

# Congress of the United States

Washington, DC 20515

March 27, 2023

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

Dear President Biden:

We write to you today in regards to the Affordable Care Act's contraceptive coverage requirement. People continue to face hurdles in obtaining contraception due to health plan non-compliance. We are pleased the Departments have acknowledged this issue in the preamble to the February 2, 2023 [proposed rulemaking](#) on the contraceptive coverage requirement. We write to request two specific actions to overcome barriers to the contraceptive coverage under the Affordable Care Act (ACA): requiring coverage for all contraceptive products without a therapeutic equivalent on plan formularies and prohibiting prescription requirements for over-the-counter (OTC) contraceptive products.

Despite repeatedly updated Frequently Asked Questions (FAQ) guidance and enforcement from the tri-agencies to address systemic noncompliance by payers, people continue to face unlawful barriers to getting coverage for certain contraceptive products. These barriers include delays, rejections, imposition of cost-sharing, lack of an exceptions process that complies with federal rules, and lack of transparency. People are not only being denied coverage without cost-sharing of prescription contraceptives, but also are unable to receive the type of IUD recommended by their provider. According to the COR report, at least 34 contraceptive products, many of them newly introduced, face exclusions or cost-sharing. The report also reveals that most of the insurers and pharmacy benefit managers reported denying an average of at least 40% of exception requests for contraceptive products from 2015 to 2021. These systemic practices violate [guidance](#) initially issued in 2015, and reinforced by the tri-agencies on three separate occasions. ***After eight years, it is clear that payers will not comply with current guidance.*** The tri-agencies must issue new guidance based on the most recent HRSA guidelines in order to ensure that patients have access to the contraception that is right for them at no cost-sharing, as the ACA requires and the Departments reiterated in the preamble to the proposed rule.

**We request that the tri-agencies adopt the recommendations of the House Committee on Oversight and Reform's (COR) 2022 [report](#) to require health plans to cover, without cost-sharing, every contraceptive product that has been approved, granted, or cleared by the Food and Drug Administration (FDA), unless there is a covered therapeutic equivalent, as defined by the Food and Drug Administration (FDA) [Orange Book](#), which identifies drug products approved by the FDA. This recommendation mirrors the most recent [Women's Preventive Services Guidelines](#) released by the Health Resources and Services Administration (HRSA) in December 2022.**

Tens of millions of U.S. residents who have otherwise comprehensive health insurance coverage for contraceptive care have faced a cost barrier for OTC contraceptives, including condoms and emergency

contraception, because health insurance plans typically require enrollees to obtain a prescription, even for contraceptives that are sold OTC. We expect this barrier to become even more significant in the near future, with the historic advancement of two applications before the FDA to make oral contraceptive products available without a prescription for the first time ever in the U.S.

Health plans have justified the prescription requirement by citing outdated federal FAQs. These FAQs are not consistent with the current contraceptive coverage requirement, including the most recent updates adopted in December 2021 by HRSA. Therefore, the tri-agencies should issue new guidance that explicitly states health plans' obligation to cover OTC contraceptive products without cost-sharing and without a prescription.

**We request that the tri-agencies issue guidance clarifying that health plans must cover OTC contraceptive products without a prescription and without out-of-pocket costs. Furthermore, the benefits of mail-order pharmacies throughout the pandemic have proven them indispensable as a compliment to traditional brick and mortar pharmacies; the Departments should ensure that moving forward both OTC and prescription contraceptives are covered without cost-sharing at both types of retailers.**

Thank you again for your dedication to expanding contraceptive access for all Americans, and we look forward to working with you to ensure all patients can access the products they need. If we can be of further assistance, please contact the Policy Director of the Democratic Women's Caucus, Julia Bartusek at [Julia.Bartusek@mail.house.gov](mailto:Julia.Bartusek@mail.house.gov) or (202) 439-7666.


Sincerely,



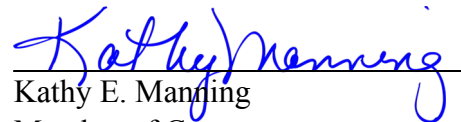
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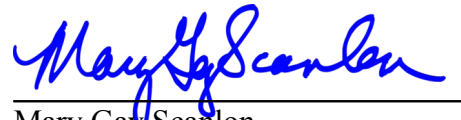
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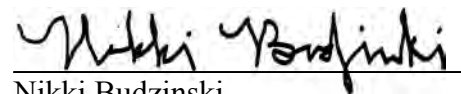
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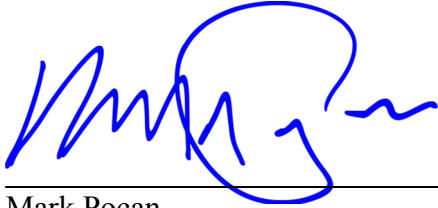
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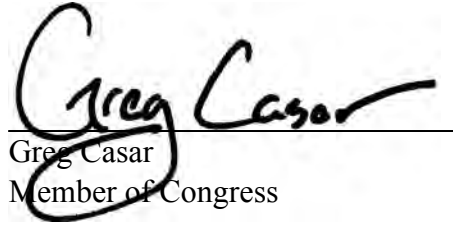
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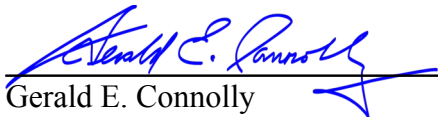
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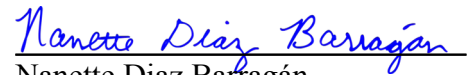
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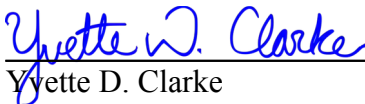
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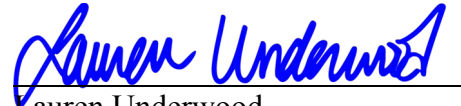
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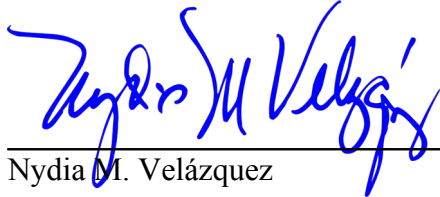
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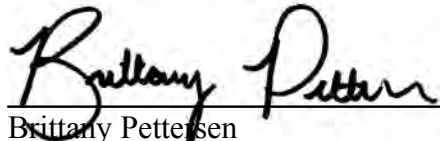
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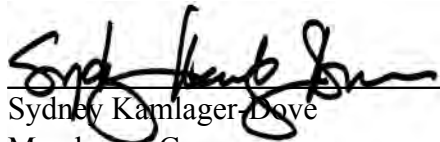
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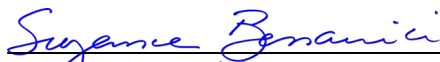
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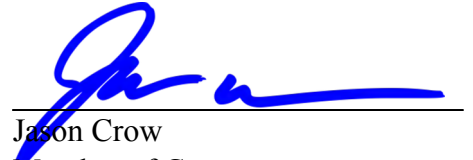


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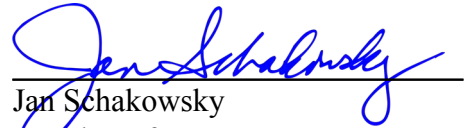
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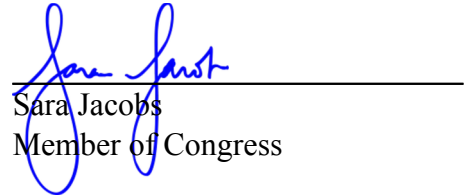
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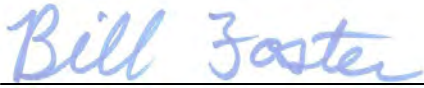
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André Carson  
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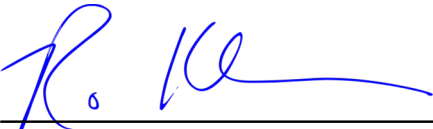
Frederica S. Wilson  
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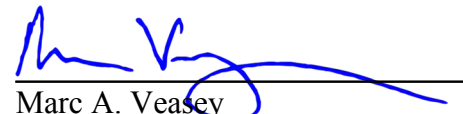
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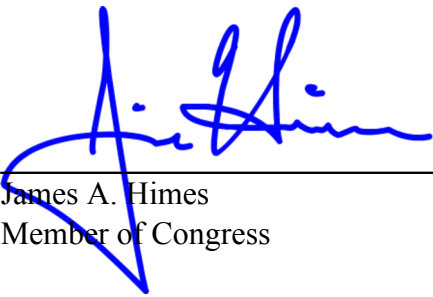
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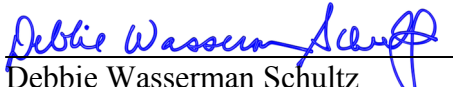
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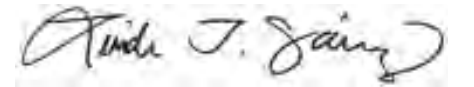



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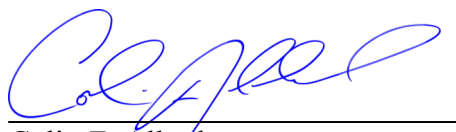
  
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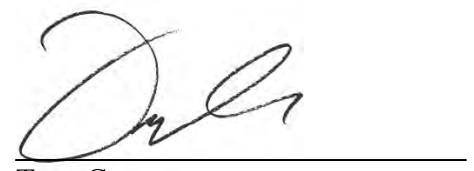
  
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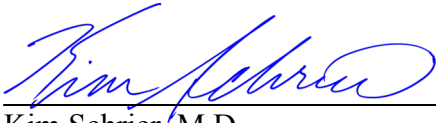
  
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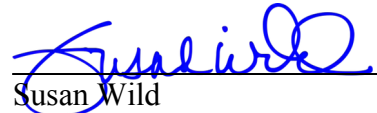
  
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Troy Carter  
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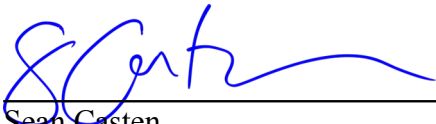




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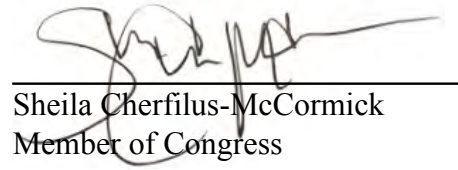
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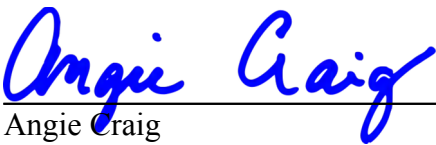
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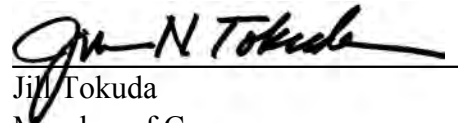
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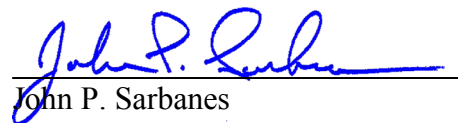
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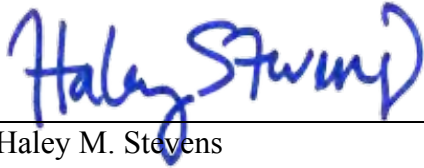
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Rashida Tlaib  
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John P. Sarbanes  
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Haley M. Stevens  
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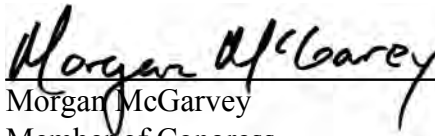
Terri A. Sewell  
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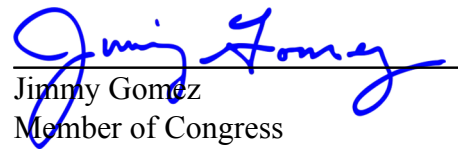
Matt Cartwright  
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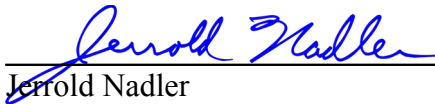
Stacey E. Plaskett  
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Morgan McGarvey  
Member of Congress



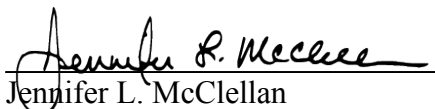
Jimmy Gomez  
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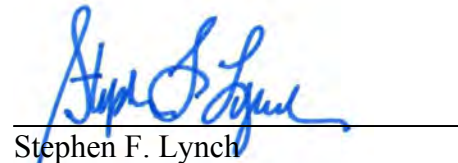
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Dwight Evans  
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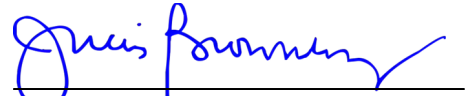
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Danny K. Davis  
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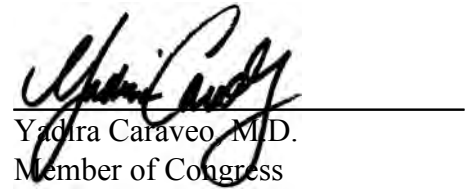
Gwen S. Moore  
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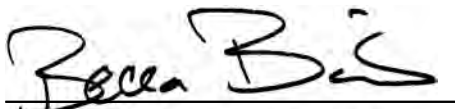
Val Hoyle  
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Cori Bush  
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Yadira Caraveo, M.D.  
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Becca Balint  
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Cc:

The Honorable Xavier Becerra, US Department of Health and Human Services

The Honorable Julie Su, US Department of Labor

The Honorable Janet Yellen, US Department of Treasury