

117TH CONGRESS
1ST SESSION

S. _____

To ensure affordable abortion coverage and care for every person, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. DUCKWORTH (for herself, Mrs. MURRAY, Ms. HIRONO, Ms. CORTEZ MASTO, Mrs. SHAHEEN, Ms. KLOBUCHAR, Mr. BLUMENTHAL, Mr. BROWN, Ms. WARREN, Mrs. GILLIBRAND, Mr. WHITEHOUSE, Ms. ROSEN, Mrs. FEINSTEIN, Mr. MERKLEY, Ms. HASSAN, Mr. BENNET, Mr. MARKEY, Ms. SMITH, Mr. MURPHY, Mr. BOOKER, Mr. VAN HOLLEN, Mr. SANDERS, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To ensure affordable abortion coverage and care for every person, 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 “Equal Access to Abor-
5 tion Coverage in Health Insurance Act of 2021” or the
6 “EACH Act of 2021”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

1 (1) All people should have access to abortion
2 services regardless of actual or perceived race, color,
3 ethnicity, language, ancestry, citizenship, immigra-
4 tion status, sex (including a sex stereotype; preg-
5 nancy, childbirth, or a related medical condition;
6 sexual orientation or gender identity; and sex char-
7 acteristics), age, disability, or sex work status or be-
8 havior.

9 (2) A person's income level, wealth, or type of
10 insurance should not prevent them from having ac-
11 cess to a full range of pregnancy-related health care,
12 including abortion services.

13 (3) No person should have the decision to have,
14 or not to have, an abortion made for them based on
15 the ability or inability to afford the health care serv-
16 ice.

17 (4) Since 1976, the Federal Government has
18 banned the use of Federal funds to pay for abortion
19 services and allows for exceptions only in very nar-
20 row circumstances. This ban affects people of repro-
21 ductive age in the United States who are insured
22 through the Medicaid program, as well as individuals
23 who receive insurance or care through other feder-
24 ally-funded health programs and plans.

1 (5) Women make up the majority of Medicaid
2 enrollees (54 percent) and, in 2019, approximately
3 14,000,000 women of reproductive age relied on the
4 program for care. Due to systematic barriers and
5 discrimination, a disproportionately higher number
6 of women of color and Lesbian, Gay, Bisexual,
7 Transgender, or Queer (LGBTQ) individuals are en-
8 rolled in the program.

9 (6) Women of color are more likely to be in-
10 sured by the Medicaid program. Nationwide, 29 per-
11 cent of Black women and 25 percent of Hispanic
12 women aged 15 to 49 were enrolled in Medicaid in
13 2018, compared with 15 percent of white women.

14 (7) In the aggregate, nearly one-fifth (19 per-
15 cent) of Asian-American and Pacific-Islander women
16 are enrolled in the Medicaid program, while enroll-
17 ment rates for certain Asian ethnic subgroups are
18 much higher (at 62 percent of Bhutanese women, 43
19 percent of Hmong women and 32 percent of Paki-
20 stani women).

21 (8) Medicaid also provides coverage to more
22 than 1 in 4 (27 percent) non-elderly American In-
23 dian and Alaska Native (AIAN) adults and half of
24 AIAN children.

1 (9) In a 2014 nationwide survey of LGBT peo-
2 ple with incomes less than 400 percent Federal Pov-
3 erty Level (FPL), 61 percent of all respondents had
4 incomes in the Medicaid expansion range—up to
5 138 percent of the FPL—including 73 percent of
6 African-American respondents, 67 percent of Latino
7 respondents, and 53 percent of white respondents.
8 Another survey found that 32 percent of Asian and
9 Native Hawaiian/Pacific Islander transgender people
10 were living in poverty.

11 (10) Of women aged 15 through 44 enrolled in
12 Medicaid in 2018, 55 percent lived in the 34 States
13 and the District of Columbia where Medicaid does
14 not cover abortion services except in limited cir-
15 cumstances. This amounted to 7,200,000 women of
16 reproductive age, including 3,000,000 women living
17 below the FPL. Of this population, Black, Indige-
18 nous, and other People of Color (BIPOC) women ac-
19 counted for 51 percent of those enrolled.

20 (11) The Indian Health Service (IHS) is the
21 federally-funded health program for American Indi-
22 ans and Alaska Natives. The IHS serves a popu-
23 lation of approximately 2,560,000 and as a feder-
24 ally-funded system, since 1988, it has been barred
25 from providing abortion services except for very lim-

1 ited cases. American Indians and Alaska Natives
2 often face higher levels of poverty and limited access
3 to health care for a number of intersecting oppres-
4 sions thus leaving them without recourse for the
5 Federal ban on abortion services.

6 (12) Moreover, 26 States also prohibit coverage
7 of abortion services in the marketplaces and 11 pro-
8 hibit coverage in private health insurance plans
9 under the Patient Protection and Affordable Care
10 Act (Public Law 111–148).

11 (13) A recent report details how restrictions on
12 abortion services coverage interfere with a person’s
13 individual decision-making, with their health and
14 well-being, with their economic security, with their
15 vulnerability to intimate partner violence, and with
16 their constitutionally protected right to a safe and
17 normal health care service.

18 (14) About 25 percent of women covered by
19 Medicaid seeking abortion services must carry their
20 pregnancies to term because they are unable to ob-
21 tain funds for their care. Government-imposed bar-
22 riers to abortion services restrict people’s decisions
23 on if, when, and how to parent, and have long-last-
24 ing and life-altering harmful effects on the pregnant
25 person, their families and their communities. Those

1 who seek and are denied abortion services are more
2 likely to remain in or fall into poverty than those
3 who access the care they need.

4 (15) Restrictions on abortion service coverage
5 have a disproportionately harmful impact on women
6 with low incomes, women of color, immigrant
7 women, LGBTQ people, and young women. Addi-
8 tionally, numerous State-imposed barriers make it
9 disparately difficult for low-income people, people of
10 color, immigrants, LGBTQ people, and young people
11 to access the health care and resources necessary to
12 prevent unintended pregnancy or to assure that they
13 are able to carry healthy pregnancies to term. Fur-
14 thermore, young people of reproductive age (ages 15
15 to 24) are more likely to have a lower income than
16 those older than that, and this income gap is greater
17 for young BIPOC. More than 40 percent of youth
18 and children under age 19 and almost a quarter of
19 young people age 19 to 25 have health insurance
20 through government programs. Without insurance
21 coverage for abortion services, young people are at
22 greater risk of not having the economic means to af-
23 ford care outside of insurance. Young people face
24 disproportionate access barriers to abortion services,
25 including parental involvement requirement (notifi-

1 cation and consent) and cost, in addition to barriers
2 to contraception and inadequate and incomplete sex-
3 ual and sexuality education. These challenges, which
4 are magnified for BIPOC and queer, trans, and non-
5 binary youth, can cause significant delays in access
6 to needed care, and could ultimately harm the life of
7 the young person seeking abortion services. These
8 institutionalized barriers deny young people’s right
9 to bodily autonomy and can force young people to
10 encounter an abusive parent or guardian, ignores
11 trusted relationships young people may have with
12 adults other than a parent or legal guardian, and in
13 the case of the judicial bypass process, may force
14 young BIPOC to interact with a legal system that
15 has historically targeted and caused harm to com-
16 munities of color.

17 (16) These and other government-created and
18 government-institutionalized barriers—including the
19 restriction on funding for abortion services in Fed-
20 eral programs—exacerbate and create poverty and
21 racial inequality in income, wealth-generation, and
22 access to services.

23 (17) Access to health care, including abortion
24 services, promotes the general welfare of people liv-
25 ing in the United States. Singling out abortion serv-

1 ices for funding restrictions in health care programs
2 otherwise designed to promote the health and well-
3 being of people in the United States has cost preg-
4 nant people their lives, their livelihoods, their ability
5 to obtain or maintain economic security for them-
6 selves and their families, their ability to meet their
7 family’s basic needs, their ability to continue their
8 education without disruption, and their ability to
9 break free of abusive relationships.

10 (18) Like other health care and health insur-
11 ance markets in the United States, abortion services
12 and public insurance programs are commercial ac-
13 tivities that affect interstate commerce. Providers
14 and patients travel across State lines, and otherwise
15 engage in interstate commerce, to provide and access
16 abortion services. Material goods, services, and fed-
17 erally-regulated medications used in abortion serv-
18 ices circulate in interstate commerce.

19 (19) Congress has the authority to enact this
20 Act to ensure affordable coverage of abortion serv-
21 ices pursuant to—

22 (A) its powers under the necessary and
23 proper clause of Section 8, Article I of the Con-
24 stitution of the United States;

1 (B) its powers under the commerce clause
2 of Section 8, Article 1 of the Constitution of the
3 United States;

4 (C) its powers to tax and spend for the
5 general welfare under Section 8, Article 1 of
6 the Constitution of the United States; and

7 (D) its powers to enforce section 1 of the
8 Fourteenth Amendment under Section 5 of the
9 Fourteenth Amendment to the Constitution of
10 the United States.

11 (20) Congress has exercised these constitutional
12 powers to create, expand, and insure health care ac-
13 cess for people in the United States for decades.
14 Pursuant to this constitutional authority, Congress
15 has enacted, and subsequently reauthorized, numer-
16 ous health care programs including title XVIII of
17 the Social Security Act (Medicare, enacted in 1965);
18 title XIX of the Social Security Act (Medicaid, en-
19 acted in 1965); and title XXI of the Social Security
20 Act (Children’s Health Insurance Program, enacted
21 in 1997).

22 **SEC. 3. DEFINITIONS.**

23 For purposes of this Act:

24 (1) **ABORTION SERVICES.**—The term “abortion
25 services” means an abortion and any services related

1 to, and provided in conjunction with, an abortion,
2 whether or not provided at the same time or on the
3 same day as the abortion.

4 (2) HEALTH PROGRAM OR PLAN.—The term
5 “health program or plan” means the following
6 health programs or plans that pay the cost of, or
7 provide, health care:

8 (A) The Medicaid program under title XIX
9 of the Social Security Act (42 U.S.C. 1396 et
10 seq.).

11 (B) The Children’s Health Insurance Pro-
12 gram under title XXI of the Social Security Act
13 (42 U.S.C. 1397 et seq.).

14 (C) The Medicare program under title
15 XVIII of the Social Security Act (42 U.S.C.
16 1395 et seq.).

17 (D) A medicare supplemental policy as de-
18 fined in section 1882(g)(1) of the Social Secu-
19 rity Act (42 U.S.C. 1395ss(g)(1)).

20 (E) The Indian Health Service program
21 under the Indian Health Care Improvement Act
22 (25 U.S.C. 1601 et seq.).

23 (F) Medical care and health benefits under
24 the TRICARE program (as defined in section
25 1072(7) of title 10, United States Code).

1 (G) Benefits under the uniform health ben-
2 efits program for employees of the Department
3 of Defense assigned to a nonappropriated fund
4 instrumentality of the Department established
5 under section 349 of the National Defense Au-
6 thorization Act for Fiscal Year 1995 (Public
7 Law 103–337; 10 U.S.C. 1587 note).

8 (H) Benefits for veterans under chapter 17
9 of title 38, United States Code.

10 (I) Medical care for survivors and depend-
11 ents of veterans under section 1781 of title 38,
12 United States Code.

13 (J) Medical care for individuals in the care
14 or custody of the Department of Homeland Se-
15 curity pursuant to any of sections 235, 236, or
16 241 of the Immigration and Nationality Act (8
17 U.S.C. 1225, 1226, 1231).

18 (K) Medical care for individuals in the care
19 or custody of the Department of Health and
20 Human Services, Office of Refugee Resettle-
21 ment under section 235 of the William Wilber-
22 force Trafficking Victims Protection Reauthor-
23 ization Act of 2008 (8 U.S.C. 1232) or section
24 462 of the Homeland Security Act of 2002 (6
25 U.S.C. 279).

1 (L) Medical assistance to refugees under
2 section 412 of the Immigration and Nationality
3 Act (8 U.S.C. 1522).

4 (M) Other coverage, such as a State health
5 benefits risk pool, as the Secretary of Health
6 and Human Services, in coordination with the
7 Secretary of the Treasury, recognizes for pur-
8 poses of section 5000A(f)(1)(E) of the Internal
9 Revenue Code of 1986.

10 (N) The Federal Employees Health Ben-
11 efit Plan under chapter 89 of title 5, United
12 States Code.

13 (O) Medical care for individuals under the
14 care or custody of the Department of Justice
15 pursuant to chapter 301 of title 18, United
16 States Code.

17 (P) Medical care for Peace Corps volun-
18 teers under section 5(e) of the Peace Corps Act
19 (22 U.S.C. 2504(e)).

20 (Q) Other government-sponsored programs
21 established after the date of the enactment of
22 this Act.

1 **SEC. 4. ABORTION COVERAGE AND CARE REGARDLESS OF**
2 **INCOME OR SOURCE OF INSURANCE.**

3 (a) ENSURING ABORTION COVERAGE AND CARE
4 THROUGH THE FEDERAL GOVERNMENT IN ITS ROLE AS
5 AN INSURER AND EMPLOYER.—Each person insured by,
6 enrolled in, or otherwise receiving medical care from
7 health programs or plans described in section 3(2) shall
8 receive coverage of abortion services. Health programs or
9 plans described in section 3(2) shall provide coverage of
10 abortion services.

11 (b) ENSURING ABORTION COVERAGE AND CARE
12 THROUGH THE FEDERAL GOVERNMENT IN ITS ROLE AS
13 A HEALTH CARE PROVIDER.—In its role as a provider
14 of health services, including under health programs de-
15 scribed in section 3(2) and health services covered by
16 health plans described in section 3(2), the Federal Govern-
17 ment shall ensure access to abortion services for individ-
18 uals who are eligible to receive medical care in its own
19 facilities or in facilities with which it contracts to provide
20 medical care.

21 (c) PROHIBITING RESTRICTIONS ON PRIVATE INSUR-
22 ANCE COVERAGE OF ABORTION SERVICES.—The Federal
23 Government shall not prohibit, restrict, or otherwise in-
24 hibit insurance coverage of abortion services by State or
25 local government or by private health plans.

1 **SEC. 5. REPEAL OF SECTION 1303.**

2 (a) IN GENERAL.—Section 1303 of the Patient Pro-
3 tection and Affordable Care Act (42 U.S.C. 18023) is re-
4 pealed.

5 (b) CONFORMING AMENDMENTS.—

6 (1) BASIC HEALTH PLANS.—Section 1331(d) of
7 the Patient Protection and Affordable Care Act (42
8 U.S.C. 18051(d)) is amended by striking paragraph
9 (4).

10 (2) MULTI-STATE PLANS.—Section 1334(a) of
11 the Patient Protection and Affordable Care Act
12 (Public Law 111–148) is amended—

13 (A) by striking paragraph (6); and

14 (B) by redesignating paragraph (7) as
15 paragraph (6).

16 **SEC. 6. SENSE OF CONGRESS.**

17 It is the sense of Congress that—

18 (1) the Federal Government, acting in its ca-
19 pacity as an insurer, employer, or health care pro-
20 vider, should serve as a model for the Nation to en-
21 sure coverage of abortion services; and

22 (2) restrictions on coverage of abortion services
23 in the private insurance market must end.

24 **SEC. 7. RULE OF CONSTRUCTION.**

25 Nothing in this Act shall be construed to have any
26 effect on any Federal, State, or local law that includes

1 more protections for abortion coverage or abortion services
2 than those set forth in this Act.

3 **SEC. 8. RELATIONSHIP TO FEDERAL LAW.**

4 This Act supersedes and applies to all Federal law,
5 and the implementation of that law, whether statutory or
6 otherwise, and whether adopted before or after the date
7 of enactment of this Act and is not subject to the Religious
8 Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et
9 seq.).

10 **SEC. 9. SEVERABILITY.**

11 If any portion of this Act or the application thereof
12 to any person, entity, government, or circumstances is
13 held invalid, such invalidity shall not affect the portions
14 or applications of this Act which can be given effect with-
15 out the invalid portion or application.