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S. 1645

To protect a woman's ability to determine whether and when to bear a child or end a pregnancy, and to protect a health care provider's ability to provide reproductive health care services, including abortion services.

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 22), 2019

Mr. BLUMENTHAL (for himself, Ms. BALDWIN, Mr. MENENDEZ, Mr. BROWN, Ms. HARRIS, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. BENNET, Mr. MARKEY, Ms. WARREN, Mr. CARDIN, Mr. HEINRICH, Ms. STABENOW, Ms. KLOBUCHAR, Mr. TESTER, Ms. ROSEN, Mr. COONS, Ms. CORTEZ MASTO, Mrs. SHAHEEN, Mr. SANDERS, Ms. HIRONO, Ms. HASSAN, Mr. SCHATZ, Mr. KING, Ms. SMITH, Mrs. MURRAY, Mr. PETERS, Mr. WYDEN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. MURPHY, Mr. LEAHY, Ms. DUCKWORTH, Mr. VAN HOLLEN, Mr. CARPER, Ms. CANTWELL, Mr. BOOKER, Mr. WARNER, Mr. UDALL, Mr. SCHUMER, Mr. KAINE, Mr. DURBIN, and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect a woman's ability to determine whether and when to bear a child or end a pregnancy, and to protect a health care provider's ability to provide reproductive health care services, including abortion services.

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 “Women’s Health Pro-
3 tection Act of 2019”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Access to safe, legal abortion services is es-
7 sential to women’s health and central to women’s
8 ability to participate equally in the economic and so-
9 cial life of the United States.

10 (2) Since 1973, the Supreme Court repeatedly
11 has recognized the constitutional right of a woman
12 to decide to terminate her pregnancy before fetal vi-
13 ability, and to terminate her pregnancy after fetal
14 viability where it is necessary, in the good-faith med-
15 ical judgment of the treating health care profes-
16 sional, for the preservation of her life or health.

17 (3) Nonetheless, access to safe, legal abortion
18 services has been hindered across the United States
19 in various ways, including blockades of health care
20 facilities and associated violence, prohibitions of and
21 restrictions on insurance coverage, restrictions which
22 shame and stigmatize women seeking abortion serv-
23 ices, and medically unnecessary regulations which
24 neither confer any health benefit nor further the
25 safety of abortion services, but which harm women
26 by delaying access to, and reducing the availability

1 of, services. Since 2010, States and local govern-
2 ments have passed more than 400 such restrictions
3 singling out health care providers who offer abortion
4 services and interfering with health care providers'
5 ability to provide reproductive health care services
6 and the ability of patients to obtain those services.

7 (4) Many State and local governments have im-
8 posed restrictions on the provision of abortion that
9 are neither evidence-based nor generally applicable
10 to the medical profession or to other medically com-
11 parable outpatient gynecological procedures, such as
12 endometrial ablations, dilation and curettage for rea-
13 sons other than abortion, hysteroscopies, loop
14 electrosurgical excision procedures, or other analo-
15 gous non-gynecological procedures performed in
16 similar outpatient settings including vasectomy,
17 sigmoidoscopy, and colonoscopy.

18 (5) Legal abortion is one of the safest medical
19 procedures in the United States. An independent re-
20 view of research on the safety and quality of abor-
21 tion services in the United States, published by the
22 National Academies of Sciences, Engineering, and
23 Medicine in 2018, found that abortion in all forms
24 is safe and effective and that the biggest threats to
25 the quality of abortion services in the United States

1 are State regulations that create barriers to care.
2 These abortion-specific restrictions conflict with
3 medical standards and are not supported by the rec-
4 ommendations and guidelines issued by leading re-
5 productive health care professional organizations in-
6 cluding the American College of Obstetricians and
7 Gynecologists, the Society of Family Planning, the
8 National Abortion Federation, the World Health Or-
9 ganization, and others.

10 (6) Many abortion-specific restrictions do not
11 confer any health or safety benefits on the patient.
12 Instead, these restrictions have the purpose and ef-
13 fect of unduly burdening women’s personal and pri-
14 vate medical decisions to end their pregnancies by
15 making access to abortion services more difficult,
16 invasive, and costly, forcing women to travel signifi-
17 cant distances and make multiple unnecessary visits
18 to the provider, and in some cases, foreclosing the
19 option altogether. For example, a 2018 report from
20 the University of California San Francisco’s Advanc-
21 ing New Standards in Reproductive Health research
22 group found that in 27 cities across the United
23 States, people have to travel more than 100 miles in
24 any direction to reach an abortion provider.

1 (7) These restrictions additionally harm wom-
2 en’s health by reducing access not only to abortion
3 services but also to the other essential health care
4 services offered by the providers targeted by the re-
5 strictions, including—

6 (A) contraceptive services, which advance
7 women’s health and provide a range of benefits,
8 including preventing unintended pregnancies
9 and reducing the need for abortion; and

10 (B) screenings for cervical cancer and sex-
11 ually transmitted infections.

12 (8) The cumulative effect of these numerous re-
13 strictions has been to severely limit the availability
14 of abortion services in some areas, creating a patch-
15 work system where access to abortion services is
16 more available in some States than in others. A
17 2019 report from the Government Accountability Of-
18 fice examining State Medicaid compliance with abor-
19 tion coverage requirements analyzed 7 key chal-
20 lenges (identified both by health care providers and
21 research literature) and their effect on abortion ac-
22 cess, and found that access to abortion services var-
23 ied across the States and even within a State.

24 (9) The harms of these abortion-specific restric-
25 tions fall especially heavily on low-income women,

1 women of color, immigrants, young people, and
2 women living in rural and other medically under-
3 served areas.

4 (10) Abortion-specific restrictions single out
5 health services used by women, and rely on and rein-
6 force stereotypes about women's roles, women's deci-
7 sionmaking, and women's need for protection. These
8 restrictions harm the basic autonomy, dignity, equal-
9 ity, and ability of women to participate in the social
10 and economic life of the Nation.

11 (11) Not all people who become pregnant or
12 need abortion services identify as women. Access to
13 abortion services is critical to the health of every
14 person regardless of actual or perceived race, color,
15 national origin, immigration status, sex (including
16 gender identity, sex stereotyping, or sexual orienta-
17 tion), age, or disability status. This Act's protection
18 is inclusive of all pregnant people.

19 (12) These restrictions affect the cost and
20 availability of abortion services, and the settings in
21 which abortion services are delivered. Women travel
22 across State lines and otherwise engage in interstate
23 commerce to access this important medical care, and
24 more would be forced to do so absent this Act. Like-
25 wise, health care providers travel across State lines

1 and otherwise engage in interstate commerce in
2 order to provide reproductive health services to pa-
3 tients, and more would be forced to do so absent this
4 Act.

5 (13) Health care providers, including those who
6 provide abortion services, engage in a form of eco-
7 nomic and commercial activity when they provide
8 abortion services, and there is an interstate market
9 for abortion services.

10 (14) To provide abortion services, health care
11 providers engage in interstate commerce to purchase
12 medicine, medical equipment, and other necessary
13 goods and services. To provide and assist others in
14 providing abortion services, health care providers en-
15 gage in interstate commerce to obtain and provide
16 training. To provide abortion services, health care
17 providers employ and obtain commercial services
18 from doctors, nurses, and other personnel who en-
19 gage in interstate commerce and travel across State
20 lines. Abortion restrictions substantially affect inter-
21 state commerce in numerous ways.

22 (15) It is difficult and time consuming for clin-
23 ics to challenge State laws that burden or impede
24 abortion services. Litigation that blocks one abortion
25 restriction may not prevent a State from adopting

1 other abortion restrictions or using different meth-
2 ods to burden or impede abortion services. There is
3 a history and pattern of States passing successive
4 and different laws that impede and unduly burden
5 abortion services.

6 (16) When a health care provider ceases pro-
7 viding abortion services as a result of burdensome
8 and medically unnecessary regulations, it is often
9 difficult or impossible for that health care provider
10 to recommence providing those abortion services,
11 and difficult or impossible for other health care pro-
12 viders to provide abortion services that restore or re-
13 place the ceased abortion services.

14 (17) An overwhelming majority of abortions in
15 the United States are provided in clinics, not hos-
16 pitals. The large majority of United States counties
17 have no clinics that provide abortion.

18 (18) Congress has the authority to enact this
19 Act to protect abortion services pursuant to—

20 (A) its powers under the commerce clause
21 of section 8 of article I of the Constitution of
22 the United States;

23 (B) its powers under section 5 of the Four-
24 teenth Amendment to the Constitution of the

1 United States to enforce the provisions of sec-
2 tion 1 of the Fourteenth Amendment; and

3 (C) its powers under the necessary and
4 proper clause of section 8 of article I of the
5 Constitution of the United States.

6 (19) Congress has used its authority in the past
7 to protect women's ability to access abortion services
8 and health care providers' ability to provide abortion
9 services. In the early 1990s, protests and blockades
10 at health care facilities where abortion services were
11 provided, and associated violence, increased dramati-
12 cally and reached crisis level, requiring congressional
13 action. Congress passed the Freedom of Access to
14 Clinic Entrances Act (Public Law 103-259; 108
15 Stat. 694) to address that situation and protect
16 physical access to abortion services.

17 (20) Congressional action is necessary to put an
18 end to harmful restrictions, to federally protect ac-
19 cess to abortion services for all women regardless of
20 where they live, and to protect the ability of repro-
21 ductive health care providers to provide these serv-
22 ices in a safe and accessible manner.

23 (b) PURPOSE.—It is the purpose of this Act—

24 (1) to permit health care providers to provide
25 abortion services without limitations or requirements

1 that single out the provision of abortion services for
2 restrictions that are more burdensome than those re-
3 strictions imposed on medically comparable proce-
4 dures, do not significantly advance women’s health
5 or the safety of abortion services, and make abortion
6 services more difficult to access;

7 (2) to promote women’s health and women’s
8 ability to participate equally in the economic and so-
9 cial life of the United States; and

10 (3) to invoke congressional authority, including
11 the powers of Congress under the commerce clause
12 of section 8 of article I of the Constitution of the
13 United States, its powers under section 5 of the
14 Fourteenth Amendment to the Constitution of the
15 United States to enforce the provisions of section 1
16 of the Fourteenth Amendment, and its powers under
17 the necessary and proper clause of section 8 of arti-
18 cle I of the Constitution of the United States.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) **ABORTION SERVICES.**—The term “abortion
22 services” means an abortion and any medical or
23 non-medical services related to and provided in con-
24 junction with an abortion (whether or not provided

1 at the same time or on the same day as the abor-
2 tion).

3 (2) HEALTH CARE PROVIDER.—The term
4 “health care provider” means any entity or indi-
5 vidual (including any physician, certified nurse-mid-
6 wife, nurse practitioner, and physician assistant)
7 that is—

8 (A) engaged in the delivery of health care
9 services, including abortion services; and

10 (B) if required by law or regulation to be
11 licensed or certified to engage in the delivery of
12 such services, is so licensed or certified.

13 (3) MEDICALLY COMPARABLE PROCEDURES.—
14 The term “medically comparable procedures” means
15 medical procedures that are similar in terms of
16 health and safety risks to the patient, complexity, or
17 the clinical setting that is indicated.

18 (4) PREGNANCY.—The term “pregnancy” refers
19 to the period of the human reproductive process be-
20 ginning with the implantation of a fertilized egg.

21 (5) VIABILITY.—The term “viability” means
22 the point in a pregnancy at which, in the good-faith
23 medical judgment of the treating health care pro-
24 vider, based on the particular facts of the case be-
25 fore the health care provider, there is a reasonable

1 likelihood of sustained fetal survival outside the
2 uterus with or without artificial support.

3 **SEC. 4. PERMITTED SERVICES.**

4 (a) GENERAL RULE.—A health care provider has a
5 statutory right under this Act to provide abortion services,
6 and may provide abortion services, and that provider’s pa-
7 tient has a corresponding right to receive such services,
8 without any of the following limitations or requirements:

9 (1) A requirement that a health care provider
10 perform specific tests or medical procedures in con-
11 nection with the provision of abortion services, un-
12 less generally required for the provision of medically
13 comparable procedures.

14 (2) A requirement that the same health care
15 provider who provides abortion services also perform
16 specified tests, services, or procedures prior to or
17 subsequent to the abortion.

18 (3) A requirement that a health care provider
19 offer or provide the patient seeking abortion services
20 medically inaccurate information in advance of or
21 during abortion services.

22 (4) A limitation on a health care provider’s abil-
23 ity to prescribe or dispense drugs based on current
24 evidence-based regimens or the provider’s good-faith

1 medical judgment, other than a limitation generally
2 applicable to the medical profession.

3 (5) A limitation on a health care provider's abil-
4 ity to provide abortion services via telemedicine,
5 other than a limitation generally applicable to the
6 provision of medical services via telemedicine.

7 (6) A requirement or limitation concerning the
8 physical plant, equipment, staffing, or hospital
9 transfer arrangements of facilities where abortion
10 services are provided, or the credentials or hospital
11 privileges or status of personnel at such facilities,
12 that is not imposed on facilities or the personnel of
13 facilities where medically comparable procedures are
14 performed.

15 (7) A requirement that, prior to obtaining an
16 abortion, a patient make one or more medically un-
17 necessary in-person visits to the provider of abortion
18 services or to any individual or entity that does not
19 provide abortion services.

20 (8) A prohibition on abortion prior to fetal via-
21 bility, including a prohibition or restriction on a par-
22 ticular abortion procedure.

23 (9) A prohibition on abortion after fetal viabil-
24 ity when, in the good-faith medical judgment of the
25 treating health care provider, continuation of the

1 pregnancy would pose a risk to the pregnant pa-
2 tient's life or health.

3 (10) A limitation on a health care provider's
4 ability to provide immediate abortion services when
5 that health care provider believes, based on the
6 good-faith medical judgment of the provider, that
7 delay would pose a risk to the patient's health.

8 (11) A requirement that a patient seeking abor-
9 tion services prior to fetal viability state the pa-
10 tient's reasons for seeking abortion services, or a
11 limitation on the provision of abortion services prior
12 to fetal viability based on the patient's reasons or
13 perceived reasons for obtaining abortion services.

14 (b) OTHER LIMITATIONS OR REQUIREMENTS.—A
15 health care provider has a statutory right to provide abor-
16 tion services, and may provide abortion services, and that
17 provider's patient has a corresponding right to receive
18 such services, without a limitation or requirement that—

19 (1) is the same as or similar to one or more of
20 the limitations or requirements described in sub-
21 section (a); or

22 (2) both—

23 (A) singles out the provision of abortion
24 services, health care providers who provide

1 abortion services, or facilities in which abortion
2 services are provided; and

3 (B) impedes access to abortion services
4 based on one or more of the factors described
5 in subsection (c).

6 (c) FACTORS FOR CONSIDERATION.—Factors for a
7 court to consider in determining whether a limitation or
8 requirement impedes access to abortion services for pur-
9 poses of subsection (b)(2)(B) include the following:

10 (1) Whether the limitation or requirement
11 interferes with a health care provider’s ability to
12 provide care and render services in accordance with
13 the provider’s good-faith medical judgment.

14 (2) Whether the limitation or requirement is
15 reasonably likely to delay some patients in accessing
16 abortion services.

17 (3) Whether the limitation or requirement is
18 reasonably likely to directly or indirectly increase the
19 cost of providing abortion services or the cost for ob-
20 taining abortion services (including costs associated
21 with travel, childcare, or time off work).

22 (4) Whether the limitation or requirement is
23 reasonably likely to have the effect of necessitating
24 a trip to the offices of a health care provider that
25 would not otherwise be required.

1 (5) Whether the limitation or requirement is
2 reasonably likely to result in a decrease in the avail-
3 ability of abortion services in a given State or geo-
4 graphic region.

5 (6) Whether the limitation or requirement im-
6 poses penalties that are not imposed on other health
7 care providers for comparable conduct or failure to
8 act, or that are more severe than penalties imposed
9 on other health care providers for comparable con-
10 duct or failure to act.

11 (7) The cumulative impact of the limitation or
12 requirement combined with other new or existing
13 limitations or requirements.

14 (d) EXCEPTION.—To defend against a claim that a
15 limitation or requirement violates a health care provider’s
16 or patient’s statutory rights under subsection (b), a party
17 must establish, by clear and convincing evidence, that—

18 (1) the limitation or requirement significantly
19 advances the safety of abortion services or the health
20 of patients; and

21 (2) the safety of abortion services or the health
22 of patients cannot be advanced by a less restrictive
23 alternative measure or action.

24 (e) APPLICABILITY.—

1 (1) GENERAL RELATIONSHIP TO FEDERAL
 2 LAW.—Except as stated in paragraph (2), this Act
 3 supersedes and applies to all Federal law, and the
 4 implementation of that law, whether statutory or
 5 otherwise, and whether adopted before or after the
 6 date of enactment of this Act, notwithstanding any
 7 other provision of Federal law, including the Reli-
 8 gious Freedom Restoration Act of 1993 (42 U.S.C.
 9 2000bb et seq.).

10 (2) LIMITATIONS.—The provisions of this Act
 11 shall not supersede or apply to—

12 (A) laws regulating physical access to clin-
 13 ic entrances;

14 (B) insurance or medical assistance cov-
 15 erage of abortion services;

16 (C) the procedure described in section
 17 1531(b)(1) of title 18, United States Code; or

18 (D) generally applicable State contract
 19 law.

20 **SEC. 5. RELATIONSHIP TO STATE LAW AND PREEMPTION.**

21 No State, territory, or possession of the United
 22 States, or the District of Columbia, or the Commonwealth
 23 of Puerto Rico, or subdivision, branch, department, agen-
 24 cy, instrumentality, or official (or other person acting
 25 under color of law) of any of the forgoing, shall enact or

1 enforce any law, rule, regulation, standard, or other provi-
2 sion having the force and effect of law that conflicts with
3 any provision of this Act.

4 **SEC. 6. EFFECTIVE DATE.**

5 This Act shall take effect immediately upon the date
6 of enactment of this Act. This Act shall apply to all re-
7 strictions on the provision of, or access to, abortion serv-
8 ices whether the restrictions are enacted or imposed prior
9 to or after the date of enactment of this Act, except as
10 otherwise provided in this Act.

11 **SEC. 7. LIBERAL CONSTRUCTION.**

12 (a) LIBERAL CONSTRUCTION.—In interpreting the
13 provisions of this Act, a court shall liberally construe such
14 provisions to effectuate the purposes of the Act.

15 (b) RULE OF CONSTRUCTION.—Nothing in this Act
16 shall be construed to authorize any government to inter-
17 fere with a woman’s ability to terminate her pregnancy,
18 to diminish or in any way negatively affect a woman’s con-
19 stitutional right to terminate her pregnancy, or to displace
20 any other remedy for violations of the constitutional right
21 to terminate a pregnancy.

22 **SEC. 8. ENFORCEMENT.**

23 (a) ATTORNEY GENERAL.—The Attorney General
24 may commence a civil action for prospective injunctive re-
25 lief on behalf of the United States against any government

1 official that is charged with implementing or enforcing any
2 limitation or requirement that is challenged as a violation
3 of a statutory right under this Act. The court shall hold
4 unlawful and set aside the limitation or requirement if it
5 is in violation of this Act.

6 (b) PRIVATE RIGHT OF ACTION.—

7 (1) IN GENERAL.—Any individual or entity, in-
8 cluding any health care provider, aggrieved by an al-
9 leged violation of this Act may commence a civil ac-
10 tion for prospective injunctive relief against the gov-
11 ernment official that is charged with implementing
12 or enforcing the limitation or requirement that is
13 challenged as a violation of a statutory right under
14 this Act. The court shall hold unlawful and set aside
15 the limitation or requirement if it is in violation of
16 this Act.

17 (2) HEALTH CARE PROVIDER.—A health care
18 provider may commence an action for prospective in-
19 junctive relief on its own behalf and/or on behalf of
20 the provider's patients who are or may be adversely
21 affected by an alleged violation of this Act.

22 (c) EQUITABLE RELIEF.—In any action under this
23 section, the court may award appropriate equitable relief,
24 including temporary, preliminary, or permanent injunctive
25 relief.

1 (d) COSTS.—In any action under this section, the
2 court shall award costs of litigation, as well as reasonable
3 attorney fees, to any prevailing plaintiff. A plaintiff shall
4 not be liable to a defendant for costs in any non-frivolous
5 action under this section.

6 (e) JURISDICTION.—The district courts of the United
7 States shall have jurisdiction over proceedings under this
8 Act and shall exercise the same without regard to whether
9 the party aggrieved shall have exhausted any administra-
10 tive or other remedies that may be provided for by law.

11 (f) ABROGATION OF STATE IMMUNITY.—A State
12 shall not be immune under the Eleventh Amendment to
13 the Constitution of the United States from an action in
14 Federal or State court of competent jurisdiction for a vio-
15 lation of this Act. In any action against a State for a viola-
16 tion of the requirements of this Act, remedies (including
17 remedies both at law and in equity) are available for such
18 a violation to the same extent as such remedies are avail-
19 able for such a violation in an action against any public
20 or private entity other than a State.

21 **SEC. 9. SEVERABILITY.**

22 If any provision of this Act, or the application of such
23 provision to any person, entity, government, or cir-
24 cumstance, is held to be unconstitutional, the remainder
25 of this Act, or the application of such provision to all other

- 1 persons, entities, governments, or circumstances, shall not
- 2 be affected thereby.

