H. R. ______

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

IN THE HOUSE OF REPRESENTATIVES

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on __________________

A BILL

To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to 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,
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SECTION 1. SHORT TITLE.

This Act may be cited as the “Access to Birth Control Act”.

SEC. 2. FINDINGS.

Congress finds as follows:
(1) Family planning is basic health care. Access to contraception helps prevent unintended pregnancy and control the timing and spacing of planned births.

(2) As a result of the enactment of the Patient Protection and Affordable Care Act (Public Law 111–148), approximately 64,300,000 women had coverage of the full range of Food and Drug Administration-approved contraceptive methods without cost sharing in 2020.

(3) The Patient Protection and Affordable Care Act saved women $1,400,000,000 on birth control pills alone in 2013.

(4) According to the Centers for Disease Control and Prevention, nearly 2/3 of women between the ages of 15 and 49 are currently using a contraceptive method.

(5) Although the Centers for Disease Control and Prevention included family planning in its published list of the Ten Great Public Health Achievements in the 20th Century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations.
(6) Each year, approximately 2,800,000 pregnancies, nearly half of all pregnancies, in the United States are unintended.

(7) Access to birth control helps people achieve their goals of whether, and when, to get pregnant. Studies show that when people are unable to access contraceptive care that fits their lives, they are more likely to face unintended pregnancies.

(8) Contraceptives are used for a range of medical purposes in addition to preventing pregnancy, such as treating abnormal cycles and endometriosis.

(9) The Food and Drug Administration has approved multiple emergency contraceptive methods as safe and effective in preventing unintended pregnancy and has approved over-the-counter access to some forms of emergency contraception for all individuals, regardless of age. If taken soon after unprotected sex or primary contraceptive failure, emergency contraception can significantly reduce a person’s chance of unintended pregnancy.

(10) Legal contraception is a protected fundamental right in the United States and should not be impeded by one individual’s personal beliefs.

(11) Reports of pharmacists refusing to fill prescriptions for contraceptives, including emergency
contraceptives, or provide emergency contraception over-the-counter have surfaced in States across the Nation, including Alabama, Arizona, California, the District of Columbia, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Washington, West Virginia, and Wisconsin.

(12) One-third of women have experienced a delay in accessing their contraception because of the ongoing coronavirus pandemic. The Centers for Disease Control and Prevention recognizes the importance of access to contraception, particularly during the pandemic.

(13) Pregnant people have a much higher risk of dying once infected with COVID–19, which highlights the importance of people being able to make and exercise decisions about whether and when to become pregnant.
SEC. 3. DUTIES OF PHARMACIES TO ENSURE PROVISION OF FDA-APPROVED CONTRACEPTION AND MEDICATION RELATED TO CONTRACEPTION.

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

“SEC. 249. DUTIES OF PHARMACIES TO ENSURE PROVISION OF FDA-APPROVED CONTRACEPTION AND MEDICATION RELATED TO CONTRACEPTION.

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

“(1) If a customer requests a contraceptive or a medication related to a contraceptive that is in stock, the pharmacy shall ensure that the contraceptive or the medication related to a contraceptive is provided to the customer without delay.

“(2) If a customer requests a contraceptive or a medication related to a contraceptive that is not in stock and the pharmacy in the normal course of business stocks contraception or the medication related to contraception, the pharmacy shall immediately inform the customer that the contraceptive or the medication related to a contraceptive is not in
stock and without delay offer the customer the following options:

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

“(i) locate a pharmacy of the customer’s choice or the closest pharmacy confirmed to have the contraceptive or the medication related to a contraceptive in stock; and

“(ii) refer the customer or transfer the prescription to that pharmacy.

“(B) If the customer prefers for the pharmacy to order the contraceptive or the medication related to a contraceptive, the pharmacy shall obtain the contraceptive or the medication related to a contraceptive under the pharmacy’s standard procedure for expedited ordering of medication and notify the customer when the contraceptive or the medication related to a contraceptive arrives.

“(3) The pharmacy shall ensure that—

“(A) it does not operate an environment in which customers are intimidated, threatened, or
harassed in the delivery of services relating to
a request for contraception or a medication re-
lated to contraception;

“(B) its employees do not interfere with or
obstruct the delivery of services relating to a re-
quest for contraception or a medication related
to contraception;

“(C) its employees do not intentionally
misrepresent or deceive customers about the
availability of contraception or a medication re-
lated to contraception or its mechanism of ac-
tion;

“(D) its employees do not breach medical
confidentiality with respect to a request for a
contraception or a medication related to contra-
ception or threaten to breach such confiden-
tiality; or

“(E) its employees do not refuse to return
a valid, lawful prescription for a contraception
or a medication related to contraception upon
customer request.

“(b) CONTRACEPTIVES OR MEDICATION RELATED TO
A CONTRACEPTIVE NOT ORDINARILY STOCKED.—Noth-
ing in subsection (a)(2) shall be construed to require any
pharmacy to comply with such subsection if the pharmacy
does not ordinarily stock contraceptives or medication related to a contraceptive in the normal course of business.

“(c) Refusals Pursuant to Standard Pharmacy Practice.—This section does not prohibit a pharmacy from refusing to provide a contraceptive or a medication related to a contraceptive to a customer in accordance with any of the following:

“(1) If it is unlawful to dispense the contraceptive or the medication related to a contraceptive to the customer without a valid, lawful prescription and no such prescription is presented.

“(2) If the customer is unable to pay for the contraceptive or the medication related to a contraceptive.

“(3) If the employee of the pharmacy refuses to provide the contraceptive or the medication related to a contraceptive on the basis of a professional clinical judgment.

“(d) Relation to Other Laws.—

“(1) Rule of Construction.—Nothing in this section shall be construed to invalidate or limit rights, remedies, procedures, or legal standards under title VII of the Civil Rights Act of 1964.

seq.) shall not provide a claim concerning, or a de-
fense to a claim under, a covered title, or provide a
basis for challenging the application or enforcement
of a covered title.

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

“(f) ENFORCEMENT.—

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

“(2) PRIVATE CAUSE OF ACTION.—Any person
aggrieved as a result of a violation of a requirement
of subsection (a) may, in any court of competent ju-
risdiction, commence a civil action against the phar-
macy involved to obtain appropriate relief, including
actual and punitive damages, injunctive relief, and a
reasonable attorney’s fee and cost.
“(3) LIMITATIONS.—A civil action under paragraph (1) or (2) may not be commenced against a pharmacy after the expiration of the 5-year period beginning on the date on which the pharmacy allegedly engaged in the violation involved.

“(g) DEFINITIONS.—In this section:

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

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

“(3) The term ‘medication related to contraception’ or ‘medication related to a contraceptive’ means any drug or device approved by the Food and Drug Administration that a medical professional determines necessary to use before or in conjunction with contraception or a contraceptive.

“(4) The term ‘pharmacy’ means an entity that—

“(A) is authorized by a State to engage in the business of selling prescription drugs at retail; and

“(B) employs one or more employees.
“(5) The term ‘product’ means a Food and Drug Administration-approved drug or device.

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

“(7) The term ‘without delay’, with respect to a pharmacy providing, providing a referral for, or ordering contraception or a medication related to contraception, or transferring the prescription for contraception or a medication related to contraception, means within the usual and customary timeframe at the pharmacy for providing, providing a referral for, or ordering other products, or transferring the prescription for other products, respectively.

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