

Congress of the United States

Washington, DC 20515

February 21, 2024

Mr. Mike Tuffin
President & CEO
America's Health Insurance Plans
601 Pennsylvania Avenue, NW
South Building, Suite 500
Washington, D.C. 20004

Dear Mr. Tuffin:

We write to express our concerns that your members are not complying with the Affordable Care Act (ACA) contraception coverage requirement, and to urge them to consider immediate adoption of the therapeutic equivalence standard outlined by the Departments of Health and Human Services, Labor, and Treasury (the Departments) on January 22, 2024 (“FAQs About Affordable Care Act Implementation Part 64”).

As you know, the ACA requires plans to fully cover all Food and Drug Administration (FDA)-approved, -cleared, or -granted contraceptive products. Prior guidance clarified that plans must cover at least one form of each contraceptive method without cost-sharing, and also required an easily accessible, unburdensome, and transparent exceptions process when a plan does not cover the specific product a patient needs.

Despite repeated clarification of these requirements from the Departments, multiple investigations—including by the [House Oversight Committee](#)—have revealed that plans routinely violate the ACA by refusing to cover certain products, imposing administrative hurdles like prior authorizations and step therapy (fail first protocols), and requiring patient cost-sharing.

In response to this systemic noncompliance, the Departments published additional guidance on January 22, 2024, outlining a standard that requires coverage without cost-sharing of every FDA-approved product that does not have a therapeutic equivalent. If a therapeutic equivalent exists, a plan may choose to cover only one therapeutically-equivalent product, so long as it maintains an acceptable exceptions process in the case that a patient needs a specific product. The Departments will generally consider that plans adopting this standard are in compliance with federal law, essentially establishing a “safe harbor” for issuers. In addition, the use of an exceptions process should be far less frequent, a process which we believe has never worked for consumers and providers and continues to be a significant compliance problem for payers.

We urge your plans to immediately consider adopting the therapeutic equivalence standard to ensure patients’ access to the contraceptive products they need, as required by the ACA. We request answers to the following questions by March 21, 2024:

1. Will your plans be adopting the therapeutic equivalence standard and in what timeframe?
2. For plans that decline to adopt the therapeutic equivalence standard, how will they ensure compliance with the ACA contraception coverage requirement and in what timeframe?
3. Do any of your plans employ management techniques that the Departments have explicitly listed as in violation of the ACA and how will you eliminate these barriers?

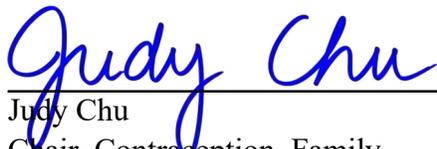
4. Do all of your plans have a publicly-available exceptions process in place and where are they available on their websites?

We thank you for your attention to these issues, and we look forward to your response. Responses may be addressed to the attention of Julia Bartusek, Policy Director and Interim Executive Director of the Democratic Women's Caucus, at Julia.Bartusek@mail.house.gov.

Sincerely,



Lois Frankel
Chair
Democratic Women's Caucus



Judy Chu
Chair, Contraception, Family
Planning & Education Task Force
Pro-Choice Caucus



Elizabeth Warren
United States Senator



Catherine Cortez Masto
United States Senator



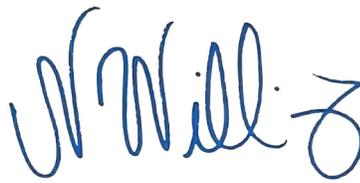
Tina Smith
United States Senator



Kathy Manning
Policy Co-Chair
Democratic Women's Caucus



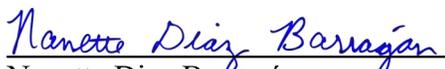
Ayanna Pressley
Policy Co-Chair
Democratic Women's Caucus



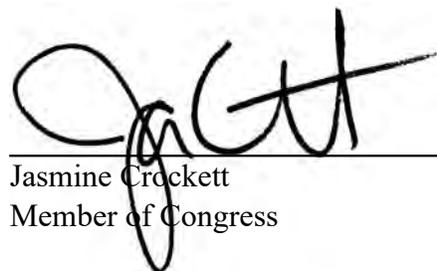
Nikema Williams
Vice Chair
Democratic Women's Caucus



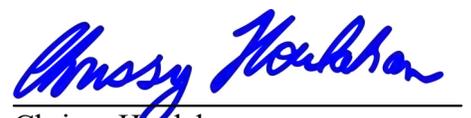
Teresa Leger Fernández
Vice Chair
Democratic Women's Caucus



Nanette Diaz Barragán
Member of Congress



Jasmine Crockett
Member of Congress



Chrissy Houlahan
Member of Congress



Haley M. Stevens
Member of Congress



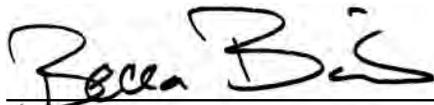
Gabe Amo
Member of Congress



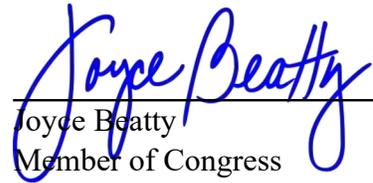
Jamie Raskin
Member of Congress



Suzanne Bonamici
Member of Congress



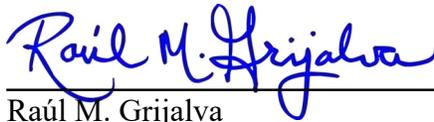
Becca Balint
Member of Congress



Joyce Beatty
Member of Congress



Doris Matsui
Member of Congress



Raúl M. Grijalva
Member of Congress



Julia Brownley
Member of Congress



Mikie Sherrill
Member of Congress



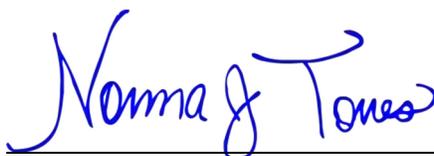
Bradley Scott Schneider
Member of Congress



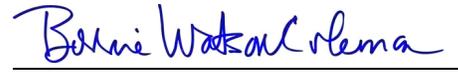
Troy A. Carter, Sr.
Member of Congress



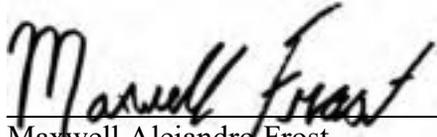
Angie Craig
Member of Congress



Norma J. Torres
Member of Congress



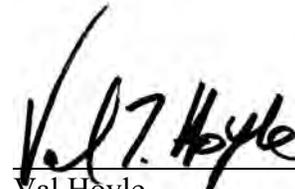
Bonnie Watson Coleman
Member of Congress



Maxwell Alejandro Frost
Member of Congress



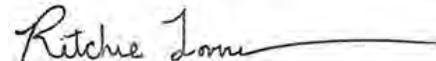
Grace Meng
Member of Congress



Val Hoyle
Member of Congress



Rick Larsen
Member of Congress



Ritchie Torres
Member of Congress



Marilyn Strickland
Member of Congress



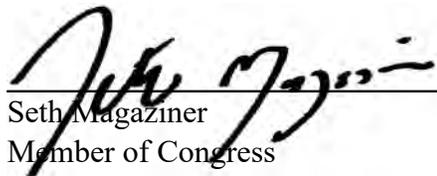
Alma S. Adams, Ph.D.
Member of Congress



Jared Moskowitz
Member of Congress



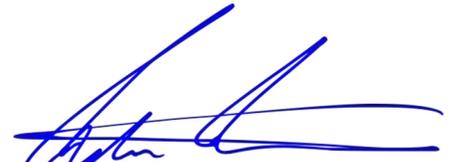
Pramila Jayapal
Member of Congress



Seth Magaziner
Member of Congress



Katie Porter
Member of Congress



Adriano Espaillat
Member of Congress



Ann McLane Kuster
Member of Congress



Jennifer Wexton
Member of Congress



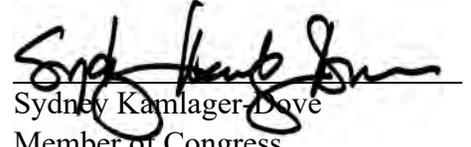
Susie Lee
Member of Congress



Mark DeSaulnier
Member of Congress



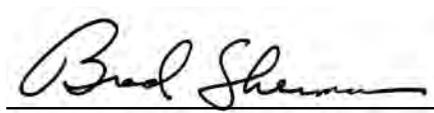
John P. Sarbanes
Member of Congress



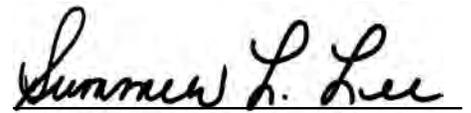
Sydney Kamlager-Dove
Member of Congress



Emanuel Cleaver, II
Member of Congress



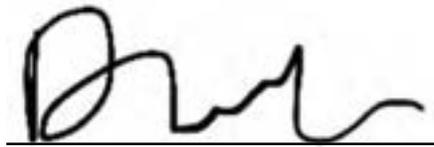
Brad Sherman
Member of Congress



Summer Lee
Member of Congress



Donald M. Payne, Jr.
Member of Congress



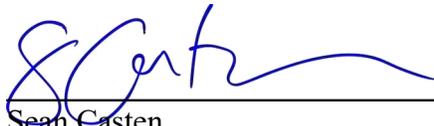
Dan Goldman
Member of Congress



Ilhan Omar
Member of Congress



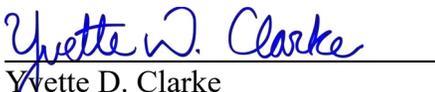
Abigail Davis Spangenberg
Member of Congress



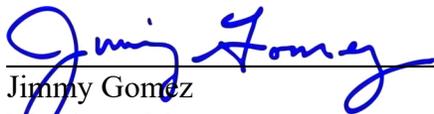
Sean Casten
Member of Congress



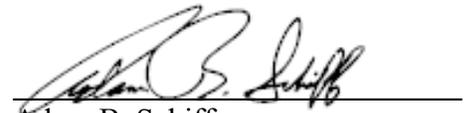
David J. Trone
Member of Congress



Yvette D. Clarke
Member of Congress



Jimmy Gomez
Member of Congress



Adam B. Schiff
Member of Congress



Paul D. Tonko
Member of Congress



Scott H. Peters
Member of Congress



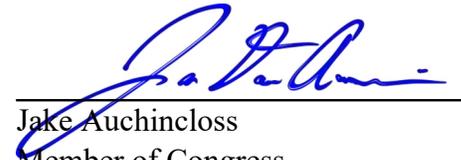
Joseph D. Morelle
Member of Congress



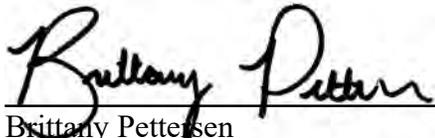
Mary Gay Scanlon
Member of Congress



Jerrold Nadler
Member of Congress



Jake Auchincloss
Member of Congress



Brittany Pettersen
Member of Congress



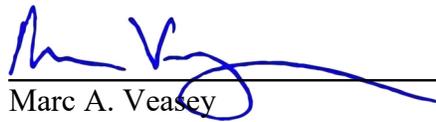
Marie Gluesenkamp Perez
Member of Congress



Deborah K. Ross
Member of Congress



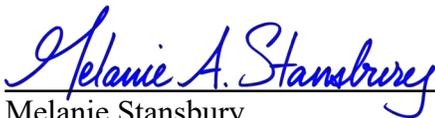
Veronica Escobar
Member of Congress



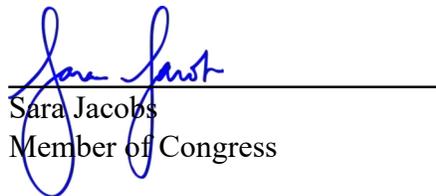
Marc A. Veasey
Member of Congress



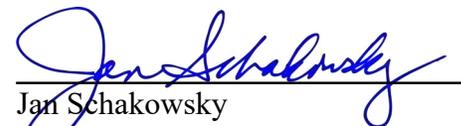
Diana DeGette
Chair
Pro-Choice Caucus



Melanie Stansbury
Member of Congress



Sara Jacobs
Member of Congress



Jan Schakowsky
Member of Congress



John Garamendi
Member of Congress



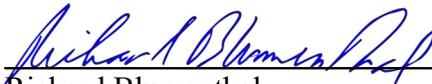
Jennifer L. McClellan
Member of Congress



Maxine Waters
Member of Congress



Madeleine Dean
Member of Congress



Richard Blumenthal
United States Senator



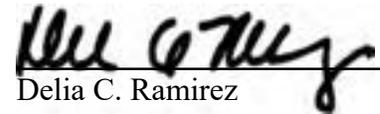
Robin L. Kelly
Member of Congress



Tammy Duckworth
United States Senator



Lucy McBath
Member of Congress



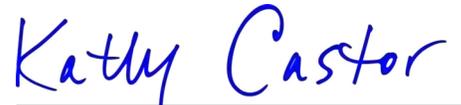
Delia C. Ramirez
Member of Congress



Colin Z. Allred
Member of Congress



Anna G. Eshoo
Member of Congress



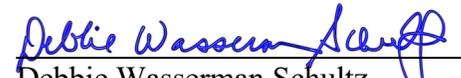
Kathy Castor
Member of Congress



Peter Welch
United States Senator

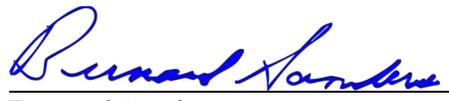


Alexandria Ocasio-Cortez
Member of Congress



Debbie Wasserman Schultz
Member of Congress

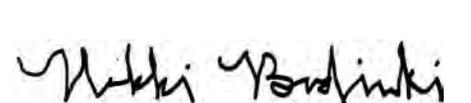

Zoe Lofgren
Member of Congress


Bernard Sanders
United States Senator


Tammy Baldwin
United States Senator


Grace F. Napolitano
Member of Congress


Barbara Lee
Chair
Pro-Choice Caucus


Nikki Budzinski
Member of Congress


Cory A. Booker
United States Senator


Terri A. Sewell
Member of Congress


Amy Klobuchar
United States Senator

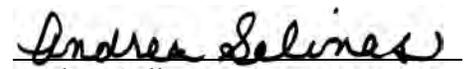

Jeffrey A. Merkley
United States Senator


Sylvia R. Garcia
Member of Congress


Yadira Caraveo M.D.
Member of Congress


Donald S. Beyer Jr.
Member of Congress


Chellie Pingree
Member of Congress


Andrea Salinas
Member of Congress



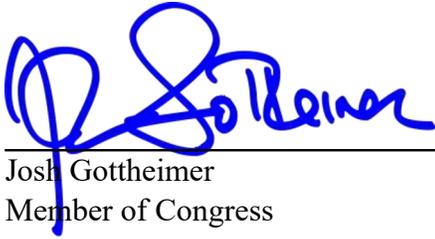
Dwight Evans
Member of Congress



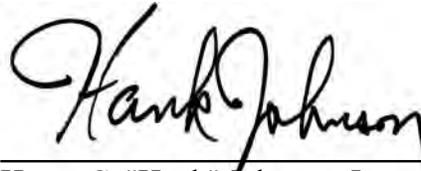
Patrick Ryan
Member of Congress



Christopher Deluzio
Member of Congress



Josh Gottheimer
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Lizzie Fletcher
Member of Congress



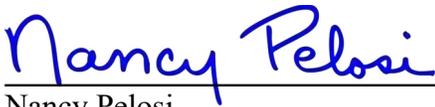
James P. McGovern
Member of Congress



Shontel M. Brown
Member of Congress



Nydia M. Velázquez
Member of Congress



Nancy Pelosi
Member of Congress



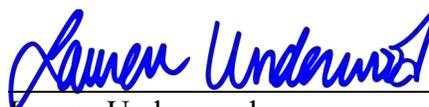
Susan Wild
Member of Congress



Danny K. Davis
Member of Congress



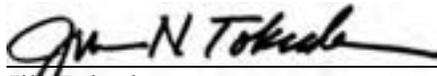
Frederica S. Wilson
Member of Congress



Lauren Underwood
Member of Congress



Kevin Mullin
Member of Congress


Jill Tokuda
Member of Congress

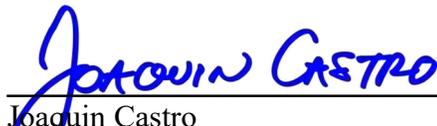

Eleanor Holmes Norton
Member of Congress

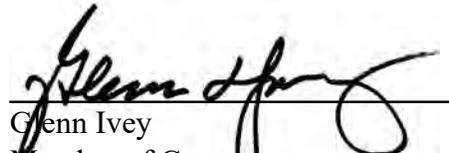

Juan Vargas
Member of Congress

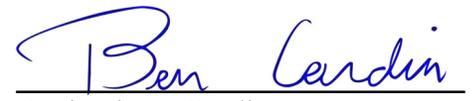

Tony Cardenas
Member of Congress

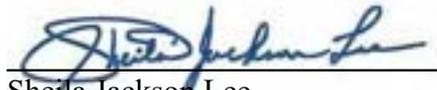

Stephen F. Lynch
Member of Congress

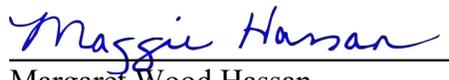

Greg Landsman
Member of Congress


Joaquin Castro
Member of Congress


Glenn Ivey
Member of Congress

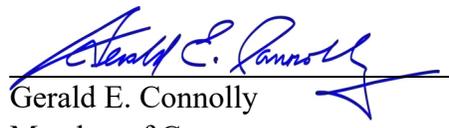

Benjamin L. Cardin
United States Senator


Sheila Jackson Lee
Member of Congress


Margaret Wood Hassan
United States Senator


Bill Foster
Member of Congress


Jesus G. "Chuy" Garcia
Member of Congress


Gerald E. Connolly
Member of Congress


Steve Cohen
Member of Congress



Lisa Blunt Rochester
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



Cori Bush
Member of Congress



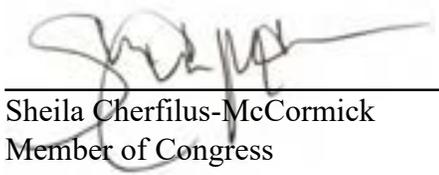
Salud Carbajal
Member of Congress



André Carson
Member of Congress



Greg Casar
Member of Congress



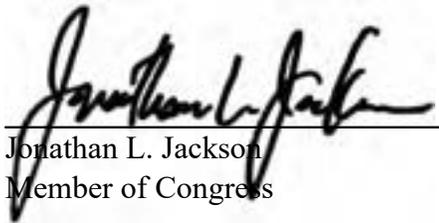
Sheila Cherfilus-McCormick
Member of Congress



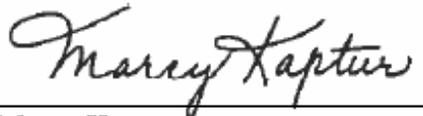
Valerie P. Foushee
Member of Congress



Ruben Gallego
Member of Congress



Jonathan L. Jackson
Member of Congress



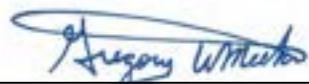
Marcy Kaptur
Member of Congress



Ro Khanna
Member of Congress



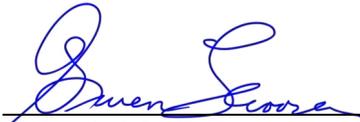
Ted W. Lieu
Member of Congress



Gregory W. Meeks
Member of Congress



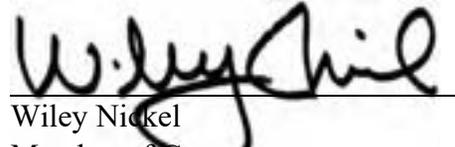
Robert J. Menendez
Member of Congress



Gwen S. Moore
Member of Congress



Seth Moulton
Member of Congress



Wiley Nickel
Member of Congress



Stacey E. Plaskett
Member of Congress



Darren Soto
Member of Congress



Emilia Strong Sykes
Member of Congress



Bennie G. Thompson
Member of Congress



Dina Titus
Member of Congress



Lori Trahan
Member of Congress



Deborah K. Ross
Member of Congress