

117TH CONGRESS
1ST SESSION

S. 1238

To amend title 10, United States Code, to ensure that members of the Armed Forces and their families have access to the contraception they need in order to promote the health and readiness of all members of the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2021

Mrs. SHAHEEN (for herself, Ms. COLLINS, Mr. KING, Ms. HASSAN, Ms. SINEMA, Mr. MURPHY, Mr. MENENDEZ, Ms. STABENOW, Mr. BROWN, Mrs. GILLIBRAND, Mr. DURBIN, Mr. BLUMENTHAL, Mr. MARKEY, Mr. KAINE, Mrs. MURRAY, Mr. LEAHY, Mr. CARDIN, Mr. WYDEN, Ms. SMITH, Ms. WARREN, Mr. SANDERS, Mr. TESTER, Ms. DUCKWORTH, Ms. HIRONO, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. WHITEHOUSE, Ms. BALDWIN, Mr. BENNET, Ms. ROSEN, Mr. BOOKER, Mr. CARPER, Ms. KLOBUCHAR, Mr. VAN HOLLEN, and Ms. CORTEZ MASTO) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to ensure that members of the Armed Forces and their families have access to the contraception they need in order to promote the health and readiness of all members of the Armed Forces, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Access to Contracep-
3 tion for Servicemembers and Dependents Act of 2021”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Women are serving in the Armed Forces at
7 increasing rates, playing a critical role in the na-
8 tional security of the United States. Women com-
9 prise more than 18 percent of members of the
10 Armed Forces, and as of fiscal year 2019, more than
11 390,000 women serve on active duty in the Armed
12 Forces or in the reserve components. An estimated
13 several thousand transgender men also serve on ac-
14 tive duty in the Armed Forces and in the reserve
15 components, in addition to non-binary members and
16 those who identify with a different gender.

17 (2) Ninety-five percent of women serving in the
18 Armed Forces are of reproductive age and as of
19 2019, more than 700,000 female spouses and de-
20 pendents of members of the Armed Forces on active
21 duty are of reproductive age.

22 (3) The TRICARE program covered more than
23 1,570,000 women of reproductive age in 2019, in-
24 cluding spouses and dependents of members of the
25 Armed Forces on active duty. Additionally, thou-
26 sands of transgender dependents of members of the

1 Armed Forces are covered by the TRICARE pro-
2 gram.

3 (4) The right to access contraception is ground-
4 ed in the principle that contraception and the ability
5 to determine if and when to have children are inex-
6 tricably tied to one's wellbeing, equality, and ability
7 to determine the course of one's life. These protec-
8 tions have helped access to contraception become a
9 driving force in improving the health and financial
10 security of individuals and their families.

11 (5) Access to contraception is critical to the
12 health of every individual capable of becoming preg-
13 nant. This Act is intended to apply to all individuals
14 with the capacity for pregnancy, including cisgender
15 women, transgender men, non-binary individuals,
16 those who identify with a different gender, and oth-
17 ers.

18 (6) Studies have shown that when cost barriers
19 to the full range of methods of contraception are
20 eliminated, patients are more likely to use the con-
21 traceptive method that meets their needs, and there-
22 fore use contraception correctly and more consist-
23 ently, reducing the risk of unintended pregnancy.

24 (7) Under the TRICARE program, members of
25 the Armed Forces on active duty have full coverage

1 of all prescription drugs, including contraception,
2 without cost-sharing requirements, in line with the
3 Patient Protection and Affordable Care Act (Public
4 Law 111–148), which requires coverage of all con-
5 traceptive methods approved by the Food and Drug
6 Administration for women and related services and
7 education and counseling. However, members not on
8 active duty and dependents of members do not have
9 similar coverage of all methods of contraception ap-
10 proved by the Food and Drug Administration with-
11 out cost-sharing when they obtain the contraceptive
12 outside of a military medical treatment facility.

13 (8) In order to fill gaps in coverage and access
14 to preventive care critical for women’s health, the
15 Patient Protection and Affordable Care Act (Public
16 Law 111–148) requires all non-grandfathered indi-
17 vidual and group health plans to cover without cost-
18 sharing preventive services, including a set of evi-
19 dence-based preventive services for women supported
20 by the Health Resources and Services Administra-
21 tion of the Department of Health and Human Serv-
22 ices. These women’s preventive services include the
23 full range of female-controlled contraceptive meth-
24 ods, effective family planning practices, and steriliza-
25 tion procedures, approved by the Food and Drug

1 Administration. The Health Resources and Services
2 Administration has affirmed that contraceptive care
3 includes contraceptive counseling, initiation of con-
4 traceptive use, and follow-up care (such as manage-
5 ment, evaluation, and changes to and removal or dis-
6 continuation of the contraceptive method).

7 (9) The Defense Advisory Committee on
8 Women in the Services has recommended that all
9 the Armed Forces, to the extent that they have not
10 already, implement initiatives that inform members
11 of the Armed Forces of the importance of family
12 planning, educate them on methods of contraception,
13 and make various methods of contraception avail-
14 able, based on the finding that family planning can
15 increase the overall readiness and quality of life of
16 all members of the Armed Forces.

17 (10) The military departments received more
18 than 7,800 reports of sexual assaults involving mem-
19 bers of the Armed Forces as victims or subjects dur-
20 ing fiscal year 2019. Through regulations, the De-
21 partment of Defense already supports a policy of en-
22 suring that members of the Armed Forces who are
23 sexually assaulted have access to emergency contra-
24 ception, and the initiation of contraception if desired
25 and medically appropriate.

1 **SEC. 3. CONTRACEPTION COVERAGE PARITY UNDER THE**
 2 **TRICARE PROGRAM.**

3 (a) PHARMACY BENEFITS PROGRAM.—Section
 4 1074g(a)(6) of title 10, United States Code, is amended
 5 by adding at the end the following new subparagraph:

6 “(D) Notwithstanding subparagraphs (A), (B), and
 7 (C), cost-sharing requirements may not be imposed and
 8 cost-sharing amounts may not be collected with respect
 9 to any eligible covered beneficiary for any prescription con-
 10 traceptive on the uniform formulary provided through a
 11 retail pharmacy described in paragraph (2)(E)(ii) or
 12 through the national mail-order pharmacy program.”.

13 (b) TRICARE SELECT.—Section 1075 of such title
 14 is amended—

15 (1) in subsection (c), by adding at the end the
 16 following new paragraph:

17 “(4)(A) Notwithstanding any other provision of
 18 this section, cost-sharing requirements may not be
 19 imposed and cost-sharing amounts may not be col-
 20 lected with respect to any beneficiary under this sec-
 21 tion for a service described in subparagraph (B) that
 22 is provided by a network provider.

23 “(B) A service described in this subparagraph
 24 is any method of contraception approved by the
 25 Food and Drug Administration, any contraceptive
 26 care (including with respect to insertion, removal,

1 and follow up), any sterilization procedure, or any
2 patient education or counseling service provided in
3 connection with any such method, care, or proce-
4 dure.”; and

5 (2) in subsection (f), by striking “calculated as”
6 and inserting “calculated (except as provided in sub-
7 section (c)(4)) as”.

8 (c) TRICARE PRIME.—Section 1075a of such title
9 is amended by adding at the end the following new sub-
10 section:

11 “(d) PROHIBITION ON COST-SHARING FOR CERTAIN
12 SERVICES.—(1) Notwithstanding subsections (a), (b), and
13 (c), cost-sharing requirements may not be imposed and
14 cost-sharing amounts may not be collected with respect
15 to any beneficiary enrolled in TRICARE Prime for a serv-
16 ice described in paragraph (2) that is provided under
17 TRICARE Prime.

18 “(2) A service described in this paragraph is any
19 method of contraception approved by the Food and Drug
20 Administration, any contraceptive care (including with re-
21 spect to insertion, removal, and follow up), any steriliza-
22 tion procedure, or any patient education or counseling
23 service provided in connection with any such method, care,
24 or procedure.”.

1 **SEC. 4. PREGNANCY PREVENTION ASSISTANCE AT MILI-**
2 **TARY MEDICAL TREATMENT FACILITIES FOR**
3 **SEXUAL ASSAULT SURVIVORS.**

4 (a) IN GENERAL.—Chapter 55 of title 10, United
5 States Code, is amended by inserting after section 1074o
6 the following new section:

7 **“§ 1074p. Provision of pregnancy prevention assist-**
8 **ance at military medical treatment facili-**
9 **ties**

10 “(a) INFORMATION AND ASSISTANCE.—The Sec-
11 retary of Defense shall promptly furnish to sexual assault
12 survivors at each military medical treatment facility the
13 following:

14 “(1) Comprehensive, medically and factually ac-
15 curate, and unbiased written and oral information
16 about all methods of emergency contraception ap-
17 proved by the Food and Drug Administration.

18 “(2) Upon request by the sexual assault sur-
19 vivor, emergency contraception or, if applicable, a
20 prescription for emergency contraception.

21 “(3) Notification of the right of the sexual as-
22 sault survivor to confidentiality with respect to the
23 information and care and services furnished under
24 this section.

1 “(b) INFORMATION.—The Secretary shall ensure that
 2 information provided pursuant to subsection (a) is pro-
 3 vided in language that—

4 “(1) is clear and concise;

5 “(2) is readily comprehensible; and

6 “(3) meets such conditions (including condi-
 7 tions regarding the provision of information in lan-
 8 guages other than English) as the Secretary may
 9 prescribe in regulations to carry out this section.

10 “(c) DEFINITIONS.—In this section:

11 “(1) The term ‘sexual assault survivor’ means
 12 any individual who presents at a military medical
 13 treatment facility and—

14 “(A) states to personnel of the facility that
 15 the individual experienced a sexual assault;

16 “(B) is accompanied by another person
 17 who states that the individual experienced a
 18 sexual assault; or

19 “(C) whom the personnel of the facility
 20 reasonably believes to be a survivor of sexual
 21 assault.

22 “(2) The term ‘sexual assault’ means the con-
 23 duct described in section 1565b(c) of this title that
 24 may result in pregnancy.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 at the beginning of such chapter is amended by inserting
 3 after the item relating to section 1074o the following new
 4 item:

“1074p. Provision of pregnancy prevention assistance at military medical treatment facilities.”.

5 **SEC. 5. EDUCATION ON FAMILY PLANNING FOR MEMBERS**
 6 **OF THE ARMED FORCES.**

7 (a) EDUCATION PROGRAMS.—

8 (1) IN GENERAL.—Not later than one year
 9 after the date of the enactment of this Act, the Sec-
 10 retary of Defense shall establish a uniform standard
 11 curriculum to be used in education programs on
 12 family planning for all members of the Armed
 13 Forces, including both men and women members.

14 (2) TIMING.—Education programs under para-
 15 graph (1) shall be provided to members of the
 16 Armed Forces as follows:

17 (A) During the first year of service of the
 18 member.

19 (B) At such other times as each Secretary
 20 of a military department determines appro-
 21 priate with respect to members of the Armed
 22 Forces under the jurisdiction of such Secretary.

23 (3) SENSE OF CONGRESS.—It is the sense of
 24 Congress that the education programs under para-

1 graph (1) should be evidence-informed and use the
2 latest technology available to efficiently and effec-
3 tively deliver information to members of the Armed
4 Forces.

5 (b) ELEMENTS.—The uniform standard curriculum
6 for education programs under subsection (a) shall include
7 the following:

8 (1) Information for members of the Armed
9 Forces on active duty to make informed decisions re-
10 garding family planning.

11 (2) Information about the prevention of unin-
12 tended pregnancy and sexually transmitted infec-
13 tions, including human immunodeficiency virus
14 (commonly known as “HIV”).

15 (3) Information on—

16 (A) the importance of providing com-
17 prehensive family planning for members of the
18 Armed Forces, including commanding officers;
19 and

20 (B) the positive impact family planning
21 can have on the health and readiness of the
22 Armed Forces.

23 (4) Current, medically accurate information.

24 (5) Clear, user-friendly information on—

1 (A) the full range of methods of contracep-
2 tion approved by the Food and Drug Adminis-
3 tration; and

4 (B) where members of the Armed Forces
5 can access their chosen method of contracep-
6 tion.

7 (6) Information on all applicable laws and poli-
8 cies so that members of the Armed Forces are in-
9 formed of their rights and obligations.

10 (7) Information on the rights of patients to
11 confidentiality.

12 (8) Information on the unique circumstances
13 encountered by members of the Armed Forces and
14 the effects of such circumstances on the use of con-
15 traception.

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