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(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R.

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on _____

A BILL

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, 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 “Access to Birth Control
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) Family planning is basic health care for
2 women. Access to contraception helps women pre-
3 vent unintended pregnancy and control the timing
4 and spacing of planned births.

5 (2) Although the Centers for Disease Control
6 and Prevention included family planning in its pub-
7 lished list of the Ten Great Public Health Achieve-
8 ments in the 20th Century, the United States still
9 has one of the highest rates of unintended pregn-
10 ancies among industrialized nations.

11 (3) Each year, 3,000,000 pregnancies, nearly
12 half of all pregnancies, in the United States are un-
13 intended, and nearly half of unintended pregnancies
14 end in abortion.

15 (4) Women rely on prescription contraceptives
16 for a range of medical purposes in addition to birth
17 control, such as regulation of cycles and endo-
18 metriosis.

19 (5) The Food and Drug Administration has de-
20 clared emergency contraception to be safe and effec-
21 tive in preventing unintended pregnancy and has ap-
22 proved over-the-counter access to the emergency con-
23 traceptive Plan B for adults.

24 (6) If taken soon after unprotected sex or pri-
25 mary contraceptive failure, emergency contraception

1 can significantly reduce a woman's chance of unin-
2 tended pregnancy and, therefore, the need for abor-
3 tion.

4 (7) Emergency contraception works like other
5 hormonal birth control. It does not harm or termi-
6 nate an already-established pregnancy.

7 (8) Access to legal contraception is a protected
8 fundamental right in the United States and should
9 not be impeded by an individual's personal beliefs.

10 (9) Reports of pharmacists refusing to fill pre-
11 scriptions for contraceptives, including emergency
12 contraceptives, have surfaced in States across the
13 Nation, including Arizona, California, Georgia, Illi-
14 nois, Louisiana, Massachusetts, Minnesota, Mis-
15 souri, New Hampshire, New York, North Carolina,
16 Ohio, Oregon, Rhode Island, Tennessee, Texas,
17 Washington, West Virginia, and Wisconsin. Since
18 emergency contraception has become available with-
19 out a prescription for individuals 18 and over, re-
20 ports of refusals to provide non-prescription emer-
21 gency contraception have also been reported.

1 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**
2 **FDA-APPROVED CONTRACEPTION.**

3 Part B of title II of the Public Health Service Act
4 (42 U.S.C. 238 et seq.) is amended by adding at the end
5 the following:

6 **“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION**
7 **OF FDA-APPROVED CONTRACEPTION.**

8 “(a) IN GENERAL.—Subject to subsection (b), a
9 pharmacy that receives Food and Drug Administration-
10 approved drugs or devices in interstate commerce shall
11 maintain compliance with the following:

12 “(1) If a customer requests a contraceptive that
13 is in stock, the pharmacy shall ensure that the con-
14 traceptive is provided to the customer without delay.

15 “(2) If a customer requests a contraceptive that
16 is not in stock and the pharmacy in the normal
17 course of business stocks contraception, the phar-
18 macy shall immediately inform the customer that the
19 contraceptive is not in stock and without delay offer
20 the customer the following options:

21 “(A) If the customer prefers to obtain the
22 contraceptive through a referral or transfer, the
23 pharmacy shall—

24 “(i) locate a pharmacy of the cus-
25 tomer’s choice or the closest pharmacy

1 confirmed to have the contraceptive in
2 stock; and

3 “(ii) refer the customer or transfer
4 the prescription to that pharmacy.

5 “(B) If the customer prefers for the phar-
6 macy to order the contraceptive, the pharmacy
7 shall obtain the contraceptive under the phar-
8 macy’s standard procedure for expedited order-
9 ing of medication and notify the customer when
10 the contraceptive arrives.

11 “(3) The pharmacy shall ensure that its em-
12 ployees do not—

13 “(A) intimidate, threaten, or harass cus-
14 tomers in the delivery of services relating to a
15 request for contraception;

16 “(B) interfere with or obstruct the delivery
17 of services relating to a request for contracep-
18 tion;

19 “(C) intentionally misrepresent or deceive
20 customers about the availability of contracep-
21 tion or its mechanism of action;

22 “(D) breach medical confidentiality with
23 respect to a request for contraception or threat-
24 en to breach such confidentiality; or

1 “(E) refuse to return a valid, lawful pre-
2 scription for contraception upon customer re-
3 quest.

4 “(b) REFUSALS PURSUANT TO STANDARD PHAR-
5 MACY PRACTICE.—This section does not prohibit a phar-
6 macy from refusing to provide a contraceptive to a cus-
7 tomer in accordance with any of the following:

8 “(1) If it is unlawful to dispense the contracep-
9 tive to the customer without a valid, lawful prescrip-
10 tion and no such prescription is presented.

11 “(2) If the customer is unable to pay for the
12 contraceptive.

13 “(3) If the employee of the pharmacy refuses to
14 provide the contraceptive on the basis of a profes-
15 sional clinical judgment.

16 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to alter any standard under title
18 VII of the Civil Rights Act of 1964.

19 “(d) PREEMPTION.—This section does not preempt
20 any provision of State law or any professional obligation
21 made applicable by a State board or other entity respon-
22 sible for licensing or discipline of pharmacies or phar-
23 macists, to the extent that such State law or professional
24 obligation provides protections for customers that are
25 greater than the protections provided by this section.

1 “(e) ENFORCEMENT.—

2 “(1) CIVIL PENALTY.—A pharmacy that vio-
3 lates a requirement of subsection (a) is liable to the
4 United States for a civil penalty in an amount not
5 exceeding \$5,000 per day of violation, not to exceed
6 \$500,000 for all violations adjudicated in a single
7 proceeding.

8 “(2) PRIVATE CAUSE OF ACTION.—Any person
9 aggrieved as a result of a violation of a requirement
10 of subsection (a) may, in any court of competent ju-
11 risdiction, commence a civil action against the phar-
12 macy involved to obtain appropriate relief, including
13 actual and punitive damages, injunctive relief, and a
14 reasonable attorney’s fee and cost.

15 “(3) LIMITATIONS.—A civil action under para-
16 graph (1) or (2) may not be commenced against a
17 pharmacy after the expiration of the 5-year period
18 beginning on the date on which the pharmacy alleg-
19 edly engaged in the violation involved.

20 “(f) DEFINITIONS.—In this section:

21 “(1) The term ‘contraception’ or ‘contraceptive’
22 means any drug or device approved by the Food and
23 Drug Administration to prevent pregnancy.

1 “(2) The term ‘employee’ means a person hired,
2 by contract or any other form of an agreement, by
3 a pharmacy.

4 “(3) The term ‘pharmacy’ means an entity
5 that—

6 “(A) is authorized by a State to engage in
7 the business of selling prescription drugs at re-
8 tail; and

9 “(B) employs one or more employees.

10 “(4) The term ‘product’ means a Food and
11 Drug Administration-approved drug or device.

12 “(5) The term ‘professional clinical judgment’
13 means the use of professional knowledge and skills
14 to form a clinical judgment, in accordance with pre-
15 vailing medical standards.

16 “(6) The term ‘without delay’, with respect to
17 a pharmacy providing, providing a referral for, or
18 ordering contraception, or transferring the prescrip-
19 tion for contraception, means within the usual and
20 customary timeframe at the pharmacy for providing,
21 providing a referral for, or ordering other products,
22 or transferring the prescription for other products,
23 respectively.

24 “(g) EFFECTIVE DATE.—This section shall take ef-
25 fect on the 31st day after the date of the enactment of

- 1 this section, without regard to whether the Secretary has
- 2 issued any guidance or final rule regarding this section.”.