



Reproductive Justice Maryland

Committee:	House Health and Government Operations Committee
Bill:	HB 939 – Maryland Commission for Women – Maryland Collaborative to Advance Implementation of Coverage of Over-the-Counter Birth Control
Date:	February 20, 2025
Position:	Favorable

Reproductive Justice Maryland strongly support *House Bill 939 – Maryland Commission for Women – Maryland Collaborative to Advance Implementation of Coverage of Over-the Counter Birth Control*. The bill would keep Maryland at the forefront of improving contraceptive access for all communities.

What is Over-the-Counter Birth Control?

Over-the-counter birth control, approved by the Food and Drug Administration (FDA), must meet the same safety and efficacy standards as prescribed birth control. The FDA has approved two forms of OTC birth control medication:

- Levonorgestrel, also known as Plan B, was approved by the FDA for OTC use in 2006. Levonorgestrel is emergency contraception and must be taken within 72 hours of unprotected sex to be effective; and
- Opill is a daily birth control pill. The FDA approved Opill for OTC use in July 2023 after a unanimous advisory committee vote. Opill has been available on the shelves since March 2024.

How OTC birth control can improve access in Maryland?

OTC birth control can be more accessible than prescribed birth control as:

- People do not have to wait to visit a healthcare practitioner for a prescription. Delays in getting an appointment creates higher risk for pregnancy; and
- People do not have to drive to visit a pharmacy or navigate a pharmacy's limited hours. Many pharmacies do not have sufficient staff to remain open in the evenings; and

How has Maryland been on the forefront of OTC birth control access?

Maryland was the first state to adopt OTC birth control coverage requirements with the Maryland Contraceptive Equity Act of 2016 (Delegate Ariana Kelly/Senator Delores Kelley). Maryland extended coverage to participants in the State Employee and Retiree Benefits Program in 2018 (Delegate Shelly Hettleman/Senator Delores Kelley).

Maryland's legislation led to nine other states enacting similar legislation (see attached)ⁱ. Other states, such as Wisconsin and North Carolina, have extended coverage through regulatory action for their Medicaid programs.

This year, House Bill 939 would keep Maryland at the forefront of improving accessibility of OTC birth control. By creating a public-private collaborative, the legislation supports continued efforts to implement Maryland's OTC coverage requirements for state-regulated private plans, Medicaid, and the State Employee and Retiree Benefit Plan.

Maryland, just as with other states, has faced some challenges with consumer and provider awareness. Despite communications from insurers and pharmacy benefit managers, there is still confusion at the pharmacy level on how to process an OTC claim.

According to data provided by the Maryland Department of Budget and Management, the State Employee and Retiree Benefits Program covered just 139 claims for OTC emergency contraception in a 23-month period (January 2023-November 2024) and 4 claims for Opill in the eight months it has been available (March 2024-November 2024). These numbers indicate that there is still more work to be done with OTC coverage implementation.

How does HB 939 build on national work on implementing OTC birth control coverage?

House Bill 939 would create a multi-stakeholder collaborative to recommend and advance practical solutions to implement OTC birth control coverage. The Commission for Women would provide staffing and coordination since implementation work falls under multiple agencies including the Department of Health (Medicaid), Department of Budget and Management (State Employee Health and Retiree Benefits Plan), and the Maryland Insurance Administration (state-regulated private plans).

HB 939's Collaborative does not have to start from scratch. The Collaborative can use the extensive work on OTC coverage at the national level as a foundation. In October 2024, the Biden-Harris Administration proposed a rule requiring OTC birth control coverage by most Affordable Care Act plansⁱⁱ. The rule was later withdrawn because of the change in administrations. However, the proposed rule was grounded upon extensive stakeholder input including:

- Responses to a request for information In October 2023 from the Departments of the Treasury, Labor, and Health and Human Services issued a joint request for information on OTC coverage.ⁱⁱⁱ

- Ibis Reproductive Health, through the Free the Pill Coalition, conducted an 18-month implementation collaborative for OTC birth control coverage in anticipation of federal action. In November 2024, Ibis Reproductive Health issued a report titled “Free the Pill and Cover it Too: Strategies for Making OTC Coverage Work in the Real World” with a section which specifically delineates potential state implementation actions (see attached)^{iv}; and
- The Contraceptive Access Initiative issued a report titled “States and Contraceptive Access: Blazing a Trail of Affordability”. The report reflected findings from a stakeholder convening that was held at the request of the Biden-Harris Administration.^v

Why Marylanders need HB 939?

Maryland has not yet realized the potential of OTC birth control to improve access across our communities. OTC birth control can be unaffordable for some people as Plan B costs between \$40-\$50 for a single dose and Opill costs an average of \$19.99 for a monthly supply. Insurance coverage can make OTC birth control, but there needs to be broader awareness of how to operationalize coverage.

Reproductive Justice Maryland asks for a favorable vote on HB 939. If any additional information would be helpful, please contact Robyn Elliott at relliott@policypartners.net.

ⁱ <https://freethepill.org/resources/states-with-over-the-counter-contraceptive-coverage-laws>

ⁱⁱ <https://www.cms.gov/newsroom/fact-sheets/enhancing-coverage-preventive-services-under-affordable-care-act-proposed-rules>

ⁱⁱⁱ <https://www.federalregister.gov/documents/2023/10/04/2023-21969/request-for-information-coverage-of-over-the-counter-preventive-services>

^{iv} <https://freethepill.org/resources/free-the-pill-and-cover-it-too-strategies-for-making-otc-birth-control-coverage-work-in-the-real-world>

^v <https://www.thepillotc.org/statesaffordability>