

110TH CONGRESS  
1ST SESSION

# H. R. 2596

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2007

Mrs. MALONEY of New York (for herself, Mr. SHAYS, Mr. WAXMAN, and Mr. INSLEE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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:

8           (1) Family planning is basic health care for  
9       women. Access to contraception helps women pre-

1        vent unintended pregnancy and control the timing  
2        and spacing of planned births.

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

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

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

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

22                (6) If taken soon after unprotected sex or pri-  
23        mary contraceptive failure, emergency contraception  
24        can significantly reduce a woman's chance of unin-

1 tended pregnancy and, therefore, the need for abor-  
2 tion.

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

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

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

21 **SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF**  
22 **FDA-APPROVED CONTRACEPTION.**

23 Part B of title II of the Public Health Service Act  
24 (42 U.S.C. 238 et seq.) is amended by adding at the end  
25 the following:

3       “(a) IN GENERAL.—Subject to subsection (b), a  
4    pharmacy that receives Food and Drug Administra-  
5    approved drugs or devices in interstate commerce shall  
6    maintain compliance with the following:

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

10                   “(2) If a customer requests a contraceptive that  
11                   is not in stock and the pharmacy in the normal  
12                   course of business stocks contraception, the phar-  
13                   macy shall immediately inform the customer that the  
14                   contraceptive is not in stock and without delay offer  
15                   the customer the following options:

16                   “(A) If the customer prefers to obtain the  
17                   contraceptive through a referral or transfer, the  
18                   pharmacy shall—

25                   “(B) If the customer prefers for the phar-  
26                   macy to order the contraceptive, the pharmacy

1 shall obtain the contraceptive under the phar-  
2 macy's standard procedure for expedited order-  
3 ing of medication and notify the customer when  
4 the contraceptive arrives.

5 "(3) The pharmacy shall ensure that its em-  
6 ployees do not—

7 "“(A) intimidate, threaten, or harass cus-  
8 tomers in the delivery of services relating to a  
9 request for contraception;

10 "“(B) interfere with or obstruct the delivery  
11 of services relating to a request for contracep-  
12 tion;

13 "“(C) intentionally misrepresent or deceive  
14 customers about the availability of contracep-  
15 tion or its mechanism of action;

16 "“(D) breach medical confidentiality with  
17 respect to a request for contraception or threat-  
18 en to breach such confidentiality; or

19 "“(E) refuse to return a valid, lawful pre-  
20 scription for contraception upon customer re-  
21 quest.

22 "(b) REFUSALS PURSUANT TO STANDARD PHAR-  
23 MACY PRACTICE.—This section does not prohibit a phar-  
24 macy from refusing to provide a contraceptive to a cus-  
25 tomer in accordance with any of the following:

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

4           “(2) If the customer is unable to pay for the  
5       contraceptive.

6           “(3) If the employee of the pharmacy refuses to  
7       provide the contraceptive on the basis of a profes-  
8       sional clinical judgment.

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

12           “(d) PREEMPTION.—This section does not preempt  
13      any provision of State law or any professional obligation  
14      made applicable by a State board or other entity respon-  
15      sible for licensing or discipline of pharmacies or phar-  
16      macists, to the extent that such State law or professional  
17      obligation provides protections for customers that are  
18      greater than the protections provided by this section.

19           “(e) ENFORCEMENT.—

20           “(1) CIVIL PENALTY.—A pharmacy that vio-  
21      lates a requirement of subsection (a) is liable to the  
22      United States for a civil penalty in an amount not  
23      exceeding \$5,000 per day of violation, not to exceed  
24      \$500,000 for all violations adjudicated in a single  
25      proceeding.

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

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

13           “(f) DEFINITIONS.—In this section:

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

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

20           “(3) The term ‘pharmacy’ means an entity  
21 that—

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

25           “(B) employs one or more employees.

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

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

7           “(6) The term ‘without delay’, with respect to  
8           a pharmacy providing, providing a referral for, or  
9           ordering contraception, or transferring the prescrip-  
10           tion for contraception, means within the usual and  
11           customary timeframe at the pharmacy for providing,  
12           providing a referral for, or ordering other products,  
13           or transferring the prescription for other products,  
14           respectively.

15           “(g) EFFECTIVE DATE.—This section shall take ef-  
16           fect on the 31st day after the date of the enactment of  
17           this section, without regard to whether the Secretary has  
18           issued any guidance or final rule regarding this section.”.

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