfere with the scientific and medical considerations of the Food and Drug Administration, or alter any other authority of the Food and Drug Administration.

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

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

(a) IN GENERAL.—Any retailer that stocks oral birth control for routine, daily use that is approved by, or otherwise legally marketed under regulation by, the Food and Drug Administration for use without a prescription may not interfere with an individual’s access to or purchase of such birth control or access to medically accurate, comprehensive information about such birth control.

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