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THE SENATE OF MARYLAND
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TESTIMONY OF SENATOR SHELLY HETTLEMAN

SB674 MARYLAND COMMISSION FOR WOMEN – MARYLAND COLLABORATIVE TO
ADVANCE COVERAGE OF OVER-THE-COUNTER BIRTH CONTROL

Purpose

The bill creates a Collaborative with state agencies, consumer representatives, pharmacies and pharmacists, and insurers to support implementation of Maryland’s existing requirements for coverage of over-the-counter (OTC) birth control.

Importance of OTC Birth Control to Improving Access for Marylanders

In the United States, the Food and Drug Administration (FDA) has approved two forms of birth control for OTC use: 1) Plan B which is emergency contraception in 2006; and 2) Opill, a daily birth control pill in 2023. It is notable that more than 100 countries provide access to multiple kinds of OTC birth control.ⁱ

OTC birth control is supported by major medical organizations as being safe and effective including American College of Obstetrics and Gynecologists, American Nurses Association, American College of Nurse-Midwives, American Academy of Physician Assistants, National Hispanic Medical Organization, Society for Adolescent Health and Medicine, and Society for General Internal Medicine.ⁱⁱ

OTC birth control can significantly increase access because people do not have to navigate obtaining a prescription from a provider and picking up their birth control from a pharmacy. An FDA advisory committee found that “nonprescription availability will have a tremendous positive impact to women and public health” when committee members unanimously recommended approval of Opill for OTC use in May 2024.ⁱⁱⁱ

However, access to OTC birth control depends on affordability. Plan B costs in the range of \$40-\$50 per dose, and Opill costs \$19.99 per monthly pill pack. Insurance coverage is important to ensure the affordability of OTC birth control.

Legislative History of Coverage of OTC Birth Control

Maryland became the first state to require coverage of over-the-counter birth control when the Maryland General Assembly enacted the Maryland Contraceptive Equity Act of 2016, sponsored by Senator Delores Kelley and Delegate Ariana Kelly.^{iv} In 2018, I continued that work by sponsoring, along with Senator Delores Kelley, legislation that extended OTC requirements to the Maryland State Employee and Retiree Benefits Plan.^v

Maryland's legislative work led to a total of ten states enacting coverage requirements: California, Colorado, Delaware, Illinois, Maryland, New Jersey, New Mexico, New York, Oregon, and Washington State.^{vi} Some states, including North Carolina and Wisconsin, have established OTC birth control coverage through bulletin or regulation.

In October 2024, the U.S. Department of Health and Human Services proposed regulations to require nearly all insurance plans across the country to cover OTC birth control. The proposed rules were withdrawn in January 2025 as a result of the change in administrations. Despite this setback, it is notable that the federal rule built upon the state experience with OTC birth control coverage. Maryland and other state policy advocates made significant contribution to the work leading up to the proposed federal rule.

Implementation of Maryland's OTC Requirements

Legislators and state advocates have been supporting implementation of Maryland's OTC birth control coverage since coverage requirements went into effect. Efforts include:

- Ensuring insurance plan documents correctly reflected OTC birth control coverage requirements. State advocates conducted a plan review and worked with the Maryland Insurance Administration between 2018-2019.
- Advocating for clear communication to pharmacies on how to process OTC birth control claims. When I was contacted in 2019 by an individual who could not utilize her State Employee's coverage for OTC birth control, I worked with the Department of Budget and Management on the issue. As a result, CVS CareMark, who administered the State's pharmacy benefit plan at the time, issued a bulletin in December 2019 on how pharmacies should process OTC birth control claims (see attached).
- In 2020, Maryland NARAL conducted a secret shopper survey which demonstrated people with plans regulated by the state could not get OTC coverage.
- Between 2023-2024, Maryland representatives participated in a national OTC Coverage Collaborative to prepare operational recommendations for implementing OTC birth control coverage. Their work resulted in Ibis Reproductive Health's report titled "Free the Pill and Cover it Too: Strategies for Making OTC Coverage Work in the Real World."^{vii}

In the fall of 2024, I requested information about the number of claims covered for OTC under the State Employee and Retiree Benefits Program. I wanted to see how my 2018 legislation was being implemented. I was concerned by the data which showed that just 139 claims for OTC emergency contraception were covered in a 23-month period (January 2023 to November 2024) and 4 claims for Opill, a new daily birth control pill that is OTC, in an eight-

month period (March 2024-November 2024). These low numbers are not the result of a failure of a single organization, but rather reflect the need for a collective effort to finally and more fully implement Maryland's OTC coverage requirements.

Advancing Implementation of OTC Birth Control Coverage in Maryland

In considering how Maryland could move forward in implementing existing requirements for OTC birth control coverage, I knew we needed the involvement of a full range of stakeholders. Since the work spans across several different state agencies, Senate Bill 674 provides for the Maryland Commission on Women to convene a collaborative of state agency officials, consumer representatives, insurers and pharmacy benefit managers, and pharmacies and pharmacists to:

- support the development of clear and consistent information on how pharmacies can submit claims for OTC birth control;
- plan to increasing awareness of consumers, pharmacies, pharmacists, and healthcare providers about OTC birth control coverage; and
- develop avenues for community-based partners to provide OTC birth control to people without insurance coverage.

The Collaborative can draw from a substantial body of work on implementation of OTC coverage including responses to a 2023 requirement for information on OTC coverage from the Department of Treasury, Labor, and Health and Human Services.^{viii}

Conclusion

It has been nearly 10 years since the Maryland General Assembly enacted OTC birth control coverage requirements. We owe it to Marylanders to ensure meaningful implementation of coverage requirements. I ask for a favorable vote on SB 674.

ⁱⁱ <https://freethpill.org/resources/otc-access-world-map>

ⁱⁱ <https://freethpill.org/statement-of-purpose/#coalition-members>

ⁱⁱⁱ <https://www.fda.gov/media/170302/download>

^{iv} <https://www.pharmacytimes.com/view/maryland-begins-to-offer-free-plan-b>

^v HB 1024/SB 986 of the 2018 Legislative Session.

^{vi} <https://freethpill.org/resources/states-with-over-the-counter-contraceptive-coverage-laws>

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

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