

RYAN A. BIZZARRO, CHAIRMAN

414 MAIN CAPITOL BUILDING
P.O. BOX 202003
HARRISBURG, PENNSYLVANIA 17120-2003
(717) 772-2297
FAX: (717) 780-4767



HOUSE DEMOCRATIC POLICY COMMITTEE

WEBSITE: WWW.PAHOUSE.COM/POLICYCOMMITTEE

EMAIL: POLICY@PAHOUSE.NET

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House Democratic Policy Committee Roundtable

Contraception Access

Friday May 12, 2023 | 9:00 a.m.

Representative Leanne Krueger

9:00a.m.

Welcome and Introductions

9:10a.m.

Roundtable Participants

Signe Espinoza, Executive Director
Planned Parenthood PA

Dr. Blythe Bynum, Fellow, Complex Family Planning
Penn Medicine

Melissa Weiler Gerber, President & CEO
AccessMatters

Dr. Alhambra Frarey, Assistant Professor of Obstetrics and Gynecology
University of Pennsylvania

Terry Fromson, Managing Attorney
Women's Law Project

Q & A with Legislators

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Pennsylvania House Democratic Policy Committee Roundtable on Contraceptive Access

Testimony by Melissa Weiler Gerber, President & CEO, AccessMatters

May 12, 2023

Hello, my name is Melissa Weiler Gerber, and I serve as the President and CEO of AccessMatters - a public health non-profit based in Philadelphia with a mission to protect, expand, and enhance equitable access to sexual and reproductive health care and information for all people.

We appreciate the opportunity to speak with you today in support of contraceptive access throughout the Commonwealth. We extend our thanks to the chairs of the House Democratic Policy Committee for hosting this important discussion today. We also extend our sincere gratitude to Representative Leanne Krueger for her continued efforts to work in solidarity with advocates and healthcare providers to protect and expand access to sexual and reproductive health care.

AccessMatters leads the Title X Family Planning Program in Southeastern Pennsylvania, so contraceptive access is core to our mission and values. For fifty years, we have focused on increasing access to sexual and reproductive health with an emphasis on health equity – ensuring that folks historically marginalized and underserved by our health care system and our nation get the care and information they seek.

We are also a part of the Alliance of Pennsylvania Councils consisting of three Title X grantees in Pennsylvania. Our collective family planning work is supported not only by federal Title X funding, but also by critical state funding streams that work in tandem to ensure continuity of care and maximum coverage for people in Pennsylvania.

Through our work, we recognize the deep connection between access to these unique healthcare services and overall health and wellbeing for people, families, and communities.

Representative Leanne Krueger's "Expanding Access to Contraceptive" bill also recognizes this critical relationship. As we acknowledge the ongoing threats to accessing sexual and reproductive health care here and around the country, we applaud the continued efforts by Representative Krueger and others in PA to protect and expand access to contraceptives for people throughout the Commonwealth.

Restrictive policies aimed at limiting access to contraceptive options and infringing on our basic privacy and bodily autonomy are becoming more and more commonplace throughout our nation. The mere existence of these measures and the rhetoric that surrounds them fuels confusion, doubt, and stigma, even in places like Pennsylvania where care is currently protected.

Given the rationale of the Supreme Court's June 24 decision to overturn *Roe v. Wade*, eviscerating 50 years of a constitutionally guaranteed privacy right to abortion care, we know that Dobbs is just the beginning –



that proposals to restrict access to abortion care also stand to impact other privacy rights and healthcare services. This includes the right to contraception first guaranteed in 1965 in the case of *Griswold vs CT* which established the privacy right that the Dobbs decision, all these decades later, tossed to the curb. No doubt in response to these threats, in the wake of the Dobbs decision AccessMatters experienced an increase in calls to our hotline related to tubal ligations and vasectomies and our providers reported increased calls seeking reproductive health services, and an increased interest in long-acting reversible contraception.

We know the effects of restrictive policies and lack of access fall hardest on people who already face significant barriers to health care, including people with low-incomes, young people, LGBTQIA+ people, and Black, Indigenous, and other people of color.

That is why it is so important that we are here today, supporting this bill, and working to enshrine contraceptive access into Pennsylvania's law.

If we think back over the last decade, we know the Affordable Care Act's contraceptive coverage requirement was a significant step forward. The ACA established clear expectations and a roadmap for insurance coverage for preventive reproductive health and contraceptive care, bringing such care in from the margins and recognizing it as an integral part of overall health and wellbeing.

We also know that healthcare consumers and advocates have had to battle back against continuous attacks on the Affordable Care Act, its contraceptive requirement, Medicaid, and an increasingly hostile political climate that seeks to restrict access to sexual and reproductive health care – all while federal funding for family planning has remained stagnant and inadequate to meet national needs.

The "Expanding Access to Contraceptives" bill puts a stake in the ground, and says, in PA you and your health are protected. Through this critical legislation, the people of Pennsylvania will be protected and ensured continued access to the affordable birth control they seek to plan and space pregnancies.

In the wake of the Dobbs decision, we know contraceptive access is the new battleground. We hear about it every day from our colleagues across the country – the growing threat to the very legitimacy and legality of birth control – in 2023! We also anticipate continued threats to the basic preventive care tenets laid out in the Affordable Care Act.

It is therefore not only common sense, but truly prudent, that we make clear that in Pennsylvania -

- Comprehensive contraceptive coverage is guaranteed in PA issued insurance policies, including coverage of vasectomies;
- People can access a full year of pills at once, which has been shown to maintain consistent usage and achieve better outcomes; and
- Insurance companies cannot put up barriers to accessing contraception such as prior-authorization, cost-sharing or co-pays, or utilization review – no one should ever be told they must first fail on one



method of birth control before they can access their method of choice – the consequences of such forced trial and error can be devastating with respect to any healthcare issue, and they are particularly illogical and monumental in the context of contraception.

- People have the right to have their personal health care and insurance coverage information kept confidential from anyone they choose.

We know that Pennsylvanians already face significant barriers to care, with an estimated 14% of living in a medically underserved areaⁱ and severe provider shortages throughout the Commonwealth which can complicate and delay care. Transportation costs to and from appointments can escalate, and folks may be faced with wage loss and childcare expenses – just to try to obtain basic health care.

Ensuring patients are protected with sufficient coverage that allows them to seek contraceptive services at their provider of choice without having to shoulder the burden of cost-sharing or out-of-network costs goes a long way to alleviate barriers to care.

Similarly, coverage that allows people to access a full year’s supply of contraceptives if they choose, helps to alleviate unnecessary follow up trips to the doctor or pharmacy, setting folks up for achieving their life and health goals. Studies have also shown that when patients are able to receive a one-year supply of contraceptives, it reduces the likelihood of missed dosesⁱⁱ and increases the likelihood of adhering to the medicine regimenⁱⁱⁱ required for optimal efficacy.

Finally, in order to truly ensure contraceptive access for all, we need to make it safe for people to do so. The “Expanding Access to Contraceptives” bill addresses this critical aspect of care as well, ensuring that everyone’s personal health care information – their medical and their insurance records – are kept confidential. For some folks, having an explanation of benefits form or appointment reminder mailed to their home might seem mundane and harmless. But for someone whose family member is unsupportive of their autonomy and their care, opening that documentation could provoke retaliation and violence. Everyone has the right to receive the care they seek, and to do so safely and confidentially.

Representative Krueger’s “Expanding Access to Contraceptives” bill recognizes the comprehensive approach we need to take in PA to ensure that access to care is protected. While we are fortunate to currently have administrations at the state and federal levels that support contraceptive access, we know how quickly that can change and how vulnerable are these rights. And while we are encouraged by recent recommendations to make oral contraceptives accessible over the counter, it is critical that we make clear Pennsylvania’s protections for all forms of contraceptive methods to ensure everyone has access to the method that works for their body and life.

We urge swift passage of this common-sense contraceptive access bill that removes barriers to care and facilitates choice of method and consistent use of that method. We know that protecting access to contraception means supporting planned and optimally spaced pregnancies leading to well-established



improved perinatal, postpartum, and child health outcomes and improved ability to achieve the education and employment goals that are family supporting.

AccessMatters is honored to be here with supportive legislators and fellow advocates today. We are grateful to Representative Krueger for her consistent leadership on this issue. As a partner in public health and advocate for equitable treatment for all people in our commonwealth, we pledge our support to this critical effort to enhance contraceptive access in Pennsylvania.

ⁱ DiMaria-Ghalili, R., Foreshaw Rouse, A., Coates, M., Hathaway, Z., Hirsch, J., Wetzel, S., Park, Y., Johnston Walsh, B., Clark, K., & Gitlin, L.N. (2021). Disrupting disparities in Pennsylvania: Retooling for geographic, racial and ethnic growth [White paper]. AARP Pennsylvania. <https://aarp-states.brightspotcdn.com/6f/b6/de161f3a4a63a23e811693d90b68/aarp-drexel-pennsylvania-disrupting-disparities-design-0421-final.pdf>

ⁱⁱPitt Health Sciences Press Release: "Yearlong Birth Control Supply Would Cut Unplanned Pregnancy, Cost" (July 8, 2019). University of Pittsburgh. <https://www.upmc.com/media/news/070819-borerro-va-bc> (original journal article cited: <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2737751>)

ⁱⁱⁱ Samuel K. Peasah et. al, "Twelve month oral contraceptive pill prescriptions: Role of policy mandates on utilization," *Exploratory Research in Clinical and Social Pharmacy* (5) (2022), available at <https://doi.org/10.1016/j.rcsop.2021.100094>



**Testimony Before the Pennsylvania House Democratic Policy Committee
Expanding Access to Contraceptives
By Women's Law Project
Terry L. Fromson, Managing Attorney
May 12, 2023**

On behalf of the Women's Law Project (WLP), I thank the House Democratic Policy Committee Chair Representative Bizarro, Vice Chair Representative Isaacson, and Deputy Vice Chair Representative Shusterman for convening this hearing on a bill that will expand contraceptive access in Pennsylvania. I must also thank Representative Krueger for responding to the contraceptive needs of Pennsylvanians by introducing a comprehensive contraceptive bill for each of the last three sessions as well as this session. Her persistence has brought us to a place where full access to contraceptive coverage in Pennsylvania may finally be realized.

I am Terry Fromson, the Managing Attorney at the Women's Law Project. Founded in 1974, the Women's Law Project is a nonprofit public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. We seek equitable opportunity in many arenas and believe reproductive freedom is the keystone to our work. We have worked to expand access to contraceptive coverage for decades by seeking to require employers and insurers to provide equitable access to contraceptive coverage and eliminate the costs and other barriers to this essential health care.

Contraception-related health care is essential to help people control, track, and better manage their life-long health, and the health of their families. It allows people to prevent pregnancy so they can time and space their pregnancies or prevent pregnancy altogether, consistent with their own choices.¹ Unintended pregnancies are associated with higher rates of long-term health complications for pregnant persons and infants, including maternal morbidity and mortality.² The U.S. has the highest rate of maternal mortality in comparison to other high income countries.³ Research consistently shows that when people have access to contraceptives, people experience positive health, social, and economic outcomes.⁴

MAIN OFFICE

Sheridan Building
125 South 9th Street, Suite 300
Philadelphia, PA 19107

215.928.5761
www.womenslawproject.org
info@womenslawproject.org

WESTERN PENNSYLVANIA OFFICE

239 Fourth Avenue
Suite 2108
Pittsburgh, PA 15222

412.281.2892
www.womenslawproject.org
infopitt@womenslawproject.org

Contraception is widely used, and people use it for many reasons.⁵ Beyond the well-established evidence that contraceptives are effective in the prevention of unintended pregnancy, evidence also supports non-contraceptive health benefits of contraception, including decreased bleeding and pain with menstrual periods, reduced risk of gynecologic disorders, endometriosis, and pelvic inflammatory disease, and decreased risk of endometrial and ovarian cancer.⁶ Non-contraceptive health benefits also include treatment for non-gynecologic conditions.⁷

Insurance coverage of contraception is critical to ensure that people can access and benefit from contraceptive care. Unintended pregnancy rates are highest among those least able to afford contraception, particularly those who face additional barriers to accessing health care services including economic instability and/or discrimination based on race, ethnicity, gender identity, or sexual orientation.

Birth control is also vital in furthering equal opportunity for women, enabling them to be equal participants in the social, political, and economic life of the nation. By enabling people with the reproductive capacity commonly associated with women to decide if and when to become parents, birth control allows them to access more professional and educational opportunities. This makes access to birth control central to women's constitutionally protected rights to privacy and liberty.⁸ Studies show that access to contraception has increased women's wages and lifetime earnings.⁹

The adoption of the federal Affordable Care Act (ACA) with its contraceptive coverage mandate over a decade ago provided an enormous boost to access to contraceptive care. It requires most private health plans to provide some coverage of contraceptive drugs, devices, and products as well as associated medical services and counseling without cost-sharing. However, the ACA has serious gaps in coverage, which the bill before us, like those adopted in many other states, will fill. It also has been subject to the adoption of several regulatory changes and issuance of many guidances in the form of FAQs. Because of the frequent shifting of the ACA at the federal level, it is important that Pennsylvania adopt a comprehensive law setting forth clear provisions that respond to the contraceptive needs of of Pennsylvanians.

This bill expands upon the ACA. The ACA does not require an insurer to offer all FDA-approved methods with no cost-sharing; it allows insurers to provide only one form of contraceptive in each of the 18 categories of contraception methods approved by the FDA with no cost sharing.¹⁰ Contraceptives, however, vary in effectiveness, side effects, drug interactions, and use of hormones. They may have features that may make one method more likely to be used continuously than another.¹¹ Each person must find the method that works best and most effectively for them. The ACA does not provide that option.

This soon-to-be introduced Pennsylvania bill, however, requires all insurers delivering a health insurance policy in the state to provide coverage for all contraceptive drugs, devices, and other products within each category of contraceptive methods without copayment, coinsurance, deductible or any cost sharing. It also requires the insurer to cover a medically advisable contraceptive drug or product without cost-sharing if there is no therapeutic equivalent. By expanding available contraceptive options, this bill will ensure access to the right contraceptive to match each person's needs.

The ACA also allows insurers to use “reasonable medical management techniques” within each of the 18 categories of contraceptive methods. Such techniques are used to control costs by imposing limits on which products the insurer will provide without cost sharing. Insurers have delayed and sometimes barred people from obtaining the contraception they need by using the following management techniques:

- Requiring a health care provider to seek prior authorization
- Requiring prescriptions for over-the-counter drugs, devices, or products
- Requiring step-therapy which requires a patient to try lower cost prescription drugs to make sure they don't work before stepping up to a similar more expensive and effective drug
- Refusing to provide a name brand drug if the generic version of the method causes side effects¹²
- Imposing limits to drug formularies
- Denying out-of-network service if no in-network provider offers the service needed.

This state bill comprehensively prohibits all of these unreasonable management limits.

The WLP sees a number of individuals each year who experience problems accessing contraceptive drugs, devices and other products either because they fall in the ACA gaps or because the insurer violates the ACA and the individual is unaware of their rights, including their appeal rights. We have had clients who were denied the brand name drug or specific device that worked best for them. Others were charged an inappropriate copay or deductible in violation of the ACA. One private plan imposed an age limit on eligibility even though the contraception was not for birth control but for a medical condition.

Similar barriers to access are caused by the frequency with which a medication must be refilled. Many insurance companies limit supply to 1 to 3 months. This bill expands on the ACA by providing for dispensing contraceptives for one year at a time for patients expected to use the contraceptive for a long term. People may find it hard to get to the provider or pharmacy because of work, familial obligations, transportation, and distance. A year-long prescription will provide a supply that will ensure continuous usage and reduce gaps in usage, allowing people to experience the full benefits of their contraception, including a reduction in pregnancy for people using contraception for this purpose.¹³ This provision will particularly be helpful for those women in Pennsylvania who live in counties that lack a single health center offering the full range of contraceptive methods. Currently 759,140 Pennsylvania women live in such contraceptive deserts.¹⁴ At least 16 states and the District of Columbia now require insurers to cover a one-year supply.¹⁵ Recent ACA guidance encourages but does not require insurers to cover a one-year supply without cost sharing.¹⁶

The ACA also only applies to contraceptive products and services for women. Therefore males are currently not covered for vasectomies or other contraceptive drugs, devices, or products and accompanying services and counseling. This bill expands upon coverage by extending coverage to all persons.

This bill also expands on the ACA by providing confidential access to contraceptives for dependents. Dependents may need confidential access but, without this statutory protection, may have their access to sensitive services disclosed by explanation of benefits forms, claim decisions, or other telephonic or electronic communications sent to the policyholder. Without

confidentiality from the policyholder, dependents may not be able to access necessary reproductive health care. This bill requires a process to inform dependents upon enrollment of their rights to obtain confidential care without consent of a spouse or parent by completing a standard easy form with preferred method of communication and insurer implementation of the request within three days.

This bill also explicitly states that it does not allow insurers to exclude coverage for contraceptive drugs, devices or other products that are prescribed for reasons other than contraceptive purposes. Without this provision, people will lose effective health care for an extensive number of health conditions listed in the bill. Endometriosis—an often painful condition where endometrial tissue is outside of the uterus—is such a purpose. It is a relatively common condition, and hormonal birth control is one of the treatment options for it.

Finally, enforcement is available through a complaint to the insurance department or a civil action that is not limited to a complaint to an internal appeal to the insurer or an external state agency.

This is the time to protect and expand access to reproductive health care, not restrict it. With the loss of *Roe*, guaranteeing comprehensive contraceptive care is all the more important. People must have access to a full range of reproductive healthcare, including contraception, without any barriers.

Thank you for bringing attention to this important issue. The Women's Law Project supports your efforts to increase access to contraception for Pennsylvanians.

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- ¹ Guttmacher Institute, Insurance Coverage of Contraception (Jan. 22, 2020) available at <https://www.guttmacher.org/evidence-you-can-use/insurance-coverage-contraception>
- ² Tsui AO, McDonald-Mosley R, Burke AE. *Family Planning and the Burden of Unintended Pregnancies*. *Epidemiologic Reviews*. 152-174 (2010).
- ³ Munira et al., *The U.S. Maternal Mortality Crisis Continues to Worsen An International Comparison*, The Commonwealth Fund (Dec. 1, 2022) available at <https://www.commonwealthfund.org/blog/2022/us-maternal-mortality-crisis-continues-worsen-international-comparison#:~:text=New%20international%20data%20show%20the,most%20other%20high%20income%20countries>
- ⁴ Guttmacher Institute, Insurance Coverage of Contraception (Jan. 22, 2020) available at <https://www.guttmacher.org/evidence-you-can-use/insurance-coverage-contraception>
- ⁵ Brittni Frederiksen, et al., Kaiser Family Foundation, *Contraception in the United States: A Closer Look at Experiences, Preferences, and Coverage* (Nov. 3, 2022), available at <https://www.kff.org/report-section/contraception-in-the-united-states-a-closer-look-at-experiences-preferences-and-coverage-findings/>
- ⁶ Schindler AE. *Non-Contraceptive Benefits Of Oral Hormonal Contraceptives*. *Int J Endocrinol Metab*. 41—47 (2013) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3693657/>
- ⁷ *Id.*; Cortessis VK, Barrett M, Brown W, et. Al. *Intrauterine Device Use and Cervical Cancer Risk; A Systematic Review and Meta-analysis* *Obstet Gynecol*. (2017).
- ⁸ *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird* 405 U.S. 438 (1972).
- ⁹ See, e.g., Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics*, 87 *CONTRACEPTION* 465, 467 (2013); Adam Sonfield, et al., Guttmacher Inst., *The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children* (2013), available at <http://www.guttmacher.org/pubs/social-economic-benefits.pdf>.
- ¹⁰ The full range of contraceptive methods for women currently identified by the U.S. Food and Drug Administration include: (1) sterilization surgery for women, (2) surgical sterilization via implant for women, (3) implantable rods, (4) copper intrauterine devices, (5) intrauterine devices with progestin (all durations and doses), (6) the shot or injection, (7) oral contraceptives (combined pill), (8) oral contraceptives (progestin only, and), (9) oral contraceptives (extended or continuous use), (10) the contraceptive patch, (11) vaginal contraceptive rings, (12) diaphragms, (13) contraceptive sponges, (14) cervical caps, (15) female condoms, (16) spermicides, and (17) emergency contraception (levonorgestrel), and (18) emergency contraception.
- ¹¹ Guttmacher Institute, Insurance Coverage of Contraception (Jan. 22, 2020) available at <https://www.guttmacher.org/evidence-you-can-use/insurance-coverage-contraception>
- ¹² Michelle Andrews, *Contraception is Free to Women, Except When It's Not*, *Health News From NPR* (July 21, 2021) available at <https://www.npr.org/sections/health-shots/2021/07/21/1018483557/contraception-is-free-to-women-except-when-its-not>
- ¹³ Green Foster, et al. *Number of Oral Contraceptive Pill Packages Dispensed and Subsequent Unintended Pregnancies*, *Obstet Gynecol*. (2011).
- ¹⁴ Power to Decide, *Contraceptive Deserts*, available at <https://powertodecide.org/contraceptive-deserts> (2023)
- ¹⁵ Kaiser Family Foundation, *Oral Contraceptive Pills*, (May 23, 2019) available at <https://www.kff.org/womens-health-policy/fact-sheet/oral-contraceptive-pills/>
- ¹⁶ FAQs About Affordable Care Act Implementation Part 54 (July 28, 2022) available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-54.pdf>

Contraception and the ability to decide if and when to have a child is essential to the health and economic security of women, pregnancy capable people, families, and communities.

Each of us deserves the freedom to make decisions about our own health and our own lives.

Barriers to accessing healthcare, including contraception, disproportionately affect people of color, indigenous people, young people, immigrants, LBTQ+ individuals, those living in poverty and those living with disabilities. This is a health equity issue. Everyone should have the freedom to thrive in every aspect of their life, and birth control is critical to making that a reality.

Contraception is life affirming.
And often it is also lifesaving.

As a contraceptive specialist I am referred patients with medical conditions that make their use of contraception more complicated. For these patients with complex health conditions pregnancy can be extremely dangerous. It is vitally important that patients are able to plan for these more complicated pregnancies with the help of their doctors and high-risk pregnancy specialists. Avoiding an unintended pregnancy can be a matter of life and death. Contraception allows my patients to live, and to safely have a pregnancy when the time is right.

For other complicated patients I see in my clinic, hormonal contraception can help with health problems they are facing. For example, the patient with a history of life-threatening blood clots in her lungs whose blood thinner is making her periods dangerously heavy. Being able to use hormonal contraception to help her bleeding allows her to avoid surgery that would be high risk because of her medical condition.

Another group of patients that came to mind when I was considering the benefits of this legislation are the adolescent patients I am regularly referred from the Children's Hospital of Philadelphia who are living with severe developmental disabilities. For these patients and families, managing puberty and menstruation can be very difficult. Being able to use hormonal contraception to control their bleeding and period pain allows these young people to go to school without interruption each month when they otherwise would not be able to, and subsequently allows parents to continue to go to work because they do not have to stay home with their children. The decisions surrounding this care can be complicated and should be left between families and physicians, without options being limited by insurers and employers.

Contraception is an essential part of healthcare. And access to healthcare is a fundamental human right. I am deeply grateful to Representative Krueger and her colleagues for introducing this important legislation to improve access to contraception for Pennsylvanians.

Alhambra Frarey, MD, MSHP