

114TH CONGRESS
1ST SESSION

S. 1532

To ensure timely access to affordable birth control for women.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2015

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, Mr. WYDEN, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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”.

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 by women without a prescription.

8 **SEC. 3. FINDINGS.**

9 Congress makes the following findings:

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

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

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

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

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

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

1 (7) The Patient Protection and Affordable Care
2 Act women's preventive services benefit has signifi-
3 cantly improved women's access to birth control, in-
4 cluding oral birth control for routine, daily use. The
5 Department of Health and Human Services has re-
6 ported that, as of 2014, more than 55,000,000
7 women are benefitting from coverage without cost-
8 sharing for women's preventive services, including
9 birth control, under the Patient Protection and Af-
10 fordable Care Act. Women have saved more than
11 \$483,000,000 in out-of-pocket costs for birth control
12 with no copayments in 2012 compared to 2013, an
13 average savings of \$269 per woman.

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

1 (9) The determination as to whether a drug
2 should be available for use without a prescription is
3 appropriately and solely made by the Food and Drug
4 Administration. To ensure the safety and efficacy of
5 a drug, including a drug available for over-the-
6 counter use, the appropriate scientific and medical
7 personnel at the Food and Drug Administration,
8 often with input from independent advisory panels of
9 experts, review clinical and other data relating to the
10 safety and efficacy of the drug. This scientific and
11 medical review can occur as part of the Food and
12 Drug Administration's over-the-counter drug review
13 for potential inclusion in a monograph as generally
14 recognized as safe and effective, or as part of the re-
15 view of a new drug application (or an abbreviated
16 new drug application). As part of these regulatory
17 processes, the appropriate scientific and medical per-
18 sonnel review clinical and other data, including data
19 generated in controlled clinical trials. The Food and
20 Drug Administration also reviews consumer studies
21 and monitors post-marketing safety data. All of
22 these processes ensure that the appropriate scientific
23 and medical personnel make the determination of
24 safety, quality, and efficacy of drugs marketed to
25 the people of the United States.

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

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

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

2 It is the sense of the Senate that—

3 (1) in order to increase women's access to oral
4 birth control, it must be both easier to obtain and
5 affordable and, to make it either easier to obtain or
6 more affordable, but not both, is to leave unaccept-
7 able barriers in place for women;

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

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

25 (4) if and when the Food and Drug Adminis-
26 tration approves an oral birth control that is avail-

1 able over-the-counter, such birth control should be
2 covered by health insurance, without a prescription
3 and without cost-sharing.

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

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

13 **SEC. 6. RULES OF CONSTRUCTION.**

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

23 (b) **NON-PREEMPTION.**—Nothing in this Act (or the
24 amendment made by this Act) preempts any provision of
25 Federal or State law to the extent that such Federal or

1 State law provides protections for consumers that are
2 greater than the protections provided for in this Act.

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

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

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

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