

**JOINT COMMITTEE ON PUBLIC HEALTH
TESTIMONY OF REPRODUCTIVE EQUITY NOW IN SUPPORT OF**

H. 2264: *An Act to improve access to emergency contraception*

S. 1372: *An Act to improve access to emergency contraception*

Date of Testimony

Chairs [Name], [Name], and members of the committee:

Reproductive Equity Now (REN) is dedicated to ensuring equitable access to the full spectrum of reproductive health care for all people—regardless of their race, ethnicity, income, zip code, gender, age, immigration status, ability, sexual orientation, or religion.

REN strongly SUPPORTS passages of H. 2264 and S. 1372, *An Act to improve access to emergency contraception*.

Emergency contraception is a medication that can be taken in the hours and days after sex to help prevent pregnancy before one begins. Emergency contraception is not an abortifacient. That said, emergency contraception is most effective in preventing unintended pregnancy when taken immediately following unprotected sex.

The 2017 Contraceptive ACCESS law requires that insurance cover emergency contraception without a copay as long as it is prescribed either through a conventional prescription or a standing order. However, **few pharmacies have standing orders for emergency contraception**. Because of this, many patients go to the pharmacy and buy Plan B One-Step[®] solely because it is the easiest to get as it has been approved for over-the-counter sale. As a result, they end up paying upwards of \$40 for the medication. Without pharmacists actively procuring standing orders, Bay Staters cannot utilize insurance coverage without first going out of their way to procure a prescription from their doctor—this can lead to delays and decreased effectiveness in preventing unintended pregnancy.

Decisions about emergency contraception are time-sensitive and sometimes overwhelming. In high stress situations, such as a condom breaking or pregnancy risk due to unprotected sex, humans often get overwhelmed and look for a solution that is available and easy, rather than the solution that is best. This can be problematic when the most readily available form of emergency contraception, Plan B One-Step[®], may not be the best solution for a large segment of the population. **A statewide standing order would make it possible for someone to go to the pharmacy, pick up either ella[®] or Plan B One-Step[®], and utilize their insurance.** This is critical to ensuring that all Bay Staters can remain in control of their reproductive lives and determine if, when, and how to start families.

I. MASSACHUSETTS MUST ENSURE THAT EVERYONE CAN ACCESS THE EMERGENCY CONTRACEPTION THAT IS RIGHT FOR THEM WITHOUT DELAY.

There are two basic types of medication emergency contraception, and each works differently to prevent pregnancy.¹ Levonorgestrel-based (“LNG-based”) emergency contraceptives, such as Plan B One-Step[®], main method of action is preventing the ovaries from releasing eggs and ensuring sperm do not reach any existing eggs.² Ulipristal-based (“UPA-based”) emergency contraception, such as ella[®], similarly prevents ovulation, but also changes the uterine lining, making it difficult for an egg to embed and preventing implantation.³ While Plan B One-Step[®] and LNG-based generics are available over-the-counter, unrestricted and without the need to show ID or proof of age, this form of emergency contraception may not be best for all patients.

Overall, Plan B One-Step[®] and LNG-based emergency contraception reduce pregnancy risk by 88% and prevent 95% of pregnancies if taken within 24 hours.⁴ However, if taken within 24-hours, ella[®] and UPA-based emergency contraception is *65% more effective* than Plan B One-Step[®] and LNG-based emergency contraception.⁵ If taken within 72 hours, ella[®] and UPA-based emergency contraception is *42% more effective* than Plan B One-Step[®] and LNG-based emergency contraception.⁶ While Plan B One-Step[®] is not recommended beyond 72 hours (3 days),⁷ and has shown limited to no efficacy beyond 96 hours,⁸ ella[®] has demonstrated efficacy for up to 120 hours (5 days).⁹ Given that sperm can live for up to five days in the female genital tract, ella[®] and UPA-based emergency contraceptives may be preferable for some patients.¹⁰

There are additional reasons why an individual might need ella[®]/UPA-based as opposed to Plan B One-Step[®]/LNG-based contraception. For example, ella[®] is more effective than Plan B

¹ Intrauterine devices (“IUDs”), particularly the copper IUD, are also effective as emergency contraception, but are not covered within the intended scope of this bill.

² NURX, *What’s the difference between Plan B and Ella?* (2021), available at <https://www.nurx.com/faq/whats-the-difference-between-plan-b-and-ella/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* Another study, not specifically limited to the 24 hour window, found UPA-based contraceptives reduced risk of pregnancy by 50% compared to LNG-based contraceptives. A. Glasier, S.T. Cameron, D. Bliithe, B. Scherrer, H. Mathe, D. Levy, E. Gainer, & A. Ulmann, *Can we identify women at risk of pregnancy despite using emergency contraception? Data from randomized trials of ulipristal acetate and levonorgestrel*, 84 *Contraception* 363, 364 (2011).

⁷ Plan B One-Step[®]: Full Prescribing Information, FDA (updated 2009), available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2009/0219981bl.pdf.

⁸ C. Moreau and J. Trussell, *Results from pooled Phase III studies of ulipristal acetate for emergency contraception*, 86 *Contraception* 673, 673 (2012).

⁹ ella[®]: Full Prescribing Information, FDA (2010), available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2010/022474s0001bl.pdf.

¹⁰ C. Moreau and J. Trussell, *supra* note 8.

One-Step[®] around the time of ovulation.”¹¹ Timing may also be a factor if emergency contraception is needed on the weekend, when doctor’s offices are less likely to be open. Plan B One-Step[®] and LNG-based contraceptives also have more stringent weight and BMI limits, above which efficacy is diminished.¹² While Plan B One-Step[®] and LNG-based contraceptives are only recommended for women under 165 pounds, ella[®] is effective for women up to 195 pounds.¹³ Other studies, using body mass index (“BMI”) as a metric, indicate that LNG-based emergency contraceptives have diminished efficacy on women with a BMI of 26 or more,¹⁴ while ella[®] and other UPA-based contraceptives have efficacy for BMIs of up to 30.¹⁵

For women over 165 pounds or a BMI of 26, for women who had sex closer to the time of ovulation, or for women who have been delayed in accessing emergency contraception, ella[®] and UPA-based emergency contraception is the superior option. **Massachusetts must ensure that all residents can access the birth control that is right for them, without delay, and be able to utilize their insurance.** This doesn’t currently happen. The lack of pharmacy participation in acquiring standing orders has created a situation where a woman must make a separate appointment and see a physician in order to acquire ella[®] and UPA-based emergency contraception. This delays access and adds additional steps and costs.

An Act to Improve Access to Emergency Contraception would create a statewide standing order for both prescription (ella[®]/UPA-based) and over-the-counter (Plan B One-Step[®]/LNG based) emergency contraception, ensuring women can pay for emergency contraceptives with insurance. **This is a critical step in helping to realize the full potential of the 2017 contraception ACCESS law, M.G.L. c. 94C, § 19A.**

II. THIS ACT WOULD INCREASE AND ENSURE TIMELY ACCESS TO THE MOST APPROPRIATE FORM OF PRESCRIPTION OR OVER-THE-COUNTER EMERGENCY CONTRACEPTION BY CREATING A STATEWIDE STANDING ORDER FOR BOTH.

The 2017 contraception ACCESS law permits pharmacists to dispense emergency contraception pursuant to a standing order.¹⁶ A standing order is a documented coordination between a physician and a pharmacist allowing the pharmacists to dispense a particular medication.

¹¹ NURX, *supra* note 2.

¹² Multiple research studies indicate that emergency contraceptives are twice as likely to fail for obese women. C. Moreau and J. Trussell, *supra* note 8. *See also*, A. Glasier, et al., *supra* note 6.

¹³ *See*, NURX, *supra* note 2; Planned Parenthood, What’s the ella morning-after pill?, available at <https://www.plannedparenthood.org/learn/morning-after-pill-emergency-contraception/whats-ella-morning-after-pill>.

¹⁴ Plan B One-Step[®], *supra* note 7.

¹⁵ ella[®], *supra* note 9.

¹⁶ M.G.L. c. 94C, § 19A.

However, as currently written, Massachusetts emergency contraception law permits, but does not require, pharmacists to procure a standing order: “[n]otwithstanding any other law, a licensed pharmacist **may dispense** emergency contraception in accordance with written, standardized procedures or protocols....”¹⁷ In addition, Board of Registration in Pharmacy (“BoRP”) and Department of Public Health (“DPH”) policy currently require the pharmacist to proactively procure the standing order by partnering with an actively practicing physician, renew the standing order every two years, file the standing order with the Board of Registration in Pharmacy, and complete a training accredited by the Accreditation Council on Pharmacy Education (ACPE).¹⁸

Due to the lengthy process involved, **many pharmacists do not acquire standing orders**. This means that, despite the legislatures efforts and intention with the emergency contraception provision of the 2017 ACCESS law, women are not able to go to most pharmacies and acquire prescription (ella[®]/UPA-based) emergency contraception and are forced to settle for over the counter (Plan B One-Step[®]/LNG-based) emergency contraceptives and pay without using insurance benefits. *An Act to improve access to emergency contraception* fixes this problem by creating a statewide standing order for both prescription and over the counter emergency contraception.

The Legislature has utilized statewide standing orders before. Specifically, M.G.L. c. 94C, § 19B creates a statewide standing order for naloxone, a life-saving opioid antagonist medication. Because of this standing order, pharmacists are allowed to dispense naloxone — without the requirement of a prescription — to at-risk persons as well as families, relatives, friends, and other people who are in a position to assist individuals at risk of opioid overdose.¹⁹ **A statewide standing order for emergency contraception would work in a similar manner** by allowing pharmacists to dispense emergency contraception — without the requirement of an additional prescription — to patients requesting emergency contraception.

Nor would Massachusetts be the first state to create a statewide standing order for emergency contraception: **California has had a statewide protocol for pharmacist dispensing or emergency contraception since 2003**.²⁰ Furthermore, the FDA has permitted Plan B/LNG-based

¹⁷ M.G.L. c. 94C, § 19A(b), emphasis added.

¹⁸ Joint Policy 2020-09: Emergency Contraception Standing Order, Board of Registration in Pharmacy Drug Control Program (July 31, 2020), available at <https://www.mass.gov/doc/2020-09-emergency-contraception-standing-order-0/download>.

¹⁹ Policy 2020-07: Naloxone Dispensing, The Board of Registration in Pharmacy (July 31, 2020), available at <https://www.mass.gov/doc/2020-07-naloxone-dispensing-0/download#:~:text=Policy%202020%2D07%3A%20Naloxone%20Dispensing&text=c.,for%20this%20life%2Dsaving%20medication>.

²⁰ *Revised Pharmacist Protocols for Dispensing Emergency Contraception*, Medical Board of California Newsletter (Winter 2011/12) at 12, available at <https://www.mbc.ca.gov/Download/Documents/emergency-contraception-protocol.pdf>. The California Medical Board reaffirmed this protocol on July 28, 2011 with Cal. Bus. & Prof. Code § 4052.3. In fact, California goes a step

emergency contraception to be sold over-the-counter (OTC) to women aged 18 and older since 2006.²¹ Between 2006 and 2010, approximately 5.8 million women ages 15-44 used emergency contraception at least once.²² In June 2013 the age restriction was lifted and the FDA permitted Plan B/LNG-based emergency contraception to be sold regardless of age. **Both ella[®] and Plan B One-Step[®] are extremely and equally safe,**²³ so it only makes sense for the Massachusetts legislature to take the next step and ensure that Bay Staters can get Plan B One-Step[®] or ella[®] through a statewide standing order.

III. THIS ACT WOULD MAKE INSURANCE COVERAGE POSSIBLE FOR ALL FORMS OF EMERGENCY CONTRACEPTION.

Emergency contraception is not cheap and cost can be a barrier for some. While generics of Plan B One-Step[®] range from \$35-40, the brand name typically costs \$50. ella[®] typically ranges in cost from \$50-\$67. **The Massachusetts legislature has already opined that emergency contraception should be covered by insurance, this Act would help make that a reality.** A statewide standing order would make it easier for the public to get insurance coverage for emergency contraceptives under the ACCESS law.

The ACCESS law requires only that emergency contraception be covered if it is prescribed or dispensed pursuant to a standing order.²⁴ But, as already established, many pharmacists do not take the necessary measures to procure a standing order. By creating a statewide standing order, every pharmacy would be able to offer Plan B One-Step[®] and ella[®], through the standing order and patients would be able to utilize their insurance.

In a recent study by Center for Health Information and Analysis (CHIA), “birth of a child” was a reason stated in 13% of Massachusetts residents who reported having difficulty affording family medical bills in the 12 months prior to the survey.²⁵ This is particularly disconcerting given that data from 2010 indicated that 47% of pregnancies — approximately 54,000 — were

further and allows pharmacists to prescribe multiple forms of self-administered hormonal contraceptives. Cal. Bus. & Prof. Code § 4052.3.

²¹ Office on Women’s Health, Approval of emergency contraception (Apr. 1, 2019), *available at* <https://www.womenshealth.gov/30-achievements/19>.

²² CDC, Use of Emergency Contraception Among Women Aged 15–44: United States, 2006–2010.

²³ In clinical trials, ella[®] saw adverse reactions less than 5% of the time with the most common being: headache (18%), abdominal pain (12%), nausea (12%), dysmenorrhea (9%), fatigue (6%) and dizziness (5%). ella[®], *supra* note 9. Similarly, Plan B One-Step[®] users experiences adverse effects in less than 10% of clinical trials, with the most common reactions including: heavier menstrual bleeding (31%), nausea (14%), lower abdominal pain (13%), fatigue (13%), headache (10%), and dizziness (10%). Plan B One-Step[®], *supra* note 7.

²⁴ M.G.L., c 94C, § 19A.

²⁵ Center for Health Information and Analysis (CHIA), *Findings from the 2019 Massachusetts Health Insurance Survey* (Apr. 2019) on 52.

unintended.²⁶ **Creating a statewide standing order would help decrease these numbers and help ensure economic security for Massachusetts residents by ensuring that cost is not a barrier to obtaining emergency contraception.**

An Act to improve access to emergency contraception helps to realize the goal of ACCESS by creating the situation needed to secure insurance coverage for both forms of emergency contraception. This will increase access, eliminate cost as a barrier, and ensure that the patient can obtain the form of emergency contraception that will work best for them without having to worry about affordability. In an emergency situation, Bay Staters should be able to focus on making the decisions that will be best for their health, secure in the knowledge that the decision they make won't have a detrimental or deleterious effect on their wallet. The Legislature already wants this, this Act helps make it happen.

IV. THIS ACT WOULD ELIMINATE AN UNNECESSARY TRAINING PROVISION THAT ONLY SERVED AS A BARRIER TO PHARMACIST DISPENSING.

Finally, *An Act to improve access to emergency contraception* eliminates unnecessary training requirements. The law currently requires a pharmacist to complete a training program approved by the commissioner prior to dispensing emergency contraception pursuant to a standing order.²⁷ This training includes items such as the importance of recommending that the patient follow-up with a medical practitioner.²⁸ The mandated training is largely unnecessary, consists of procedures and advice that a properly certified pharmacist knows to do already, and only serves as a barrier to realize the emergency contraception provision of the 2017 ACCESS law.

Emergency contraception is incredibly safe, having been FDA approved in 1998; Plan B One-Step[®]/LNG-based emergency contraception has been sold over-the-counter (OTC) to women ages 18 and older since 2006, and available over the counter regardless of age since 2013.²⁹ **There is no good medical reason to require additional training for pharmacists to dispense a form of medication that has been available over the counter for 15 years.** Under this Act, pharmacists who act in good faith to dispense emergency contraception in accordance with a standing order would be protected from any criminal or civil liability or any professional disciplinary action by the Board of Registration in Pharmacy. Patients would still be protected from acts of gross negligence or willful misconduct.

Eliminating this training requirement is important because it is medically and professionally unnecessary. By eliminating this barrier, all pharmacists would be able to dispense emergency

²⁶ Guttmacher Institute, State Facts About Unintended Pregnancy: Massachusetts (2016), available at https://www.guttmacher.org/sites/default/files/factsheet/ma_18.pdf. Of these pregnancies, 43% resulted in births, 44% resulted in abortions, and 13% resulted in miscarriages. *Id.*

²⁷ M.G.L. c. 94C, § 19A(c).

²⁸ *Id.*

²⁹ Office on Women's Health, *supra* note 21.

contraception pursuant to a statewide standing order. This would make emergency contraception available, with insurance as a payment option, at **all Massachusetts pharmacies**.

Please give a favorable report to H. 2264 and S. 1372, *An Act to improve access to emergency contraception*.

Massachusetts was a leader in ensuring contraceptive access and insurance coverage for emergency contraception, but the law as written has gaps that leave women unable to obtain the emergency contraception they need in a timely, convenient, and affordable manner. This Act addresses this by ensuring Bay Staters can go directly to the pharmacy to get the emergency contraception that's best for them, whether it's Plan B One-Step[®] or ella[®], and have it covered by their insurance. A statewide standing order just makes sense and is critical to ensuring that all Bay Staters can remain in control of their reproductive lives and determine if, when, and how to start families. Therefore, I respectfully ask that this bill receive a favorable report.

If I can answer any of your questions about this bill, please contact me at [email] or [phone].