

117TH CONGRESS  
1ST SESSION

# S. 1021

To ensure affordable abortion coverage and care for every person, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 2021

Ms. DUCKWORTH (for herself, Mrs. MURRAY, Ms. HIRONO, Ms. CORTEZ MASTO, Mrs. SHAHEEN, Ms. KLOBUCHAR, Mr. BLUMENTHAL, Mr. BROWN, Ms. WARREN, Mrs. GILLIBRAND, Mr. WHITEHOUSE, Ms. ROSEN, Mrs. FEINSTEIN, Mr. MERKLEY, Ms. HASSAN, Mr. BENNET, Mr. MARKEY, Ms. SMITH, Mr. MURPHY, Mr. BOOKER, Mr. VAN HOLLEN, Mr. SANDERS, Mr. WYDEN, Mr. PADILLA, and Mr. LUJÁN) 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 ensure affordable abortion coverage and care for every person, 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 “Equal Access to Abor-  
5 tion Coverage in Health Insurance Act of 2021” or the  
6 “EACH Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) All people should have access to abortion  
4 services regardless of actual or perceived race, color,  
5 ethnicity, language, ancestry, citizenship, immigra-  
6 tion status, sex (including a sex stereotype; preg-  
7 nancy, childbirth, or a related medical condition;  
8 sexual orientation or gender identity; and sex char-  
9 acteristics), age, disability, or sex work status or be-  
10 havior.

11 (2) A person's income level, wealth, or type of  
12 insurance should not prevent them from having ac-  
13 cess to a full range of pregnancy-related health care,  
14 including abortion services.

15 (3) No person should have the decision to have,  
16 or not to have, an abortion made for them based on  
17 the ability or inability to afford the health care serv-  
18 ice.

19 (4) Since 1976, the Federal Government has  
20 banned the use of Federal funds to pay for abortion  
21 services and allows for exceptions only in very nar-  
22 row circumstances. This ban affects people of repro-  
23 ductive age in the United States who are insured  
24 through the Medicaid program, as well as individuals  
25 who receive insurance or care through other feder-  
26 ally funded health programs and plans.

1           (5) Women make up the majority of Medicaid  
2           enrollees (54 percent) and, in 2019, approximately  
3           14,000,000 women of reproductive age relied on the  
4           program for care. Due to systematic barriers and  
5           discrimination, a disproportionately higher number  
6           of women of color and Lesbian, Gay, Bisexual,  
7           Transgender, or Queer (LGBTQ) individuals are en-  
8           rolled in the program.

9           (6) Women of color are more likely to be in-  
10          sured by the Medicaid program. Nationwide, 29 per-  
11          cent of Black women and 25 percent of Hispanic  
12          women aged 15 to 49 were enrolled in Medicaid in  
13          2018, compared with 15 percent of White women.

14          (7) In the aggregate, nearly one-fifth (19 per-  
15          cent) of Asian-American and Pacific-Islander women  
16          are enrolled in the Medicaid program, while enroll-  
17          ment rates for certain Asian ethnic subgroups are  
18          much higher (at 62 percent of Bhutanese women, 43  
19          percent of Hmong women and 32 percent of Paki-  
20          stani women).

21          (8) Medicaid also provides coverage to more  
22          than 1 in 4 (27 percent) non-elderly American In-  
23          dian and Alaska Native (AIAN) adults and half of  
24          AIAN children.

1           (9) In a 2014 nationwide survey of LGBT peo-  
2           ple with incomes less than 400 percent Federal Pov-  
3           erty Level (FPL), 61 percent of all respondents had  
4           incomes in the Medicaid expansion range—up to  
5           138 percent of the FPL—including 73 percent of  
6           African-American respondents, 67 percent of Latino  
7           respondents, and 53 percent of White respondents.  
8           Another survey found that 32 percent of Asian and  
9           Native Hawaiian/Pacific Islander transgender people  
10          were living in poverty.

11          (10) Of women aged 15 through 44 enrolled in  
12          Medicaid in 2018, 55 percent lived in the 34 States  
13          and the District of Columbia where Medicaid does  
14          not cover abortion services except in limited cir-  
15          cumstances. This amounted to 7,200,000 women of  
16          reproductive age, including 3,000,000 women living  
17          below the FPL. Of this population, Black, Indige-  
18          nous, and other People of Color (BIPOC) women ac-  
19          counted for 51 percent of those enrolled.

20          (11) The Indian Health Service (IHS) is the  
21          federally funded health program for American Indi-  
22          ans and Alaska Natives. The IHS serves a popu-  
23          lation of approximately 2,560,000 and as a federally  
24          funded system, since 1988, it has been barred from  
25          providing abortion services except for very limited

1 cases. American Indians and Alaska Natives often  
2 face higher levels of poverty and limited access to  
3 health care for a number of intersecting oppressions  
4 thus leaving them without recourse for the Federal  
5 ban on abortion services.

6 (12) Moreover, 26 States also prohibit coverage  
7 of abortion services in the marketplaces and 11 pro-  
8 hibit coverage in private health insurance plans  
9 under the Patient Protection and Affordable Care  
10 Act (Public Law 111–148).

11 (13) A recent report details how restrictions on  
12 abortion services coverage interfere with a person’s  
13 individual decision making, with their health and  
14 well-being, with their economic security, with their  
15 vulnerability to intimate partner violence, and with  
16 their constitutionally protected right to a safe and  
17 normal health care service.

18 (14) About 25 percent of women covered by  
19 Medicaid seeking abortion services must carry their  
20 pregnancies to term because they are unable to ob-  
21 tain funds for their care. Government-imposed bar-  
22 riers to abortion services restrict people’s decisions  
23 on if, when, and how to parent, and have long-last-  
24 ing and life-altering harmful effects on the pregnant  
25 person, their families and their communities. Those

1 who seek and are denied abortion services are more  
2 likely to remain in or fall into poverty than those  
3 who access the care they need.

4 (15) Restrictions on abortion service coverage  
5 have a disproportionately harmful impact on women  
6 with low incomes, women of color, immigrant  
7 women, LGBTQ people, and young women. Addi-  
8 tionally, numerous State-imposed barriers make it  
9 disparately difficult for low-income people, people of  
10 color, immigrants, LGBTQ people, and young people  
11 to access the health care and resources necessary to  
12 prevent unintended pregnancy or to assure that they  
13 are able to carry healthy pregnancies to term. Fur-  
14 thermore, young people of reproductive age (ages 15  
15 to 24) are more likely to have a lower income than  
16 those older than that, and this income gap is greater  
17 for young BIPOC. More than 40 percent of youth  
18 and children under age 19 and almost a quarter of  
19 young people age 19 to 25 have health insurance  
20 through government programs. Without insurance  
21 coverage for abortion services, young people are at  
22 greater risk of not having the economic means to af-  
23 ford care outside of insurance. Young people face  
24 disproportionate access barriers to abortion services,  
25 including parental involvement requirement (notifi-

1 cation and consent) and cost, in addition to barriers  
2 to contraception and inadequate and incomplete sex-  
3 ual and sexuality education. These challenges, which  
4 are magnified for BIPOC and queer, trans, and non-  
5 binary youth, can cause significant delays in access  
6 to needed care, and could ultimately harm the life of  
7 the young person seeking abortion services. These  
8 institutionalized barriers deny young people’s right  
9 to bodily autonomy and can force young people to  
10 encounter an abusive parent or guardian, ignores  
11 trusted relationships young people may have with  
12 adults other than a parent or legal guardian, and in  
13 the case of the judicial bypass process, may force  
14 young BIPOC to interact with a legal system that  
15 has historically targeted and caused harm to com-  
16 munities of color.

17 (16) These and other government-created and  
18 government-institutionalized barriers—including the  
19 restriction on funding for abortion services in Fed-  
20 eral programs—exacerbate and create poverty and  
21 racial inequality in income, wealth-generation, and  
22 access to services.

23 (17) Access to health care, including abortion  
24 services, promotes the general welfare of people liv-  
25 ing in the United States. Singling out abortion serv-

1        ices for funding restrictions in health care programs  
2        otherwise designed to promote the health and well-  
3        being of people in the United States has cost preg-  
4        nant people their lives, their livelihoods, their ability  
5        to obtain or maintain economic security for them-  
6        selves and their families, their ability to meet their  
7        family’s basic needs, their ability to continue their  
8        education without disruption, and their ability to  
9        break free of abusive relationships.

10            (18) Like other health care and health insur-  
11            ance markets in the United States, abortion services  
12            and public insurance programs are commercial ac-  
13            tivities that affect interstate commerce. Providers  
14            and patients travel across State lines, and otherwise  
15            engage in interstate commerce, to provide and access  
16            abortion services. Material goods, services, and fed-  
17            erally regulated medications used in abortion serv-  
18            ices circulate in interstate commerce.

19            (19) Congress has the authority to enact this  
20            Act to ensure affordable coverage of abortion serv-  
21            ices pursuant to—

22                    (A) its powers under the necessary and  
23                    proper clause of Section 8, Article I of the Con-  
24                    stitution of the United States;



1 (B) its powers under the commerce clause  
2 of Section 8, Article 1 of the Constitution of the  
3 United States;

4 (C) its powers to tax and spend for the  
5 general welfare under Section 8, Article 1 of  
6 the Constitution of the United States; and

7 (D) its powers to enforce section 1 of the  
8 Fourteenth Amendment under Section 5 of the  
9 Fourteenth Amendment to the Constitution of  
10 the United States.

11 (20) Congress has exercised these constitutional  
12 powers to create, expand, and insure health care ac-  
13 cess for people in the United States for decades.  
14 Pursuant to this constitutional authority, Congress  
15 has enacted, and subsequently reauthorized, numer-  
16 ous health care programs including title XVIII of  
17 the Social Security Act (Medicare, enacted in 1965);  
18 title XIX of the Social Security Act (Medicaid, en-  
19 acted in 1965); and title XXI of the Social Security  
20 Act (Children’s Health Insurance Program, enacted  
21 in 1997).

22 **SEC. 3. DEFINITIONS.**

23 For purposes of this Act:

24 (1) **ABORTION SERVICES.**—The term “abortion  
25 services” means an abortion and any services related

1 to, and provided in conjunction with, an abortion,  
2 whether or not provided at the same time or on the  
3 same day as the abortion.

4 (2) HEALTH PROGRAM OR PLAN.—The term  
5 “health program or plan” means the following  
6 health programs or plans that pay the cost of, or  
7 provide, health care:

8 (A) The Medicaid program under title XIX  
9 of the Social Security Act (42 U.S.C. 1396 et  
10 seq.).

11 (B) The Children’s Health Insurance Pro-  
12 gram under title XXI of the Social Security Act  
13 (42 U.S.C. 1397 et seq.).

14 (C) The Medicare program under title  
15 XVIII of the Social Security Act (42 U.S.C.  
16 1395 et seq.).

17 (D) A medicare supplemental policy as de-  
18 fined in section 1882(g)(1) of the Social Secu-  
19 rity Act (42 U.S.C. 1395ss(g)(1)).

20 (E) The Indian Health Service program  
21 under the Indian Health Care Improvement Act  
22 (25 U.S.C. 1601 et seq.).

23 (F) Medical care and health benefits under  
24 the TRICARE program (as defined in section  
25 1072(7) of title 10, United States Code).

1 (G) Benefits under the uniform health ben-  
2 efits program for employees of the Department  
3 of Defense assigned to a nonappropriated fund  
4 instrumentality of the Department established  
5 under section 349 of the National Defense Au-  
6 thorization Act for Fiscal Year 1995 (Public  
7 Law 103–337; 10 U.S.C. 1587 note).

8 (H) Benefits for veterans under chapter 17  
9 of title 38, United States Code.

10 (I) Medical care for survivors and depend-  
11 ents of veterans under section 1781 of title 38,  
12 United States Code.

13 (J) Medical care for individuals in the care  
14 or custody of the Department of Homeland Se-  
15 curity pursuant to any of sections 235, 236, or  
16 241 of the Immigration and Nationality Act (8  
17 U.S.C. 1225, 1226, 1231).

18 (K) Medical care for individuals in the care  
19 or custody of the Department of Health and  
20 Human Services, Office of Refugee Resettle-  
21 ment under section 235 of the William Wilber-  
22 force Trafficking Victims Protection Reauthor-  
23 ization Act of 2008 (8 U.S.C. 1232) or section  
24 462 of the Homeland Security Act of 2002 (6  
25 U.S.C. 279).

1           (L) Medical assistance to refugees under  
2 section 412 of the Immigration and Nationality  
3 Act (8 U.S.C. 1522).

4           (M) Other coverage, such as a State health  
5 benefits risk pool, as the Secretary of Health  
6 and Human Services, in coordination with the  
7 Secretary of the Treasury, recognizes for pur-  
8 poses of section 5000A(f)(1)(E) of the Internal  
9 Revenue Code of 1986.

10          (N) The Federal Employees Health Ben-  
11 efit Plan under chapter 89 of title 5, United  
12 States Code.

13          (O) Medical care for individuals under the  
14 care or custody of the Department of Justice  
15 pursuant to chapter 301 of title 18, United  
16 States Code.

17          (P) Medical care for Peace Corps volun-  
18 teers under section 5(e) of the Peace Corps Act  
19 (22 U.S.C. 2504(e)).

20          (Q) Other government-sponsored programs  
21 established after the date of the enactment of  
22 this Act.

1 **SEC. 4. ABORTION COVERAGE AND CARE REGARDLESS OF**  
2 **INCOME OR SOURCE OF INSURANCE.**

3 (a) ENSURING ABORTION COVERAGE AND CARE  
4 THROUGH THE FEDERAL GOVERNMENT IN ITS ROLE AS  
5 AN INSURER AND EMPLOYER.—Each person insured by,  
6 enrolled in, or otherwise receiving medical care from  
7 health programs or plans described in section 3(2) shall  
8 receive coverage of abortion services. Health programs or  
9 plans described in section 3(2) shall provide coverage of  
10 abortion services.

11 (b) ENSURING ABORTION COVERAGE AND CARE  
12 THROUGH THE FEDERAL GOVERNMENT IN ITS ROLE AS  
13 A HEALTH CARE PROVIDER.—In its role as a provider  
14 of health services, including under health programs de-  
15 scribed in section 3(2) and health services covered by  
16 health plans described in section 3(2), the Federal Govern-  
17 ment shall ensure access to abortion services for individ-  
18 uals who are eligible to receive medical care in its own  
19 facilities or in facilities with which it contracts to provide  
20 medical care.

21 (c) PROHIBITING RESTRICTIONS ON PRIVATE INSUR-  
22 ANCE COVERAGE OF ABORTION SERVICES.—The Federal  
23 Government shall not prohibit, restrict, or otherwise in-  
24 hibit insurance coverage of abortion services by State or  
25 local government or by private health plans.

1 **SEC. 5. REPEAL OF SECTION 1303.**

2 (a) IN GENERAL.—Section 1303 of the Patient Pro-  
3 tection and Affordable Care Act (42 U.S.C. 18023) is re-  
4 pealed.

5 (b) CONFORMING AMENDMENTS.—

6 (1) BASIC HEALTH PLANS.—Section 1331(d) of  
7 the Patient Protection and Affordable Care Act (42  
8 U.S.C. 18051(d)) is amended by striking paragraph  
9 (4).

10 (2) MULTI-STATE PLANS.—Section 1334(a) of  
11 the Patient Protection and Affordable Care Act  
12 (Public Law 111–148) is amended—

13 (A) by striking paragraph (6); and

14 (B) by redesignating paragraph (7) as  
15 paragraph (6).

16 **SEC. 6. SENSE OF CONGRESS.**

17 It is the sense of Congress that—

18 (1) the Federal Government, acting in its ca-  
19 pacity as an insurer, employer, or health care pro-  
20 vider, should serve as a model for the Nation to en-  
21 sure coverage of abortion services; and

22 (2) restrictions on coverage of abortion services  
23 in the private insurance market must end.

24 **SEC. 7. RULE OF CONSTRUCTION.**

25 Nothing in this Act shall be construed to have any  
26 effect on any Federal, State, or local law that includes

1 more protections for abortion coverage or abortion services  
2 than those set forth in this Act.

3 **SEC. 8. RELATIONSHIP TO FEDERAL LAW.**

4 This Act supersedes and applies to all Federal law,  
5 and the implementation of that law, whether statutory or  
6 otherwise, and whether adopted before or after the date  
7 of enactment of this Act and is not subject to the Religious  
8 Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et  
9 seq.).

10 **SEC. 9. SEVERABILITY.**

11 If any portion of this Act or the application thereof  
12 to any person, entity, government, or circumstances is  
13 held invalid, such invalidity shall not affect the portions  
14 or applications of this Act which can be given effect with-  
15 out the invalid portion or application.

○