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Pharmacy Refusals of Birth Control and the Access to Birth Control Act of 2021

Birth control allows people to decide if, and when, they want to become pregnant, and how they want to live their life, as well as the freedom to exercise their autonomy. An individual's access to birth control should not be limited by a pharmacy employee's personal beliefs. To make sure people can access birth control without facing a refusal in the pharmacy, Senator Booker and Representative Maloney introduced the Access to Birth Control Act of 2021 (ABC Act). The ABC Act ensures that any person who goes to a pharmacy for birth control leaves the pharmacy with their birth control in hand or can easily obtain it nearby.

People across the country have reported being refused birth control at a pharmacy.

Pharmacy refusals of birth control are a problem of national importance. There have been reports in at least twenty-six states of pharmacy refusals to provide birth control, based on personal beliefs held by pharmacy employees. These refusals include failing to fill prescriptions and refusing to dispense over the counter products, like emergency contraception (EC). These refusals are not based on medical reasons, but rather on individual pharmacy employees' personal beliefs. The ABC Act recognizes and addresses this nationwide problem.

Pharmacy refusals can have devastating consequences.

When a person faces a pharmacy refusal, it can have devastating effects. If someone is refused the birth control they need at the pharmacy, they may delay trying to get it again or mistakenly believe they will never be able to access it and give up. This threatens their health, including putting people at risk for unintended pregnancy.¹ Furthermore, when someone is refused access to birth control at a pharmacy, it can be a humiliating experience. In some instances, pharmacy employees have even berated or shamed individuals seeking birth control. The ABC Act makes certain that those seeking birth control at pharmacies will get the care they need in a respectful way, regardless of any individual employee's beliefs.

Removing barriers to birth control is especially important at this time.

Eliminating barriers to birth control at pharmacies is especially timely and important right now. The pandemic has exacerbated existing structural inequalities and made accessing birth control more difficult, especially for those who already face barriers to care. Early in the pandemic, over half of surveyed women reported barriers in accessing their preferred birth control because of the ongoing pandemic, and that number increased as the pandemic wore on.² These barriers have been even more pronounced for women of color and women experiencing job/income loss and food insecurity.³ At the same time, access to birth control is more critical than ever, as people—especially Black, Latina, and queer women—express a desire to get pregnant later or have fewer children because of the pandemic,⁴ and as attacks on abortion rights and access increase. People should never face barriers to birth control at the pharmacy, but especially not at a time when people need more access to health care, not less.

The ABC Act builds on Congress's long-standing support for access to birth control.

Ever since the Supreme Court first recognized the right to birth control in *Griswold v. Connecticut*,⁵ Congress has repeatedly acted to remove barriers to birth control and improve pathways to accessing this critical health service. In 1970, Congress established Title X grants to fund family planning services across the country. In 1972, Congress required Medicaid programs to provide access to family planning services without cost-sharing.⁶ More recently, the Affordable Care Act (ACA) required coverage of women's preventive services without out-of-pocket costs, including coverage of all FDA-approved methods of birth control. In this Congress, FY2022 appropriations for Title X were proposed in both the House (\$400 million) and the Senate (\$500 million). These proposed spending bills signal continued support for access to birth control and family planning services.

Despite Congressional support for access to birth control, people continue to face barriers to this important care that they need. Pharmacy refusals to provide birth control are just one barrier, but it is a barrier that can be overcome with the ABC Act.

Birth control is a public health success that is popular.

Birth control is basic health care, essential to people's ability to time and space pregnancies. In fact, the Centers for Disease Control and Prevention (CDC) included "family planning" on the list of ten greatest public health achievements in the twentieth century.⁷ Birth control allows people to decide if and when to get pregnant, giving them greater autonomy and ability to plan their lives. Access to birth control is also popular. A recent National Women's Law Center poll found that 84% of voters agree that everyone should have access to the birth control they want or need, when they want or need it, without any barriers standing in their way.⁸ The ABC Act is one important step Congress can take to increase access to birth control and remove harmful barriers to it.

The ABC Act will make sure that people get the birth control they need when they go to a pharmacy.

The ABC Act specifically addresses the problem of pharmacy refusals for birth control and ensures that people are able to access birth control at the pharmacy without discrimination, harassment, or delay. The ABC Act specifies:

- Pharmacies must dispense in-stock birth control without delay
- If a pharmacy is out of stock of a requested item, the pharmacy must either make a referral to a pharmacy that has the item in stock, transfer the prescription, or order the product, whichever the customer prefers

- Pharmacies must not otherwise create barriers to contraception, and are prohibited from, for example, harassing, intimidating, or threatening customers seeking birth control, or interfering with or obstructing the delivery of contraception
- Pharmacy employees may only refuse to provide birth control in line with professional clinical judgment, if a customer fails to present a legally required prescription, or if a customer is unable to pay for a product
- Pharmacies that fail to meet the requirements of the law can be subject to a fine, and customers who are refused birth control in violation of the law may bring a lawsuit

Birth control is essential health care that allows people to exercise their autonomy and make important decisions about their life. Congress has a long-standing record of supporting access to birth control, and access to birth control is extremely popular among the public. A person's access to birth control should not be limited by the personal beliefs of a pharmacy employee, and pharmacies should not be able to refuse access to birth control. The ABC Act is a common sense action that Congress can take to remove one of the barriers people face in accessing birth control.

¹ [Pharmacy Refusals 101](https://nwlc.org/wp-content/uploads/2017/12/Pharmacy-Refusals-101.pdf), Nat'l Women's L. Center (Dec. 28, 2017), <https://nwlc.org/wp-content/uploads/2017/12/Pharmacy-Refusals-101.pdf>

² In July 2020, 51.5% of respondents who sought contraception reported barriers to care compared to 55.3% in January 2021. Nadia Diamond-Smith et al., *COVID-19's impact on contraception experiences: Exacerbation of structural inequities in women's health*, 104 *Contraception* 6, 600 (2021).

³ *Id.*

⁴ Laura D. Lindberg, *Early Impacts of the COVID-19 Pandemic: Findings from the 2020 Guttmacher Survey of Reproductive Health Experiences* (June 2020), <https://www.guttmacher.org/report/early-impacts-covid-19-pandemic-findings-2020-guttmacher-survey-reproductive-health>

⁵ *Griswold v. Connecticut*, 381 US 479 (1965).

⁶ Adam Sonfield, *A Fragmented System: Ensuring Comprehensive Contraceptive Coverage in All U.S. Health Insurance Plans*, 24 *Guttmacher Policy Review* (2021), <https://www.guttmacher.org/gpr/2021/02/fragmented-system-ensuring-comprehensive-contraceptive-coverage-all-us-health-insurance>

⁷ *Ten Great Public Health Achievements—United States, 1900-1999*, *MMWR*, Ctr. FOR DISEASE CONTROL & PREVENTION (Apr. 2, 1999), <http://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm>.

⁸ Polling on file with National Women's Law Center.