

118TH CONGRESS  
1ST SESSION

# H. R. 3589

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 HOUSE OF REPRESENTATIVES

MAY 22, 2023

Ms. PRESSLEY (for herself, Ms. OCASIO-CORTEZ, Mr. BERA, Ms. CROCKETT, Mr. DOGGETT, Mr. ESPAILLAT, Ms. NORTON, Mr. VARGAS, Ms. BROWNLEY, Ms. CASTOR of Florida, Mr. JOHNSON of Georgia, Mr. KILMER, Mrs. NAPOLITANO, Ms. WILSON of Florida, Ms. CHU, Mr. BOWMAN, Mrs. WATSON COLEMAN, Mr. POCAN, Mr. BLUMENAUER, Ms. BROWN, Ms. MCCOLLUM, Mr. CASTEN, Ms. WILLIAMS of Georgia, Ms. CLARKE of New York, Ms. UNDERWOOD, Mr. TRONE, Ms. GARCIA of Texas, Mr. KHANNA, Mr. GOMEZ, Mr. EVANS, Ms. SCANLON, Ms. LEE of California, Mr. TAKANO, Mrs. MCBATH, Ms. JAYAPAL, Ms. TLAIB, Mr. CARTER of Louisiana, Ms. LOIS FRANKEL of Florida, Ms. DELAURO, Ms. LEE of Pennsylvania, Mr. CONNOLLY, Mr. PETERS, Mr. CARTWRIGHT, Mr. MULLIN, and Mr. MENENDEZ) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Affordability is Access  
3 Act of 2023”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to ensure timely access  
6 to affordable birth control by requiring coverage without  
7 cost-sharing for contraceptives that are approved, granted,  
8 or cleared by, or otherwise legally marketed under regula-  
9 tion by, the Food and Drug Administration for use with-  
10 out a prescription.

11 **SEC. 3. FINDINGS.**

12 Congress finds the following:

13 (1) Birth control is critical health care that al-  
14 most all women, as well as many trans men and  
15 nonbinary people, will use at some point in their life-  
16 times.

17 (2) Access to the full range of reproductive  
18 health care, including birth control coverage as guar-  
19 anteed under Federal law, provides individuals with  
20 the opportunity to lead healthy lives and get the care  
21 they need to reach their goals.

22 (3) Contraceptive access is associated with  
23 health benefits for women, newborns, families, and  
24 communities and can lower the risk of harm to ma-  
25 ternal and infant health.

1           (4) An estimated 73 million women of reproduc-  
2           tive age (ages 15 through 49) live in the United  
3           States. Among the 46 million of such women who  
4           are sexually active and not seeking children, 89 per-  
5           cent use a form of birth control.

6           (5) The birth control benefit enacted under the  
7           Patient Protection and Affordable Care Act (Public  
8           Law 111–148) has been a crucial step forward in  
9           advancing access to birth control and has helped en-  
10          sure 58 million women have the power to decide for  
11          themselves if and when to become pregnant.

12          (6) Despite legal requirements for birth control  
13          coverage and access to services, gaps remain for mil-  
14          lions of individuals. Nearly 1 in 5 women are not  
15          using their preferred method of contraception, and  
16          of those women, a quarter say it is because of cost.  
17          As a result, many women have gone without the  
18          birth control they want to use, also creating incon-  
19          sistent use. Access to birth control is particularly  
20          difficult for the 19 million women of reproductive  
21          age with lower incomes who live in contraceptive  
22          deserts and lack reasonable access to a health center  
23          that offers the full range of contraceptive methods.

24          (7) Due to systemic discrimination, people paid  
25          low wages, people of color, LGBTQ+ individuals,

1 immigrants, and people with disabilities are more  
2 likely to face barriers to, and lack access to, health  
3 coverage and health care providers.

4 (8) There are numerous social and economic  
5 factors that make it harder to access birth control,  
6 including rising income and wealth inequality, gaps  
7 in insurance coverage, and barriers to accessing  
8 health providers.

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

11 **SEC. 4. SENSE OF CONGRESS.**

12 It is the sense of Congress that—

13 (1) in order to increase access to oral birth con-  
14 trol, such birth control must be both easier to obtain  
15 and affordable and, to make such birth control ei-  
16 ther easier to obtain or more affordable, but not  
17 both, is to leave unacceptable barriers in place;

18 (2) it is imperative that the entities that re-  
19 search and develop oral birth control and whose  
20 medical and scientific experts have developed clinical  
21 and other evidence that oral birth control for rou-  
22 tine, daily use is safe and effective when sold with-  
23 out a prescription, apply to the Food and Drug Ad-  
24 ministration for review and approval for sale of such  
25 birth control without a prescription;

1           (3) upon the receipt of such an application, the  
2           Food and Drug Administration should determine  
3           whether the oral birth control meets the rigorous  
4           safety, efficacy, and quality standards for over-the-  
5           counter use under the Federal Food, Drug, and Cos-  
6           metic Act (21 U.S.C. 301 et seq.), and if the prod-  
7           uct meets those standards, the Food and Drug Ad-  
8           ministration should approve the application without  
9           delay; and

10           (4) if and when the Food and Drug Adminis-  
11           tration approves an oral birth control that is avail-  
12           able over-the-counter, such birth control should be  
13           covered by health insurance, without a prescription  
14           and without cost-sharing.

15 **SEC. 5. CLARIFYING COVERAGE REQUIREMENTS.**

16           The Secretaries of Health and Human Services,  
17           Labor, and the Treasury shall clarify that coverage of con-  
18           traceptives pursuant to section 2713(a)(4) of the Public  
19           Health Service Act (42 U.S.C. 300gg-13(a)(4)) includes  
20           coverage of over-the-counter contraceptives approved,  
21           granted authorization for emergency use, or cleared by the  
22           Food and Drug Administration, even if the enrollee does  
23           not have a prescription for the contraceptive.

1 **SEC. 6. RULES OF CONSTRUCTION.**

2 (a) NON-INTERFERENCE WITH FDA REGULA-  
3 TION.—Nothing in this Act shall be construed to modify  
4 or interfere with Food and Drug Administration processes  
5 to review, approve, clear, or authorize for emergency use,  
6 or otherwise determine the safety and efficacy of, and  
7 make available, non-prescription drugs or devices, modify  
8 or interfere with the scientific and medical considerations  
9 of the Food and Drug Administration, or alter any other  
10 authority of the Food and Drug Administration.

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

16 **SEC. 7. DUTIES OF RETAILERS TO ENSURE ACCESS TO CON-**  
17 **TRACEPTION FOR USE WITHOUT A PRESCRIP-**  
18 **TION.**

19 (a) IN GENERAL.—Any retailer that stocks contra-  
20 ception that is approved, granted authorization for emer-  
21 gency use, or cleared by, or otherwise legally marketed  
22 under regulation by, the Food and Drug Administration  
23 for use without a prescription may not interfere with an  
24 individual's access to or purchase of such contraception  
25 or access to medically accurate, comprehensive informa-  
26 tion about such contraception.

1           (b) LIMITATION.—Nothing in this section shall pro-  
2     hibit a retailer that stocks over-the-counter contraceptive  
3     products from refusing to provide an individual with such  
4     contraceptive product that is approved, granted, or cleared  
5     by, or otherwise legally marketed under regulation by, the  
6     Food and Drug Administration if the individual is unable  
7     to pay for the contraceptive product, directly, through in-  
8     surance coverage, or through other payment mechanism.

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