

111TH CONGRESS  
2D SESSION

# H. R. 5309

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

MAY 13, 2010

Mrs. MALONEY (for herself, Mr. OLVER, Ms. MOORE of Wisconsin, Ms. SUTTON, Mr. FARR, Mr. MOORE of Kansas, Mr. TIERNEY, Mr. INSLEE, Mrs. CAPPS, Ms. BALDWIN, Mr. FILNER, Ms. WASSERMAN SCHULTZ, and Mr. STARK) 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       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 preg-  
10 nancies 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 emergency contra-  
23 ception for individuals aged 17 and older.

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.

3           (7) Emergency contraception works like other  
4       hormonal birth control by preventing pregnancy. It  
5       also does not harm or terminate an already-estab-  
6       lished pregnancy.

7           (8) Access to legal contraception is a protected  
8       fundamental right in the United States and should  
9       not be impeded by one 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 Alabama, Arizona, California, the  
14       District of Columbia, Georgia, Illinois, Louisiana,  
15       Massachusetts, Michigan, Minnesota, Missouri, Mon-  
16       tana, New Hampshire, New York, North Carolina,  
17       Ohio, Oklahoma, Oregon, Rhode Island, Tennessee,  
18       Texas, Washington, West Virginia, and Wisconsin.  
19       Since emergency contraception became available  
20       without a prescription for certain individuals, refus-  
21       als to provide non-prescription emergency contracep-  
22       tion 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 (c), 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)     CONTRACEPTIVES     NOT     ORDINARILY  
5 STOCKED.—Nothing in subsection (a)(2) shall be con-  
6 strued to require any pharmacy to comply with such sub-  
7 section if the pharmacy does not ordinarily stock contra-  
8 ceptives in the normal course of business.

9           “(c) REFUSALS PURSUANT TO STANDARD PHAR-  
10 MACY PRACTICE.—This section does not prohibit a phar-  
11 macy from refusing to provide a contraceptive to a cus-  
12 tomer in accordance with any of the following:

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

16                   “(2) If the customer is unable to pay for the  
17                   contraceptive.

18                   “(3) If the employee of the pharmacy refuses to  
19                   provide the contraceptive on the basis of a profes-  
20                   sional clinical judgment.

21           “(d) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed to invalidate or limit rights, rem-  
23 edies, procedures, or legal standards under title VII of the  
24 Civil Rights Act of 1964.

1       “(e) PREEMPTION.—This section does not preempt  
2 any provision of State law or any professional obligation  
3 made applicable by a State board or other entity respon-  
4 sible for licensing or discipline of pharmacies or phar-  
5 macists, to the extent that such State law or professional  
6 obligation provides protections for customers that are  
7 greater than the protections provided by this section.

8       “(f) ENFORCEMENT.—

9           “(1) CIVIL PENALTY.—A pharmacy that vio-  
10 lates a requirement of subsection (a) is liable to the  
11 United States for a civil penalty in an amount not  
12 exceeding \$1,000 per day of violation, not to exceed  
13 \$100,000 for all violations adjudicated in a single  
14 proceeding.

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

22           “(3) LIMITATIONS.—A civil action under para-  
23 graph (1) or (2) may not be commenced against a  
24 pharmacy after the expiration of the 5-year period

1 beginning on the date on which the pharmacy alleg-  
2 edly engaged in the violation involved.

3 “(g) DEFINITIONS.—In this section:

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

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

10 “(3) The term ‘pharmacy’ means an entity  
11 that—

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

15 “(B) employs one or more employees.

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

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

22 “(6) The term ‘without delay’, with respect to  
23 a pharmacy providing, providing a referral for, or  
24 ordering contraception, or transferring the prescrip-  
25 tion for contraception, means within the usual and



1        customary timeframe at the pharmacy for providing,  
2        providing a referral for, or ordering other products,  
3        or transferring the prescription for other products,  
4        respectively.

5        “(h) EFFECTIVE DATE.—This section shall take ef-  
6        fect on the 31st day after the date of the enactment of  
7        this section, without regard to whether the Secretary has  
8        issued any guidance or final rule regarding this section.”.

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