

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.

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## 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. KAINE, Mr. MERKLEY, Mr. SANDERS, Ms. CANTWELL, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Mr. HEINRICH, 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

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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”.

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 oral birth control for routine, daily use  
5 that is approved by, or otherwise legally marketed under  
6 regulation by, the Food and Drug Administration for use  
7 without 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 will use at some point in their life-  
12 times.

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

18 (3) Family planning has well-documented  
19 health benefits for women, newborns, families, and  
20 communities and can lower the risk of harm to ma-  
21 ternal and infant health.

22 (4) An estimated 72,000,000 women of repro-  
23 ductive age (ages 15 through 44) live in the United  
24 States, of which nearly 70 percent are at risk of  
25 having an unintended pregnancy. Sixty-five percent  
26 of women of reproductive age are using a contracep-

1       tive method and 12 percent of women at risk for un-  
2       intended pregnancy are not using contraception. The  
3       rates of non-use of contraception are highest among  
4       those between 15 and 19 years old.

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

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

21              (7) Health disparities persist among people  
22      with low incomes, people of color, LGBTQ people,  
23      immigrants, and people who lack access to health  
24      coverage and health care providers.

1           (8) There are numerous social and economic  
2           barriers that make it harder to access birth control,  
3           including rising income and wealth inequality, gaps  
4           in insurance coverage and challenges 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 contraceptive methods ap-  
18 proved by the Food and Drug Administration, even if the  
19 enrollee does not have a prescription for the contraceptive.

20 **SEC. 6. RULES OF CONSTRUCTION.**

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

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

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

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

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

20 (b) LIMITATION.—Nothing in this section shall pro-  
21 hibit a retailer that stocks oral birth control for routine,  
22 daily use from refusing to provide an individual with such  
23 oral birth control that is approved by, or otherwise legally  
24 marketed under regulation by, the Food and Drug Admin-

1. contribution if the individual is unable to pay for the birth
2. control, directly or through insurance coverage.

