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The Access to Birth Control Act: Ensuring People Get the Birth Control They Need at the Pharmacy

Everyone deserves the freedom to decide when or whether they want to grow a family, and the ability to access affordable birth control to make this family planning possible. Yet, individuals seeking birth control have faced refusals at pharmacies across the country. An individual's access to birth control should never be obstructed by a pharmacy employee's personal beliefs. To make sure people can access birth control without facing a refusal in the pharmacy, Senators Booker and Murray and Representative Robin Kelly introduced the Access to Birth Control Act of 2024 (ABC Act). The ABC Act ensures that any person who goes to a pharmacy for birth control gets the medication they need.

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

Refusals to provide birth control based on a pharmacy employee's personal beliefs have happened in at least twenty-six states across the country. Individuals have faced refusals to fill prescriptions and refusals to dispense over the counter products, like emergency contraception (EC), as well as refusals to transfer prescriptions or help someone locate a pharmacy that has medication in stock. 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 not be able to access it somewhere else, especially if they live in a rural area or otherwise face systemic barriers like lack of transportation or inability to get time off.¹ A refusal could also delay an individual from trying to get it again or make them 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. When someone is refused access to birth control at a pharmacy, it can be a demoralizing and humiliating experience. In some instances, pharmacy employees have berated or shamed individuals seeking birth control. The ABC Act makes certain that individuals seeking birth control at pharmacies will get the care they need in a respectful way, regardless of any individual employee's beliefs.

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 can access birth control at the pharmacy without discrimination, harassment, or delay. The ABC Act specifies that:

- 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 for reasons related to 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.

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, in the wake of the Supreme Court’s decision to unjustly overturn the constitutional right to abortion.² While increasing access to birth control cannot make up for losing the constitutional right to abortion, it is still critical to ensuring everyone can decide when or whether they want to start or grow a family. Yet, the Supreme Court’s decision – and in particular Justice Thomas’s call for revisiting and overturning the constitutional right to contraception – has escalated attacks on birth control.³ Refusals of birth control in the pharmacy have increased in the two years since that decision. In this moment, when access to reproductive health care is curtailed and threatened, it is even more important to ensure that everyone can get the birth control they need without barriers.

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*,⁴ 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.⁵ 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.⁷ Despite congressional support for access to birth control, people continue to face barriers to this important care. Pharmacy refusals to provide birth control are a barrier that can be addressed by Congress, through 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. The Centers for Disease Control and Prevention (CDC) included “family planning” on the list of ten greatest public health achievements of the twentieth century.⁸ 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.⁹ The ABC Act furthers public health and is in line with what the vast majority in this country wants.

Pharmacies should not be able to refuse or obstruct people’s access to birth control. The ABC Act is a necessary action Congress must take to stop refusals in the pharmacy and ensure people can access birth control immediately and with dignity.

- ¹See Brief for National Women's Law Center as Amicus Curiae Supporting Appellant, *Anderson v. Thrifty White Pharmacy*, Minn. Ct. App., July 6, 2023 (documenting harms when pharmacy policies obstruct access to emergency contraception), available at <https://nwlc.org/wp-content/uploads/2023/07/Anderson-v.-Thrifty-White-Amicus-Brief.pdf>.
- ²*Dobbs v. Jackson Women's Health Organization*: The Court Takes Away a Guaranteed Nationwide Right to Abortion, Nat'l Women's L. Center (July 12, 2022), <https://nwlc.org/resource/dobbs-v-jackson-womens-health-organization-the-court-takes-away-a-guaranteed-nationwide-right-to-abortion/>.
- ³See Don't be Fooled: Birth Control is Already at Risk, Nat'l Women's L. Center (Jun. 17, 2022), <https://nwlc.org/resource/dont-be-fooled-birth-control-is-already-at-risk/>.
- ⁴*Griswold v. Connecticut*, 381 US 479 (1965).
- ⁵Office of Population Affairs, Dept. of Health and Human Services, 50 Years of Title X: A Timeline of Key Events, last accessed May 9, 2024, <https://opa.hhs.gov/sites/default/files/2020-11/opa-titex-2020-timeline.pdf>.
- ⁶Centers for Medicaid & Medicare Services, Medicaid Covers Family Planning Services, last accessed May 9, 2024, <https://www.medicaid.gov/about-us/program-history/medicaid-50th-anniversary/entry/47702>.
- ⁷New Data Estimates 62.1 Million Women Have Coverage of Birth Control and Other Preventive Services Without Out-of-Pocket Costs, Nat'l Women's L. Center (Dec. 1, 2021), <https://nwlc.org/resource/new-data-estimates-62-1-million-women-have-coverage-of-birth-control-and-other-preventive-services-without-out-of-pocket-costs/>.
- ⁸Ctrs. For Disease Control and Prevention, Ten Great Public Health Achievements—United States, 1900-1999 (Apr. 2, 1999), <http://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm>.
- ⁹Polling on file with National Women's Law Center.