BREAKING BARRIERS TO BIRTH CONTROL: WHY ACCESS TO BIRTH CONTROL MATTERS AND WHAT STILL NEEDS TO BE DONE

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I. INTRODUCTION

A. The Issue: Consistent Access to Medication Is Important for Ensuring Women's Health

In 2023, the Indiana legislature passed a statute, Indiana Code § 25-26-25, which gives pharmacists the ability to prescribe contraceptives. Indiana is far from the first state to pass such legislation, but there are still questions about what would be the best way to maximize the statute's effectiveness. This Note begins with an introductory, fictitious story showing how contraceptive access is vital for a variety of reasons, not just birth control. It will then provide background information about the statute, the history of the right to birth control, and how other states have implemented similar statutes that allow pharmacists to prescribe contraceptives.

Next, this Note will provide an analysis of how Indiana should implement the statute to ensure that it does increase access to contraceptives by addressing why pharmacists need proper incentives to provide additional services. The Note will then discuss how to increase legislative awareness to inform women of the new services that pharmacists can provide and how pharmacists will be properly educated before prescribing contraceptives. Lastly, this Note will examine and address pharmacists' potential concerns about prescribing birth control.

B. Possible Complications When There Are Gaps in Receiving Birth Control

Molly Jones is from a small town in southern Indiana.[1] The summer before starting college, Molly experienced severe pre-menstrual symptoms. The symptoms had grown so debilitating that Molly had to miss work due to severe cramping and abdominal pain. Molly visited a gynecologist located in her hometown the summer before Molly started college. The physician prescribed Molly birth control to help with the severe pre-menstrual symptoms and to help alleviate the pain that Molly was experiencing.[2] After receiving the prescription,

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1. Molly Jones is a fictional character derived from a combination of personal stories the author has heard from close friends. Her story helps describe the potential problems that can be derived when women experience gaps in their prescribed contraceptives.

2. *See* Oshin M. Bansode et al., *Contraception*, STATPEARLS (July 24, 2023 9:40 PM), https://www.statpearls.com/point-of-care/19940 [https://perma.cc/DAQ2-WB4F] (discussing certain medical reasons why women may be prescribed birth control).

Molly started school at a college located about three hours away from her hometown.

Molly began taking the oral contraceptives, and the pain she had been experiencing substantially subsided. Molly did not miss any classes in her first year of college. She made many new friends, joined student organizations, and even made the Dean's list in both semesters. Molly enjoyed her time at school so much that she decided to apply to be a residential assistant to help incoming students the next school year.

After Molly's first appointment, she scheduled another checkup with her same physician the following year. Unfortunately, the appointment that Molly had scheduled a year prior was to take place after she was already supposed to be back on campus. She called and requested an earlier appointment, but since it had not been a full year between appointments, her insurance would not cover the deductible. Molly had to cancel her appointment and could not get another appointment until six months later. Molly tried to refill her birth control prescription before going back to school, but unfortunately, she was unable to do so because she needed a new doctor's prescription. Molly then had to start the school year without her medication.

After going off the birth control, Molly's menstrual pains reemerged. In fact, her symptoms returned even worse than what they were before.[3] Because of the sudden hormonal changes, Molly also developed hormonal acne around her jawline and began experiencing headaches and sudden mood swings.[4] Molly started missing class because the menstrual pain was so bad. Since Molly was missing class, her grades began to drop. Molly was no longer engaged in the social activities at school. Since she was no longer taking her medication, she noticed that she was also increasingly more anxious and began to feel depressed.[5]

After an extremely long and difficult semester, Molly was finally able to go to her scheduled appointment six months later. She resumed taking the medication, and her symptoms subsided again. Molly is now extremely careful to ensure that she does not miss another doctor's appointment for fear that she might have to deal with another lapse in medication.

Unfortunately, Molly's story may not be the only reason women experience gaps in their birth control medication. Women may forget their medication while traveling, or women may have to wait longer in between appointments

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3. Jessica Caporuscio, *Stopping Birth Control: What to Expect and Management*, MED. NEWS TODAY, https://www.medicalnewstoday.com/articles/stopping-birth-control [https://perma.cc/DF89-539G] (last updated Oct. 26, 2023). (discussing possible symptoms that may result after coming off the birth control pill).

4. *Id.*

5. *Id.*

due to physician shortages.[6] Whenever a woman stops taking birth control, it results in a change of hormonal levels in the body because progesterone and/or estrogen is being removed from the body.[7] The lapse in medication could be especially problematic for women who are using birth control to treat symptoms such as polycystic ovary syndrome or who are using it as a form of family planning.[8]

Women are prescribed birth control for a multitude of reasons.[9] It does not matter why a woman is prescribed birth control; women should not have to experience gaps in their medication just because they cannot get into their yearly scheduled physician's appointment. By allowing pharmacists to prescribe birth control, women are less likely to experience a disruption in their medication just because they cannot get in to see a physician. The remainder of this Note will further discuss the importance of the Indiana Code section 25-26-26 and how it should be properly implemented to ensure that women have greater access to oral contraceptives.

II. BACKGROUND

A. Discussing Indiana Code § 25-26-25

On July 1, 2023, the Indiana legislature passed Indiana Code section 25-26-25, which allows pharmacists to prescribe birth control. The statute allows pharmacists to "prescribe and dispense hormonal contraceptive patches and self-administered hormonal contraceptives" without having a prescription from a practitioner.[10] This does not include injectable contraceptives or intrauterine devices, and pharmacists can only prescribe these self-administered contraceptives to women who are at least eighteen years of age.[11] Women would not be required to schedule an appointment with the pharmacist before being prescribed the contraceptive.[12]

Indiana Code section 25-26-25-3 states that the "self-administered

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6. Cate Charron, *Rural health care gaps complicate health outcomes. Where does Indiana stand?*, INSIDE IND. BUS. (Nov. 6, 2023), https://www.insideindianabusiness.com/articles/rural-health-care-gaps-complicate-health-outcomes-where-does-indiana-stand [https://perma.cc/P375-Q8J8].

7. Caporuscio, *supra* note 3.

8. JOHN HOPKINS MED., *Polycystic Ovary Syndrome (PCOS)*, https://www.hopkinsmedicine.org/health/conditions-and-diseases/polycystic-ovary-syndrome-pcos#:~:text=PCOS%20is%20a%20very%20common,%2C%20infertility%2C%20and%20weight%20gain [https://perma.cc/JX8X-QL4Y] (last visited Feb. 4, 2024) (discussing polycystic ovary syndrome (POS) as a "condition in which the ovaries produce an abnormal amount of androgens," which may cause "irregular periods, excessive body hair, weight gain, acne, hair loss, or infertility"; noting that birth control can "help regulate menstrual cycles, lower androgen levels, and reduce acne.").

9. *See* Bansode et al., *supra* note 2.

10. IND. CODE § 25-26-25-4 (2023).

11. *Id.*

12. *Id.* § 7.

hormonal contraceptives" include hormonal contraceptive pills, which can be in the form of combination pills that contain both estrogen and progestin or progestin-only pills.[13] These pills are used to "[s]top or reduce ovulation," "[t]hicken cervical mucus [by] creating a barrier that prevents sperm from entering [a] uterus and [reaching the] egg [and] [t]hin[ing] the lining of [a] uterus" to prevent a fertilized egg from growing.[14] Hormonal contraceptive patches are a "type of contraception that contains the hormones estrogen and progestin" that one can physically apply to their body to prevent pregnancy.[15] These two types of contraceptives are easy for women to use and help give women the power to choose whether they become pregnant.

Before pharmacists can prescribe birth control, they must complete a designated training program approved by the state health commissioner or designated public health authority.[16] The training program will educate pharmacists on "prescribing hormonal contraceptive patches and self-administered hormonal contraceptives."[17] In addition to completing the designated training program, pharmacists must ensure the woman completes a self-risk screening assessment, and the pharmacist must "[a]dminister the screening protocols" before they prescribe birth control.[18] The screening protocols may differ by state, but they may include gathering a patient's "medical history, pregnancy status, . . . medication use . . . [a] blood-pressure check," and patient preferences.[19] After prescribing birth control, pharmacists must "[r]efer the woman to a primary care practitioner or the women's health care practitioner."[20] Additionally, pharmacists must supply "a written record of the hormonal…contraceptive prescribed" to the woman and recommend a consult with an appropriate practitioner.[21] These steps are similar to the ones that a physician would use before prescribing birth control. Since the pharmacists must refer the woman to a physician, any underlying health problems that the woman may have can be quickly addressed.

Pharmacists only have the authority to prescribe the contraceptive for up to a six-month period. Pharmacists "may not issue a prescription to the woman after twelve (12) months unless the woman has been seen by a physician,

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13. *Id.* § 3.; *see also Birth Control Pills*, CLEV. CLINIC, https://my.clevelandclinic.org/health/treatments/3977-birth-control-the-pill [https://perma.cc/5Z92-FZ37] (last visited July 5, 2023).

14. CLEVELAND CLINIC, *supra* note 13.

15. *Birth Control Patch*, MAYO CLINIC (Feb. 9, 2023), https://www.mayoclinic.org/tests-procedures/birth-control-patch/about/pac-20384553 [https://perma.cc/GKX4-9NT6].

16. IND. CODE § 25-26-25-5(c)(1) (2023).

17. *Id.*

18. *Id.*; IND. CODE § 25-26-25(c)(6) (2023).

19. Christine Chim & Pallak Sharma, *Pharmacists Prescribing Hormonal Contraceptives: A Status Update*, 46 U.S. PHARM. 45, 48 (2021); *see also* Kierra B. Jones, *Advancing Contraception Access in States Through Expanded Pharmacist Prescribing*, CTR. FOR AM. PROGRESS (Jan. 31, 2023), https://www.americanprogress.org/article/advancing-contraception-access-in-states-through-expanded-pharmacist-prescribing/ [https://perma.cc/R7VE-97CZ].

20. IND. CODE § 25-26-25-5(c)(3) (2023).

21. *Id.* § 5(c)(4).

advanced practice registered nurse, or physician assistant in the previous twelve (12) month period."[22] These provisions safeguard women's health by ensuring that she does not go a prolong time without consulting a physician.

Furthermore, it is important to note that this statute does not require pharmacists to prescribe contraceptives if they feel as though the contraceptive is "contraindicated" or the pharmacists "objects on ethical, moral, or religious grounds."[23] Nowhere does the statute require pharmacists to undergo the training necessary to be able to prescribe contraceptives. This allows pharmacists to decide whether they want to prescribe birth control.

B. The Legal Right to Contraception

The right to use hormonal contraceptives derives from two Supreme Court cases: *Griswold v. Connecticut*[24] and *Eisenstadt v. Baird*.[25] *Griswold* and *Eisenstadt* were vital in giving women and families the ability to participate in family planning. The results of these cases gave women bodily autonomy and gave women the power to decide their future.

In 1965, the United States Supreme Court held it was unconstitutional to prevent married couples from using contraceptives in *Griswold*.[26] Within this case, the Supreme Court declared a Connecticut law that prevented the use of contraceptives for marital couples illegal.[27] The Supreme Court reached the conclusion "that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[28] This holding was the first step in ensuring that women had the right to contraceptives, but it notably left out unmarried women.

The right to use contraceptives was extended to single individuals in *Eisenstadt*.[29] The Supreme Court held that a state could not "outlaw [the] distribution [of contraceptives] to unmarried but not to married persons" and still be consistent with the Equal Protection clause.[30] This means that states could not bar access to women who were not married and gave single, not just married, women more power for family planning.[31] Although this case allowed

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22. *Id.* § 5(c)(7).
23. *Id.* § 8.
24. 381 U.S. 479, 485 (1965).
25. 405 U.S. 438, 454–55 (1972).
26. 381 U.S. at 485 (quoting NAACP v. Alabama, 377 U.S. 288, 307 (1964)).
27. *Id.*
28. *Id.* at 480.
29. 405 U.S. at 454–55.
30. *Id.* at 454.
31. *See* Mabel Felix et al., *The Right to Contraception: State and Federal Actions, Misinformation, and the Courts*, KFF (Oct. 26, 2023), https://www.kff.org/womens-health-policy/issue-brief/the-right-to-contraception-state-and-federal-actions-misinformation-and-the-courts/#:~:text=Currently%2C%20the%20right%20to%20contraception,married%20people%20to%20obtain%20contraceptives [https://perma.cc/SLR5-2HHL].

the distribution of contraceptives, it produced no guarantee that women would be able to access the contraceptives when they need them.[32]

Only thirteen states currently protect the right to contraceptives through legal or constitutional provisions.[33] Indiana is not one of those states. However, as long as the decisions in *Griswold* and *Eisenstadt* are not overturned by the Supreme Court, Indiana residents will still maintain the right to contraceptives.[34]

C. Hormonal Contraceptives Differ from Abortion-inducing Drugs

There are often misconceptions that hormonal contraceptives are related to abortion-inducing drugs, however, they are medically distinct. Understanding the difference between hormonal contraceptives and abortion-inducing drugs is important because "fundamental misunderstandings regarding how contraceptives work – particularly how IUDs and emergency contraceptive pills operate – present a situation in which legislators and regulatory agencies might conflate abortion and contraception, potentially restricting people's ability to access these methods in some states."[35] Hormonal contraception is used to prevent pregnancy,[36] while an abortion is termination of a pregnancy.[37] Contraceptives "work by inhibiting ovulation or by making it harder for sperm to reach an egg," which, if used correctly can prevent a pregnancy from occurring."[38]

This statute does not allow pharmacists to "knowingly or intentionally prescribe[] a drug…that is intended to cause an abortion."[39] Additionally, under the new statute, a pharmacist commits a Level 5 felony if they prescribe an abortion-inducing drug.[40] Since Indiana pharmacists have never been allowed to prescribe abortion-inducing drugs, this section of the statute seems to emphasize that the statute gives pharmacists the power to solely prescribe contraceptives.

D. The Effect on States That Allow Pharmacists to Prescribe Birth Control

As of January 23, 2023, twenty-four other states currently allow pharmacists to prescribe birth control, and several states currently have similar legislation pending.[41] However, legislation in this area is still relatively new; only fourteen

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32. *Id*.
33. *Id*.
34. *Id.*
35. *Id.*
36. Bansode et al., *supra* note 2.
37. *Abortion (Termination Of Pregnancy)*, HARV. HEALTH PUBL'G (Jan. 9, 2019), https://www.health.harvard.edu/medical-tests-and-procedures/abortion-termination-of-pregnancy-a-to-z [https://perma.cc/NJ3V-CFVH].
38. Felix et al., *supra* note 31.
39. IND. CODE § 25-26-25-9(a) (2023).
40. *Id.* § 9(b).
41. Jones, *supra* note 19.

of those twenty-four states had legislation passed before 2020.[42] Most states allow pharmacists to prescribe birth control through a statewide protocol or a standing order and give the right to prescribe through a collaborative practice agreement (CPA).[43] A collaborative practice agreement is "[a] formal agreement in which a licensed provider makes a diagnosis, supervise[s] patient care, and refers patients to a pharmacist under a protocol that allows the pharmacist to perform specific patient care functions."[44] A collaborative practice agreement allows the pharmacist to provide care services to the patients and in turn can "reduce fragmentation of care, lower health care costs, and improve health outcomes."[45]

In 2016, California and Oregon became the first two states to pass legislation that allowed pharmacists to prescribe birth control.[46] Four other states, Colorado, New Mexico, Hawaii, and Maryland, quickly followed suit and also passed legislation.[47] The specific legislation allowing pharmacists to prescribe birth control varies from state to state.[48] The states' statutes vary on the types of contraceptives that pharmacists may prescribe and what the pharmacists' training requirements include.[49] State legislation also differs on the minimum age requirement and the time period for how long prescriptions can be refilled.[50] Despite these differences, all state protocols require pharmacists to meet certain standards of screening, counseling, documenting, and monitoring.[51] This includes a screening questionnaire that is required by the CDC's *U.S. Medical Eligibility Criteria for Contraceptives* that a woman must complete before the pharmacist can issue a prescription.[52] The questionnaires include questions that relate to a patient's "medical history, pregnancy status, and medication use."[53] If certain risk factors are identified within the questionnaire, the pharmacist may need a physician referral before they can prescribe the contraceptive.[54] These questionnaires help pharmacists identify the patient's medical history to ensure that it is safe for the pharmacists to prescribe birth control. By identifying certain risk factors, pharmacists detect which patients are more likely to experience complications from taking contraceptives and which ones need to be monitored by a physician.

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42. *Id.*
43. Chim & Sharma, *supra* note 19, at 45.
44. *Collaborative Practice Agreements and Pharmacists' Patient Care Services*, CDC 1 (2023), https://stacks.cdc.gov/view/cdc/49016 [https://perma.cc/NHK7-U72S]; *see generally* Chim & Sharma, *supra* note 19, at 45.
45. *Collaborative Practice Agreements and Pharmacists' Patient Care*, *supra* note 44.
46. Chim & Sharma, *supra* note 19, at 45.
47. *Id.*
48. *Id.* at 46–47.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at 46–47.
53. *Id.* at 47.
54. *Id.*

Additionally, the National Alliance of State Pharmacy Associations (NASPA) issued legislation recommendations that allow pharmacists to prescribe birth control.[55] NASPA recommends that state legislation should be general for specific medication categories and that states should not limit where pharmacists can prescribe birth control within the state.[56] NASPA's additional legislation recommendations include limiting delegations to non-pharmaceutical staff, requiring additional pharmaceutical training, and keeping documentation of records and communications with patients.[57] The Indiana statute meets all of the above NASPA recommendations, but the statute does not include any information about how the statute will affect insurance policies.[58] NASPA recommends that insurance policies should cover pharmacist-preformed services, like administering vaccines, in the same manner as physician-prescribed services.[59] Without a reimbursement incentive, pharmacists may not undergo the proper training needed to prescribe birth control, which would still inhibit women's ability to access contraceptives.

Examining some of the first states that allowed pharmacists to prescribe birth control provides insight on how the Indiana statute should be implemented.[60] The Oregon statute that allows pharmacists to prescribe birth control requires that "state and federal laws governing insurance coverage of contraceptives drugs, devices, products, and services shall apply to hormonal contraceptive patches and self-administered oral hormonal contraceptives prescribed by a pharmacists."[61] The Oregon Board of Pharmacy originally created a group of "pharmacists, pharmacy administrators, obstetricians and gynecologists, policymakers, and subject-matter experts" to provide suggestions for standard procedures.[62] Oregon initially faced problems with finances and consultation costs, and although these issues have improved, the low number of pharmacists willing to prescribe contraceptives continues to be an issue.[63] In 2020, only 46% of pharmacists in Oregon prescribed contraceptives, which is still significantly higher than in other states.[64] However, even with these numbers, it is estimated that the Oregon policy allowing pharmacists to prescribe birth control, prevented more than fifty unintended

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55. NAT'L ALL. ST. PHARMACY ASS'N & NAT'L ASS'N BDS. PHARMACY, PHARMACIST STATEWIDE PROTOCOLS: KEY ELEMENTS FOR LEGISLATIVE AND REGULATORY AUTHORITY 1 (Mar. 2017) [hereinafter LEGISLATIVE AND REGULATORY AUTHORITY].

56. *Id.*

57. *Id.* at 5.

58. *Id.* at 6.

59. *Id.* at 3.

60. Jones, *supra* note 19.

61. OR. REV. STAT. § 689.689 (2024).

62. Jones, *supra* note 19.

63. *Id.*

64. *Beyond the Beltway: Pharmacist Prescribing of Hormonal Contraceptives*, POWER TO DECIDE 1, 2 (May 3, 2023), https://powertodecide.org/sites/default/files/2023-05/Pharmacist%20Prescribing_5-03-23_0.pdf [https://perma.cc/P69G-8LVM]; Jones, *supra* note 19.

pregnancies and saved the state $1.6 million after just two years of execution.[65]

California is another state where a small number of pharmacists are providing birth control. In California, three years after the state allowed pharmacists to prescribe birth control, only 15% of pharmacies included this option.[66] California and pharmacies in California have done little to advertise for the new services.[67] Because the service has not been well advertised, women likely are not seeking the service, which could be misconstrued as a lack of interest in the service. The primary objective of the California legislation allowing pharmacists to prescribe birth control was to provide more options to underserved communities.[68] However, this is a hard task to accomplish if the underserved communities are not aware of the services. The CEO of the California Pharmacists Association, Jon Roth, believed that the biggest obstacle in getting pharmacists to prescribe birth control has been reimbursement.[69] This was also confirmed by a qualitative data survey, which also stated that this was the biggest obstacle in dispensing a year-long supply of birth control.[70] The survey found the second biggest obstacle was "whether the pharmacy had a protocol or policy allowing for such a large quantity of birth control."[71] By looking at the problems exhibited in California, it shows how important it will be to provide reimbursement for Indiana pharmacists and to advertise the new service.

E. Other States' Reimbursement Policies

Proper compensation for pharmacists' service is a primary concern. Maryland illustrates how pharmacists can be properly compensated for their services.[72] Pharmacists can bill for patient consultations that determine a patient's eligibility for contraception if the pharmacist enrolls in Maryland's Medicaid pharmacist prescriber program.[73] Pharmacists are reimbursed for their services by filing and billing through a specific form at the Centers for Medicare

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65. Steve Lundeberg, *Prescriptions written by pharmacists reducing risk of unwanted pregnancies*, OR. STATE UNIV. (May 23, 2019), https://news.oregonstate.edu/news/prescriptions-written-pharmacists-reducing-risk-unwanted-pregnancies#:~:text=The%20study%20suggests%20that%20in,million%20in%20associated%20taxpayer%20costs [https://perma.cc/M33Y-G829].

66. Fran Kritz, *Pharmacists Can Now Prescribe Birth Control, But Few Do*, CAL. HEALTH REP. (Feb. 15, 2019), https://www.calhealthreport.org/2019/02/15/pharmacists-can-now-prescribe-birth-control-but-few-do-%EF%BB%BF/ [https://perma.cc/T7DU-ENDK].

67. *Id.*

68. *Id.*

69. *Id.*

70. Gelareh Nikpour et. al, *Pharmacy Implementation of a New Law Allowing Year-Long Hormonal Contraception Supplies*, 8 PHARMACY 165, 171 (2020) (available at https://www.mdpi.com/2226-4787/8/3/165 [https://perma.cc/ST5B-LVMM]).

71. *Id.*

72. Jones, *supra* note 19.

73. *Id.*

and Medicaid Services.[74] This method is similar to what Indiana pharmacists might currently use for reimbursement for other services.

Other states have diverse ways of compensating pharmacists as well. New Mexico has incentivized pharmacists to prescribe birth control by reimbursing pharmacists at the same rate as other health care providers.[75] In Hawaii, some Hawaiian insurers have special billing codes for pharmacists, and the pharmacists are reimbursed for any of their services that promote contraceptive use.[76] Reimbursing pharmacists at the state rate as other health care provider would perhaps being the greatest incentive for pharmacists to prescribe birth control because it would result in a higher reimbursement amount.

F. Importance of Increasing Access for Young Women and Low-Income Groups

By 2014, the Affordable Care Act eliminated cost-sharing for most women who had commercial insurance, resulting in an increased use of prescription contraceptives.[77] Under the Affordable Care Act, women can avoid copay or out-of-pocket costs for their birth control prescription through most employer health insurance plans, private insurers, or states' marketplace plans if they have had a valid prescription for FDA-approved birth control.[78] Eliminating the cost-sharing for birth control was related to "more consistent contraceptive use and a decrease in birth rates among all income groups," with the lowest income group experiencing the most dramatic decline in births.[79] The lowest income group saw a 22% decline of births.[80] However, those with insurance from private employers may not have received coverage because private employers have the option to not provide birth control coverage on moral or religious grounds.[81] For those individuals who have insurance plans that do not cover birth control, it is important that prescription costs remain low so they can still receive the medication that they need.

Encouraging pharmacy providers to provide services that give immediate

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74. *Id.*

75. *Id.*

76. *Id.*

77. Vaness K. Dalton et al., *Trends in Birth Rates After Elimination of Cost Sharing for Contraception by the Patient Protection and Affordable Care Act*, 3 JAMA NETWORK, Nov. 6, 2020, at 1, 2 https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2772565 [https://perma.cc/SSP2-UPLY].

78. Stephanie Watson, *Birth Control Coverage: FAQ*, WEBMD, https://www.webmd.com/health-insurance/aca-birth-control-coverage-faq [https://perma.cc/AQ9E-R5UG] (last updated Sept. 17, 2022).

79. Beata Mostafavi, *Expanded Birth Control Coverage May Help Reduce Disparities in Unplanned Pregnancies*, MICH. MED. (Nov. 6, 2020, 11:00 AM), https://www.michiganmedicine.org/health-lab/expanded-birth-control-coverage-may-help-reduce-disparities-unplanned-pregnancies [https://perma.cc/6Y8C-L5AU]; *see* Dalton et al., *supra* note 77.

80. Mostafavi, *supra* note 79; *see* Dalton, et al., *supra* note 77.

81. Watson, *supra* note 78.

access to contraception options will help increase contraception access.[82] Giving pharmacists the ability to prescribe birth control is especially important for young adults still seeing a pediatrician because many pediatricians do not feel comfortable prescribing contraception.[83] Among teens who are currently sexually active, only 33% used effective hormonal birth control, and only 52% of teens used a condom the last time they had sexual intercourse.[84] Black, Asian, and Hispanic teens were significantly less likely to use effective birth control than White teens.[85] Teen birth rates are currently at their lowest, but there were still over 145,000 infants born to teenagers in 2021.[86] Allowing these young women to receive contraceptives at a pharmacy gives them access and the ability to receive contraceptives at the same place and day, especially in areas with physician deserts. Same-day services that pharmacists can provide are especially important due to complications of "transportation, confidentiality, and school absences."[87]

Additionally, confidentially breaches may occur through billing and insurance claims, which could have dangerous consequences for young adults who are still on their parents' insurance plans.[88] Billing and insurance claims are intended to prevent fraud, but they also notify the policyholders of the services that were provided under health insurance plans.[89] Young adults can stay on their parents' insurance plans until they reach age twenty-six.[90] These young adults may fear getting birth control prescriptions because they are afraid that billing information may be displayed to their parents.[91] Being able to receive their prescription from a pharmacist may help young women over age eighteen use their discretion to make the choice that best fits their needs without having to disclose their private health information to their parents.

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82. Sara Green, *In a Post-Roe World, Access to Contraception is Critical for Adolescents*, CHILD'S. HOSP. PHILA. (Oct. 31, 2022), https://policylab.chop.edu/blog/post-roe-world-access-contraception-critical-adolescents [https://perma.cc/S87Z-JQNG].

83. *Id.*

84. YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT: 2011–2021, CDC 11 (2021) (available at https://www.cdc.gov/healthyyouth/data/yrbs/pdf/yrbs_data-summary-trends_report2023_508.pdf [https://perma.cc/HXN7-DUTJ]).

85. *Id.* at 21.

86. *Id.* at 11.

87. Green, *supra* note 82.

88. Gale R. Burstein et al., *Confidentiality Protections for Adolescents and Young Adults in the Health Care Billing and Insurance Claims Process*, 58 J. ADOLESCENT HEALTH, 374, 375–76 (2016).

89. *Id.* at 375.

90. *Id.* at 376.

91. *Id.*

G. Pharmacists' Concerns

Although 79.1% of pharmacy preceptors surveyed from the two Indiana pharmaceutical schools, Butler University and Purdue University, expressed an interest in providing contraceptive services, only 35.6% felt they currently had the resources to prescribe contraceptives.[92] These numbers are similar to the 46% of Oregon pharmacists who did not prescribe birth control, indicating that pharmacists' amount of training could be an indicator of those who elect to take on the services.[93] Pharmacists could also be potentially limited by their employer and what services they are allowed to provide. Pharmacists may also have liability concerns with prescribing contraceptives.[94] Of the pharmacist preceptors in Indiana who said they did not have an interest in prescribing contraceptives, 80.7% were concerned with potential liability risks.[95] It is important that these concerns of pharmacists are addressed; otherwise, Indiana pharmacists may not be willing to prescribe birth control.

H. What Retailers Are Prescribing Birth Control

Of the ten largest retail pharmacies in the United States, only five allow pharmacists to prescribe birth control: CVS Pharmacy, Good Neighbor Pharmacy, Rite Aid, Safeway Pharmacy, and Albertsons.[96] Whether the pharmacist can prescribe birth control does vary depending on the retailer's location.[97]

Some retailers allow walk-in consultations, while other may require an

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92. Jenny L. Newlon et al., *Pharmacists' Perceptions, Barriers, and Potential Solutions to Implementing a Direct Pharmacy Access Policy in Indiana*, 78 MED. CARE RES. REV. 789, 789 (2020).

93. Jones, *supra* note 19.

94. Newlon et al., *supra* note 92, at 792.

95. *Id.*

96. *10 Largest Pharmacies in the United States in 2023*, SCRAPEHERO, https://www.scrapehero.com/location-reports/10-largest-pharmacies-in-the-usa/#:~:text=CVS%20Pharmacy%2C%20Walgreens%20and%20Health,4%2C688%20locations%20in%20the%20US [https://perma.cc/ND65-CKTY] (last visited Feb. 1, 2024).

97. *See generally Birth Control in your Control*, CVS, https://www.cvs.com/content/pharmacy/womens-health [https://perma.cc/CL9A-GZ7L] (last visited Feb. 1, 2024) [hereinafter CVS]; *Birth Control, Your Way*, RITEAID, https://www.riteaid.com/pharmacy/services/birth-control [https://perma.cc/L8M8-D444] (last visited Feb. 1, 2024) [hereinafter RITEAID] ; Michael Johnson, *Albertsons First to Bill Oregon Medicaid for Birth Control Consult*, DRUG STORE NEWS, https://drugstorenews.com/pharmacy/albertsons-first-bill-oregon-medicaid-birth-control-consult [https://perma.cc/6NA5-37AR] (last visited Feb. 1, 2024) [hereinafter *Albertsons*]; *Store News & Updates*, GOOD NEIGHBOR PHARMACY, https://www.mygnp.com/pharmacies/munsey-pharmacy-oak-ridge-tn-37830/news/appointments-available-to-book-online/ [https://perma.cc/G35Y-79MB] (last visited Feb. 1, 2024) [hereinafter GOOD NEIGHBOR PHARMACY]; *Our Pharmacists can Prescribe Select Medications*, SAFEWAY, https://www.safeway.com/pharmacy/care-services/pharmacist-prescribing-services.html#:~:text=VA%20and%20VT.-,Birth%20control,%2C%20UT%2C%20VA%20and%20VT [https://perma.cc/94FL-NKWD] (last visited Feb. 1, 2024) [hereinafter SAFEWAY].

appointment.[98] The process to schedule an appointment can take place online or by using a cell phone.[99] Both options allowed a woman needing birth control to see a pharmacist on the same day.[100]

Depending on your insurance coverage, CVS offers the ability to "consult with a pharmacist who can recommend and prescribe a birth control best for your goals for $39."[101] CVS pharmacies that are located in Indiana do not currently offer this service, but CVS pharmacies do offer it in ten other states.[102] This option allows women the ability to continue their birth control subscriptions if they forget their medication on vacation.[103] It also allows women to continue their medication without having to wait weeks or months to schedule an appointment with a physician.[104] This is especially important if a woman has recently moved or is trying to find a new physician.

Purdue University Pharmacy was one of the first pharmacies in Indiana that prescribed birth control.[105] In March 2024, the consultation for a fee for this service was $45, which does not include the cost of the actual prescription.[106] However, Indiana Code section 25-26-25 does not currently include any type of reimbursement plan nor does it include any guidance on how pharmacists should bill for their services.[107] To effectively increase the availability of contraceptives, Indiana will need to provide pharmacists with incentives to perform the additional services. Specific concerns that pharmacists may have prescribing birth control prescriptions need to be addressed as well.

III. ANALYSIS

A. Pharmacists Need Financial Incentives to Prescribe Birth Control

Pharmacists who elect to prescribe contraceptives take on an entirely new job duty. Pharmacists would no longer be filling a prescription authorized by a physician, but instead, they would now be prescribing the medication themselves. The pharmacists would be giving women clinical approval to a medication that may come with many side effects. This is an additional duty that a pharmacist would be adding to their already potentially busy schedule.

Pharmacists' most basic responsibilities are ensuring that the medications patients receive meet quality standards and advising patients on how to take

98. *See* sources cited *supra* note 97.
99. *See id.*
100. *See id.*
101. *See* CVS, *supra* note 97.
102. *See id.*
103. *See id.*
104. *See id.*
105. *Clinical Services*, PURDUE UNIV., https://www.purdue.edu/rx/services/index.php [https://perma.cc/CP7B-HLK3] (last visited Mar. 3, 2024).
106. *Id.*
107. *See generally* IND. CODE § 25-26-25 (2024).

their medication.[108] Depending on the pharmacist's employer, a pharmacist may have other duties as well.[109] Pharmacists have to oversee the medication supply chain, ensure that the medications administered are safely distributed, manage medication production, evaluate the medicine quality, and make recommendations on medicine available for sale.[110] Additionally, pharmacists may be responsible for "provid[ing] services to patients, such as smoking cessation, blood pressure measurement, and cholesterol management."[111] Asking pharmacists to prescribe birth control is adding another task to the pharmacists' to-do list. Furthermore, there is a pharmacist shortage throughout the United States.[112] The number of pharmacy graduates decreased from 14,223 in 2021 to 13,323 in 2022.[113] This is a 6.3% decrease, which is the largest decrease in pharmacy graduates since 1983.[114] Perhaps even more concerning is that the Pharmacy College Application Service accepted only 9,743 students by the 2023 deadline. This would be almost a 31.5% decrease from 2021.[115] This shows that there could be a shortage of pharmacists in the future. The pharmacists may not be pressed to take on additional tasks that are not currently expected of them.

For this new service to be financially sustainable, pharmacists must be reimbursed for this new service that they are providing.[116] Since Indiana pharmacists are not deemed to be providers under collaborative practice agreements, they cannot bill directly for any patient care service that they provide.[117] This means that pharmacists could not bill directly for any consultations that they had with patients before prescribing birth control or any time that it took to evaluate the patient's pre-screening questionnaires. To be eligible for reimbursement of their services through insurance, the pharmacists would need to be working "under a statewide protocol or autonomous prescriptive authority."[118] This is why changes must be made regarding how pharmacists can bill for their services; otherwise, they have no monetary

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108. *What Does a Pharmacist Do?*, GEN. PHARM. COUNCIL, https://www.pharmacyregulation.org/raising-concerns/raising-concerns-about-pharmacy-professional/what-expect-your-pharmacy/what-does-0 [https://perma.cc/W22J-5XQZ] (last visited Feb. 1, 2024).

109. *Id.*

110. *Id.*

111. *Id.*

112. Shawn Spencer, *The Pharmacist Shortage: A Tipping Point in Healthcare*, PCOM (Nov. 15, 2023), https://www.pcom.edu/academics/programs-and-degrees/doctor-of-pharmacy/school-of-pharmacy/blog/the-pharmacist-shortage.html [https://perma.cc/7CMS-CLU6].

113. *Id.*

114. *Id.* (The percentage decrease was calculated by subtracting the number of graduates from the previous year from the current number, dividing the result by the number of graduates from the previous year, and multiplying by 100).

115. Percentage of decrease was calculated by taking the current number of graduates minus the number of graduates from the previous year and then dividing that sum by the graduates from the previous year and multiplying by 100.

116. Newlon et al., *supra* note 92, at 795.

117. *Id.*

118. *Id.*

incentive for taking the additional time to prescribe birth control.

Pharmacists are now typically reimbursed for the prescription drug they dispense, typically known as a dispensing fee.[119] This means that pharmacists are billing under a pharmacy benefit instead of a medical benefit.[120] Therefore, pharmacists must bill as a medical provider to receive compensation for their time prescribing the contraceptive.[121] To bill as a medical provider, pharmacists must be "enrolled[ed] in Medicaid; be credentialed by, and contract with, health insurance plans (including commercial and Medicaid plans, where applicable); submit medical claims; and use medical coding practices."[122]

Prescribing contraceptives requires additional accommodations that pharmacies do not currently have.[123] Pharmacy preceptors surveyed at Butler University and Purdue University agreed that for pharmacists to prescribe contraceptives, pharmacists would need not only insurance reimbursement, but also more training, possibly a room for private counseling, and perhaps most importantly, more time.[124] Due to the added burden and time this would place on pharmacists, an adequate reimbursement plan is essential because, without one, it is unlikely that pharmacists would be willing to provide an additional service.

Possible implementation methods that could be used to reimburse pharmacists can be viewed by looking at other states' protocols. As previously stated, New Mexico reimburses pharmacists at the exact rate that a physician could use when billing for those same services.[125] If Indiana were to implement this same reimbursement rate, then pharmacists could be adequately compensated for their services. Currently, Indiana does not require pharmacists to conduct an appointment with patients before prescribing birth control.[126] However, the pharmacists who opted to conduct an appointment could be able to bill at the same rate as a physician by following New Mexico's reimbursement policy.[127] To accomplish this, Indiana pharmacists would need to be considered physicians under a collaborative practice agreement.

This would be a reasonable solution because pharmacists may, in fact, provide just as much, if not more, screening preventatives than a physician. This is especially true for physician appointments that take place via Telehealth. The physicians who perform visits via Telehealth are permitted to prescribe

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119. Allison Orris et al., *Implementing Pharmacist Contraceptive Prescribing: A Playbook for States and Stakeholders*, MANATT 1, 18 (Jan. 2021), https://www.manatt.com/Manatt/media/Documents/Articles/Implementing-Pharmacist-Contraceptive-Prescribing_v3.pdf [https://perma.cc/TQ7R-2UL9].

120. *Id*.

121. *Id*.

122. *Id*.

123. Newlon et al., *supra* note 92, at 795.

124. *Id.*

125. Jones, *supra* note 19.

126. *See* IND. CODE § 25-26-25-7 (2024).

127. *See* Jones, *supra* note 19.

medications without seeing the patient, and therefore, the other preventative screening recommended by a gynecologist would not take place either.[128] Telehealth visits may take place through "secured videoconferencing," "store-and-forward technology," and "remote patient monitoring technology."[129] The physician is not required to conduct an in-person appointment with the patient before they prescribe the medication.[130] Pharmacists would at least be able to check a patient's blood pressure, which is something that could not be conducted through a telehealth appointment since telehealth appointments take place electronically.

In today's world of growing telehealth appointments, there are services where physicians can prescribe contraceptives to their patients without ever seeing the patient face-to-face. Therefore, even if a pharmacist did not choose to have an initial consultation with a patient, this would be like the services that healthcare providers already use. Thus, it would be understandable that pharmacists could be reimbursed at an identical rate.

Another possible method of reimbursement would be for pharmacists to have special billing codes that coincide with the services of prescribing birth control.[131] States, such as Maryland and Hawaii, have taken on this method.[132] In Maryland, pharmacists who are Medicaid providers may bill Maryland Medicaid when they conduct Maryland's required patient assessment before prescribing birth control.[133] Pharmacists use different billing codes depending on whether the patient is new or already established.[134] Hawaii also uses similar billing codes for new or established patients.[135] Pharmacists bill more for new patients since it is expected that the assessment will take more time to complete.[136] A research study in Oregon estimated that it would take pharmacists approximately fifteen to twenty minutes to complete a patient assessment.[137] Pharmacists then required an additional five to eight minutes to fill and issue the prescription to the patient.[138]

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128. IND. CODE § 25-1-9.5-8 (2024).

129. TELEHEALTH AND VIRTUAL SERVICES, IND. HEALTH COVERAGE PROGRAMS PROVIDER REFERENCE MODULE 1 (2022) (available at https://www.in.gov/medicaid/providers/files/modules/telehealth-and-virtual-services.pdf [https://perma.cc/Q383-YVNW]); *see also* IND. CODE § 25-1-9.5-6 (2024).

130. JOSH ARCHAMBAULT & VITTORIO NASTASI, RATING THE STATES ON TELEHEALTH BEST PRACTICES: A TOOLKIT FOR A PRO-PATIENT AND PROVIDER LANDSCAPE 5 (2022) (available at https://reason.org/wp-content/uploads/rating-states-on-telehealth-best-practices.pdf [https://perma.cc/ZR2V-YHT6]).

131. Jones, *supra* note 19.

132. *Id.*

133. Orris, et al., *supra* note 119.

134. *Id.*

135. *Id.*

136. *Id.*

137.*Id.*; *see* Timothy P. Frost, et al., *Time and Motion Study of Pharmacist Prescribing of Oral Hormonal Contraceptive in Oregon Community Pharmacies*, 59 J. AM. PHARM. ASSOC. 222, 222–27 (2019).

138. Frost, *supra* note 137, at 225.

Depending on the state, certain services relating to prescribing contraceptives may or may not be reimbursed.[139] The difference in reimbursement opportunities could determine what services pharmacists are able and willing to render in each state.[140] Educating pharmacists on the proper billing codes to issue is another training aspect that would also be needed for pharmacists.[141] Without certain state standards set in place, insurance providers may not reimburse pharmacists for their services, and reimbursing pharmacists is critical.[142] Although pharmacists already perform similar tasks, if a pharmacist decides to prescribe birth control, they are taking on another responsibility and cannot be expected to do that without a financial benefit.

If pharmacists did not have a reimbursement method offered by the state, pharmacists could potentially charge consumers directly for their services.[143] Pharmacists would charge customers for the service of prescribing the contraceptive while also claiming reimbursement for the contraceptive.[144] This method, however, may be ineffective for serving women of low income because it could restrain access.[145] Women of lower income may not likely be able to afford the cost and thus would be unable to take advantage of the service.

States could also increase Medicaid dispensing fees for birth control to cover the additional services that pharmacists are providing.[146] Medicaid dispensing fees range between $9 to $12 for each prescription, depending on the state.[147] Illinois increased the dispensing fee for certain birth control methods to $35 in 2014 with the goal of improving access to contraceptives.[148] However, this method could also negatively impact low-income persons for the same reason if pharmacists directly charged their customers.[149] This may be more effective if Indiana could require all other insurance payers to raise fees, but the state only has control in raising the fees for Medicaid patients. This method would likely not be as effective because there is a wide variety of other insurance payers.

Of these available reimbursement methods, reimbursing pharmacists as a provider would be the most effective. Pharmacists are providing the same services that a physician would provide. Pharmacists would be taking the time to discuss with each patient and review their medical history before prescribing the medication. This is like if the patient was receiving care from a physician. The billing codes that could be utilized by physicians could also be the same to

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139. Jones, *supra* note 19.
140. *Id.*
141. *Id.*
142. Spencer, *supra* note 112.
143. Orris, et al., *supra* note 119, at 9.
144. *Id.*
145. *Id.* at 7.
146.*Id.* at 19.
147. *Id.*
148. *Id.* at 9.
149. *See generally id.* at 19.

ensure proper reimbursement. This would also help provide pharmacists with the financial incentive that they would need to provide another service to their patients. If pharmacists are not reimbursed adequately, then their likelihood of wanting to provide these services would probably decrease.

B. Addressing the Concerns That a Patient May No Longer Receive Necessary Screenings

To combat any concerns that patients may no longer attend their yearly screenings, Indiana Code section 25-26-25-5, says that pharmacists can only issue the prescription to a patient for a year.[150] Then, the patient must meet with their physician before the pharmacists can prescribe birth control to them again.[151] There may be possible ways that patients would try to avoid seeing a physician, which could include visiting multiple pharmacists to avoid an annual exam. However, pharmacies, including larger retail pharmacies, keep detailed records of what medications patients have currently been prescribed.[152] This would mean that a patient would not be able to go from one pharmacy to another to get their prescription refilled. Instead, the patient would have to seek out a different pharmacist from another retailer in their area.

One of the concerns with allowing pharmacists to prescribe birth control is that women would not receive their original preventative screenings.[153] However, the American College of Obstetrician and Gynecologist Committee has deemed that "[p]elvic and breast examinations, cervical cancer screening, and sexually transmitted infection screening are not required before initiating hormonal contraception and should not be used as reasons to deny access to hormonal contraception."[154] Women twenty-one to twenty-nine years old are now only recommended to receive a Pap test once every three years with their physicians.[155] This has decreased the time between Pap tests, which used to be

150. IND. CODE § 25-26-25-5 (2024).

151. *Id*.

152. *See generally*, CVS, *View Prescription History*, https://www.cvs.com/retail/help/help-subtopic-view-print-prescription-history#:~:text=Just%20sign%20in%20to%20your,also%20can%20print%20prescription%20records [https://perma.cc/7CD5-B8ZN] (last visited Mar. 10, 2024).

153. Chim & Sharma, *supra* note 19, at 48.

154. *Over-the-Counter Access to Hormonal Contraception: Committee Opinion 788*, AM. COLL. OBSTETRICIAN & GYNECOLOGISTS, (Oct. 2019, reaffirmed 2021), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2019/10/over-the-counter-access-to-hormonal-contraception [https://perma.cc/BCD6-6Z79] [Hereinafter AM. COLL.].

155. *Get Screened for Cervical Cancer*, OFF. DISEASE PREVENTION & HEALTH PROMOTION, https://health.gov/myhealthfinder/doctor-visits/screening-tests/get-screened-cervical-cancer#:~:text=If%20you're%20age%2021,years%20with%20an%20HPV%20test [https://perma.cc/GKC8-7SMR] (last updated Mar. 10, 2024).

one year.[156] Pap tests "mainly check for changes that may turn into cervical cancer."[157] Sticking to a recommended testing schedule helps prevent most cervical cancers.[158] Although it is still recommended that patients see a gynecologist each year to check to talk about potential problems with pelvic pain, abnormal bleeding, or breast exams since Indiana pharmacists can only issue a prescription for up to six months, this would only push back a regularly scheduled appointment by six months.[159] Therefore, waiting an additional six months would likely not significantly delay any recommended screening.

C. Addressing Pharmacists' Liability Concerns When Prescribing Medications

States vary on what type of birth control they allow pharmacists to prescribe.[160] Some states allow all current forms of birth control, while some states only allow pharmacists to prescribe self-administered contraceptives.[161] Indiana pharmacists are only able to prescribe self-administered contraceptive, which gives Indiana pharmacists less liability compared to pharmacists in other states. Indiana pharmacists were most comfortable prescribing contraceptives in the form of a combined oral pill, progestin-only oral pill, and a transdermal patch.[162] These are the forms of contraceptives allowed by the Indiana statute.[163] The Indiana statute is stricter than other states' statutes in relationship to the age requirement and the fact that pharmacists can only prescribe contraceptives for a year before patients have to see a primary care physician.[164]

Although these protocols may make contraceptives less accessible to women in Indiana compared to women in other states, the statute does help limit pharmacists' liability because they cannot prescribe them to minors. It also helps ensure that any dangerous side effects that a pharmacist may not notice may be recognized by a physician before a woman is on the prescription for too long.

Pharmacists may worry that Indiana Code section 25-26-25 does not require pharmacists to perform consultations with the patient. This does give pharmacists broad discretion, and pharmacists may wonder if the pre-risk assessment is enough to evaluate if someone should be prescribed contraceptives. However, the risk assessment typically includes questions that

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156. David Mutch, *Why Annual Pap Smears are History—But Routine Ob-Gyn Visits Are Not*, AM. COLL. OBSTETRICIAN & GYNECOLOGISTS, https://www.acog.org/womens-health/experts-and-stories/the-latest/why-annual-pap-smears-are-history-but-routine-ob-gyn-visits-are-not [https://perma.cc/7TYY-U6QW] (last updated Apr. 2021).

157. *Pap Test*, MEDLINE PLUS, https://medlineplus.gov/ency/article/003911.htm [https://perma.cc/PT5D-DW6F] (last updated Jan. 1, 2023).

158. *Id*.

159. Mutch, *supra* note 156.

160. Chim & Sharma, *supra* note 19, at 46–47.

161. *Id.*

162. Newlon et al., *supra* note 92, at 792.

163. IND. CODE § 25-26-25-4 (2024).

164. *See id* § 5.

meet the CDC's U.S. Medical Eligibility Criteria for contraceptive use.[165] Additional services may be needed depending on the patient's medical history and the type of contraceptive prescribed.[166] For example, if the specific contraceptive prescribed is not safe for those with high blood pressure and the patient has hypertension, then the pharmacist may need to perform a blood pressure check.[167] The pharmacist would refer the woman to a physician if there were any indications that the hormonal contraceptive might be ineffective or unsafe for the patient.[168] The pharmacist would not need to prescribe birth control if it could place the patient at risk.[169]

On July 13, 2023, the FDA approved over-the-counter progestin-only oral contraceptives.[170] Before the FDA approves a medication in a nonprescription setting, it must be shown that the consumers can take medication without the help of a healthcare professional.[171] This shows that the FDA believes that certain birth control medications do not need to be prescribed by your standard physician. The fact that the FDA believes that a physician's prescription is not necessary for birth control helps emphasize the fact that pharmacists—a different kind of healthcare professional—are more than capable of safely prescribing birth control.

The FDA approval helps increase women's availability to contraception access, but it does render the pharmacists' service of prescribing birth control obsolete. The FDA has only approved over-the-counter contraceptives in one form, the Opill, a norgestrel tablet.[172] There are many different types of contraceptive options available to women. A pharmacist can help determine the type of contraceptive that is best for each individual. If the woman opts for the contraceptive in pill form, the pharmacist can also determine what type of pill would best meet her needs. This is more indicative of what would occur if the woman was seeking a contraceptive prescription from a physician.

Additionally, the cost and timeline for over-the-counter contraceptives would be determined by the manufacturer. There is no cover date when Opill would be available to consumers, and currently, there is no guarantee the contraceptives would be available at an affordable cost.[173] Therefore, giving pharmacists the ability to prescribe birth control remains a crucial factor to ensuring women have access to contraceptives.

Pharmacists and physicians need to understand that allowing pharmacists to

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165. Chim & Sharma, *supra* note 19, at 46–47.

166. *Id.* at 47–48.

167. *Id.* at 48.

168. *Id.*

169. *Id.*

170. *FDA Approves First Nonprescription Daily Oral Contraceptive*, U.S. FOOD & DRUG ADMIN. (July 13, 2023), https://www.fda.gov/news-events/press-announcements/fda-approves-first-nonprescription-daily-oral-contraceptive [https://perma.cc/ZJ2N-R3U2].

171. *Id.*

172. *Id.*

173. *Id.*

prescribe birth control would not replace the physician's traditional duties but would instead be a way to assist physicians. The Indiana Court of Appeals has recognized that a "recognition of a duty on the part of the pharmacists will not replace the physician's obligation to evaluate a patient's needs."[174] Pharmacists and physicians have a legal duty to work together to serve the best interest of their patients.[175] Pharmacists are already required to warn patients about the side effects of prescription medication when they dispense them which requires the pharmacist to possess "knowledge of the nature of the drug" and have knowledge of the patient's medical history.[176] Prescribing birth control medication is a new step for pharmacists because they are now making recommendations for the patients, but it is not completely out of the pharmacists' wheelhouse.

D. Other Concerns Relating to Women Not Visiting Physician

Numerous studies have shown that women can effectively use self-screening tools when determining if a certain medication is safe for them to use.[177] These questionnaires can help identify medical conditionals that a woman may have that might make it unsafe for them to be on birth control.[178] The Indiana preliminary draft for screening questions about control includes questions about their past history with birth control methods and questions about specific medical conditions and symptoms.[179] The questionnaire questions the woman on whether she has had or is planning to have surgery in the near future, and asks multiple questions about whether the patient has had blood clots.[180] Lastly, the questionnaire asks patients what their specific goals are by going on birth control.[181] This is especially important because not all women want to go on birth control to prevent pregnancies and there could be other forms of medication to best meet their needs. It also helps pharmacists identify which type of birth control may best fit the patients' needs. Specific questions on the questionnaires provides pharmacists more insurance that the patient has not forgotten critical information, and it encourages the patient to list information that the patient may not have originally deemed relevant to receiving a contraceptive prescription.

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174. Kolozsvari v. Doe, 943 N.E.2d 823, 827 (Ind. Ct. App. 2011).

175. Hooks SuperX, Inc. v. McLaughlin, 642 N.E.2d 514, 519 (Ind. 1994).

176. 856 IND. ADMIN. CODE 1-23-1 (2024); *see also* Ingram v. Hook's Drugs, Inc., 476 N.E.2d 881, 885 (Ind. Ct. App. 1985).

177. AM. COLL., *supra* note 154.

178. *See generally id.*

179. *Screening Questions for Birth Control*, IND. DEP'T HEALTH 1, 1, https://www.in.gov/health/files/Dr.-Weaver-Statewide-Standing-Order-for-Administration-of-Hormonal-Contraceptives-CSO-23-11-Appendix-C_September-1-2023.pdf [https://perma.cc/X95A-278J] (last visited Mar. 10, 2024).

180. *Id.*

181. *Id.* at 2.

Other possible concerns are that pharmacists may not receive thorough documentation of a patient's medical history because they only have the information that the patient chooses to disclose.[182] Patients may choose not to disclose all the medical documentation, or they may be unaware of all of their "underlying medical conditions."[183] However, it is important to note that this is an issue that physicians may face as well. There are some negative side effects that occur when taking contraceptives, such as "nausea, headaches, irritability or moodiness, breast [] tenderness or swelling, or abnormal menstruation."[184] Those side effects, along with "[a]n increased risk of blood-clotting problems, heart attack, stroke, liver cancer, gallbladder disease, and high blood pressure" and "skin irritation…weight gain, dizziness, acne, diarrhea, muscle spasm, vaginal infections and discharge, fatigue, and fluid retention" could occur from the birth control patch.[185] These effects could be exasperated depending on a patient's medical conditions, which is why knowing the patient's medical history is crucial.[186] This is why the screening questionnaires that pharmacists would have patients use would be a crucial part of the process of describing birth control.

Physicians have unique concerns about pharmacist prescribing birth control. Healthcare providers expressed certain concerns about over-the-counter birth control which included a "potential decrease in preventive screenings, changes to the patient-provider relationship" and decrease in patients and revenue.[187] Although these concerns may be valid, since pharmacists cannot prescribe birth control to a patient for more than a year without the patient seeing a physician, physicians would still be able to maintain a patient-relationship with women that receive their initial birth control prescription for a pharmacist.

IV. TRAINING PHARMACISTS NEED TO HELP ADDRESS THEIR LIABILITY CONCERNS

There is a "home study training program" available to pharmacists for $150 that is a "[l]ecture presentation with interactive questions and clinical case applications."[188] This course is accepted by the Indiana Board of Pharmacy and meets the required training allowing pharmacists to prescribe birth control.[189] After completing the course, pharmacists should be able to:

182. *See generally* Chim & Sharma, *supra* note 19, at 48.
183. *Id.*
184. *Birth Control Pills*, *supra* note 13.
185. *Birth Control Patch*, *supra* note 15.
186. Chim & Sharma, *supra* note 19, at 180.
187. AM. COLL., *supra* note 154.
188. *Indiana Pharmacist Contraception Services Training Program*, BIRTH CONTROL PHARMACIST, https://birthcontrolpharmacist.com/training/in/ [https://perma.cc/VDN6-9XFU] (last visited Feb. 4, 2024).
189. *Id.*

> (1) Discuss the impact of barriers to contraceptive use. (2) Describe pharmacist procedures for contraception services. (3) Identify appropriate screening assessments for the various methods of contraception. (4) Apply the medical eligibility criteria for contraceptive use to individual patients. (5) Provide accurate patient counseling about the mechanism, effectiveness, benefits, risks, and instructions for use for contraception methods. (6) Assist patients in selecting method(s) of contraception. (7) Manage side effects and refer for further evaluation when appropriate. (8) Implement contraception prescribing in a pharmacy practice setting.[190]

This course would provide pharmacists with more knowledge about prescribing hormonal contraception and would hopefully make them feel more comfortable offering this additional service.

A. Publicity Matters: The Public Needs to Be Informed Regarding the New Legislation So That Women Benefit

Information about the new Indiana statute needs to be publicized to ensure that women are aware that contraceptives are now more readily accessible. Additionally, Physicians should be educating their patients on the importance of continued use of their prescriptions. Physicians can notify their female patients of what could occur if they quit taking their contraceptives when they are in between prescriptions. If a physician knows they will not be able to refill a prescription via appointment in time, they could notify their patient that the prescription could be prescribed by a pharmacist to prevent any disruptions in receiving medication.

Indiana Code section 25-26-25 will allow pharmacists to prescribe access to younger women who may have situational barriers that prevent them from being able to see a physician. It could also help prevent women from obtaining additional and unneeded medical costs that may come from visiting a physician. This is especially true when women lack health insurance coverage. In Indiana, 9.4% of women ages fifteen to forty-four do not have any insurance at all.[191] Allowing pharmacists to prescribe birth control can help cover the gaps when patients may not be able to see a physician due to financial or other constraints.

Further, 65.25% of all abortions occurred between females ages eighteen to twenty-nine in Indiana in 2022.[192] Some of these young women may still be on their parent's health insurance and may be afraid that the policyholder would be

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190. *Id.*

191. *Maternity Care Desert*, MARCH DIMES, https://www.marchofdimes.org/peristats/data?reg=18&top=23&stop=643&lev=1&slev=4&obj=9&sreg=18 [https://perma.cc/X45T-PDTX] (last updated Dec. 2023).

192. LINDSAY M. WEAVER ET AL., DIV. VITAL RECS. 2022 TERMINATED PREGNANCY REP. 12 (2023) (available at https://www.in.gov/health/vital-records/files/2022-TPR-Annual.pdf [https://perma.cc/WT9B-BAY5]).

able to see whether they were on contraceptives.[193] Providing these women with knowledge about family planning and access to contraceptives is critical to ensure they can make the best choice for their future. This is another reason to ensure that these age groups are aware of the new way they could obtain contraceptives.

Nearly "45% of all pregnancies are unintended."[194] There are two different types of unintended pregnancies, which include those that are "mistimed and unwanted."[195] Unplanned pregnancies, regardless of whether they are unintended or unwanted, can be detrimental to the health of the mother and the child.[196] These numbers are important because "[u]nintended pregnancies have been linked to negative maternal and perinatal outcomes, including reduced likelihood of receiving early prenatal care and increased risk of preterm delivery, with associated adverse neonatal, developmental and child health outcomes."[197] Mistimed birth resulted in "an estimated $5 billion per year in direct and indirect costs for the U.S. health care system."[198]

Unwanted pregnancies can be even more problematic. They are often associated with maternal depression, which can influence a child's early development.[199] Children from unwanted pregnancies are more likely to suffer from domestic violence.[200] They also may be more likely to witness "parental intimate partner violence" and experience conduct and attention problems.[201]

By increasing access to contraceptives, the risk of unwanted pregnancies in Indiana can also be reduced. Medicaid pays for more than half of the pregnancies and deliveries in Indiana.[202] Indiana State Representative, Rita Fleming, a physician, estimated that "reducing unintended pregnancies and births by even 10% through improved access to long-acting reversible contraception would save [the State] $86 million a year."[203] Although this estimate is for a different kind of contraception not related to what pharmacists can prescribe, it shows the impact that access to contraception can provide. Additionally, by "averting unintended pregnancies and other negative

193. Burstein, *supra* note 88, at 376.

194. Chim & Sharma, *supra* note 19; *see also* Newlon et al., *supra* note 88.

195. Valeryia Pratasava, *Unwanted Pregnancies: Outcomes for Children*, DREXEL UNIV. COLL. MED. (Feb. 18, 2022), https://drexel.edu/medicine/academics/womens-health-and-leadership/womens-health-education-program/whep-blog/unwanted-pregnancies-outcomes-for-children/#:~:text=The%20stress%20associated%20with%20unintended,cognitive%2C%20motor%20and%20emotional%20development [https://perma.cc/5EE3-WKDV].

196. Mostafavi, *supra* note 79.

197. U.S. FOOD & DRUG ADMIN., *supra* note 164.

198. Mostafavi, *supra* note 79.

199. Pratasava, *supra* note 195.

200. *Id.*

201. *Id.*

202. Dan Carden, *Indiana House Approves Plan to Reduce Unintended Pregnancies*, TIMES N.W. IND. (Feb. 20, 2024), https://www.nwitimes.com/news/state-regional/government-politics/unintended-pregnancies-contraceptive-implant-medicaid/article_1e67d824-cf40-11ee-b688-0b9497e5799b.html [https://perma.cc/NP8C-ADXL].

203. *Id.*

reproductive health outcomes, publicly funded family planning services…in Indiana helped save the federal and state government $140.3 million in 2010."[204] These services show just how impactful increasing access to contraceptives could be for Indiana.

State regulators can increase consumer awareness of the new statute allowing pharmacists to prescribe contraceptives through partnerships with "community-based organizations, pharmacists associations, and other state agencies."[205] Possible plans could involve ensuring that the public health department is providing information about how to access contraceptives through their website and providing specific informational materials.[206] Pharmacies could display signage inside or outside their pharmacies displaying the new services, or pharmacists could even be given special buttons or badges to wear to promote the service.[207] Local media networks could be contacted to publicize pharmacies that are providing access to contraceptives.[208] In fact, several states had local news outlets that spread the word about new legislation allowing pharmacists to prescribe contraceptives in their state by interviewing pharmacists and state regulators.[209] Creating a "centralized registry of pharmacists certified to prescribe contraceptives" would also help women educate on which pharmacies and pharmacists can prescribe birth control.[210] For example, the Utah Department of Health's website provides a list of pharmacies where women can obtain contraceptives without a prescription.[211]

B. Why Indiana Code § 25-26-25-25 Matters and What Still Needs to Be Done

Even though Indiana women are living in an industrialized country in the twenty-first century, there is still a shortage of primary care physicians and obstetric care providers in many Indiana counties.[212] Of the 92 counties in Indiana, 53 of those counties show a physician shortage...[213] 23.9% of the counties in Indiana are considered to be "maternity care deserts."[214] A county is considered a maternity care desert if the county is "without a hospital or birth center offering obstetric care and without any obstetric providers."[215] Physician

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204. STATE FACTS ABOUT UNINTENDED PREGNANCY: INDIANA, GUTTMACHER INST. 2 (2016) (available at https://www.guttmacher.org/sites/default/files/factsheet/in_18.pdf [https://perma.cc/BAE2-22M5]).

205. Orris et. al., *supra* note 119, at 15.

206. *Id.* at 16.

207. *Id.* at 15.

208. *Id.*

209. *Id.* at 16.

210. *Id.* at 17.

211. *Id.*; *see generally Cities*, UTAH GOV. https://mihp.utah.gov/wp-content/uploads/Cities.pdf [https://perma.cc/9YB9-3EHD] (last visited Mar. 10, 2024).

212. *Maternity Care Desert*, *supra* note 191; *see also* Charron, *supra* note 6.

213. Charron, *supra* note 6.

214. *Maternity Care Desert*, *supra* note 191.

215. *Id*.

shortages throughout the United States are also expected to increase because "the demand for physicians is growing faster than the supply of physicians."[216] These physician shortages help explain why women may struggle to find access to medications, including contraceptives. In addition, Indiana's recent abortion ban further increases the importance of ensuring that women have access to birth control.

By allowing pharmacists to prescribe birth control, it can help make up for physician shortages. Physician offices typically close at 5 p.m. each day and are usually only open Monday to Friday.[217] Pharmacies are typically open later in the evenings and are open on the weekends.[218] This would make it easier for women who have school or work to visit a pharmacist for their prescription.[219] Allowing pharmacists to prescribe birth control would allow women to refill their birth control prescriptions more conveniently and efficiently.[220]

Indiana Code § 16-34-2-1 went into effect on August 1, 2023, and makes abortion a criminal act unless "the abortion is necessary when reasonable medical judgment dictates that performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life or the fetus is diagnosed with a lethal fetal anomaly."[221] This law also prohibits abortion-inducing drugs from being "dispensed, prescribed, administered, or otherwise given to a pregnant woman after eight (8) weeks of postfertilization age."[222] Since women will not be legally able to obtain an abortion in Indiana unless they meet the specific criteria, women that do not wish to become pregnant need to have greater access to contraceptives. In 2022, 9,529 abortions were performed and 32.83% of those abortions occurred past eight week of gestation, which Ind. Code § 16-34-2-1 now prohibits unless they fit the statute's narrow qualifications.[223]

Ensuring women have access to contraceptives is now more important than ever so that women can prevent unwanted pregnancies. Additionally, birth control may be prescribed for other medical conditions. Birth control may be prescribed to treat: "primary dysmenorrhea; endometriosis; amenorrhea due to low weight, stress, or exercise; menstrual cramps; premenstrual syndrome; primary ovarian insufficiency, menorrhagia; acne; [and] polycystic ovary syndrome."[224]

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216. Xiaoming Zhang et al., *Physician Workforce in the United States of America: Forecasting Nationwide Shortages*, 18 HUM. RES. FOR HEALTH. 1, 2 (2020).

217. *See generally* Erin N. Deja & Joseph L. Fink III, *Pharmacists Prescribing Birth Control*: *Improving Access and Advancing the Profession*, 82 PHARMACY TIMES (Nov. 16, 2016), https://www.pharmacytimes.com/view/pharmacists-prescribing-birth-control-improving-access-and-advancing-the-profession [https://perma.cc/WK78-JAB8].

218. *Id.*

219. *Id.*

220. *Id.*

221. IND. CODE § 16-34-2-1(a)(1)(A) (2024).

222. *Id.* § 1(a)(1)(E).

223. LINDSAY M. WEAVER ET AL., *supra* note 191, at 17; *see* IND. CODE § 16-34-2-1 (2024).

224. *See* Bansode et al, *supra* note 2.

Women may elect to start birth control to prevent pregnancies or to help with other medical conditions. It does not matter why a woman starts birth control; her contraceptive prescription is just as important as any other medication she may be prescribed.

V. CONCLUSION

To conclude, Indiana residents must have greater access to birth control because of the maternal deserts that exist within Indiana. Allowing pharmacists to prescribe birth control helps fill in the gap where women may lack access to providers. Contraceptives can not only prevent unwanted pregnancies but can also help provide relief to other women's health concerns. Access to contraceptives in Indiana is now more important than ever because Indiana no longer allows abortions for women unless they meet certain statutory criteria. The vast number of negative side effects that come from unwanted pregnancies is another reason why women need to have contraceptives so they can have the capability to choose what happens to their bodies.

To ensure that women have greater access to contraceptives, pharmacists first need to feel comfortable providing the services to women. By providing adequate training and resources for pharmacists, the number of pharmacists that offer these resources will increase. Since this is another service that pharmacists would be adding to their already busy schedules, pharmacists need to be properly incentivized for their services. To do this, Indiana needs special billing codes that pharmacists can use so they can be properly reimbursed.

Additionally, once the number of pharmacists willing to provide services increases, then the legislation needs to be publicized so residents can find pharmacists near them who could provide services.

The Indiana statute allowing pharmacists to prescribe birth control is a small step in the right direction in providing greater access to contraceptives to women, but for the statute is to make a true impact, there is still work that needs to be done. This is why Indiana should ensure that there is a proper reimbursement plan in place for pharmacists to have an incentive to prescribe birth control.