

GOVERNOR KATIE HOBBS

STATE OF ARIZONA

★

EXECUTIVE ORDER

Executive Order 2024-03

Protecting Reproductive Freedom Through Increased Access to Contraception

WHEREAS, the Arizona Supreme Court on April 9, 2024 in *Planned Parenthood Arizona, Inc. v. Mayes*, CV-23-0005-PR, ruled that Arizona’s territorial-era near-total abortion ban, A.R.S. § 13-3603, is enforceable following the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), overturning of *Roe v. Wade*, 410 U.S. 113 (1973); and

WHEREAS, enforcing this archaic abortion ban, dating back to 1864—before the Civil War ended, before women won the right to vote, and before Arizona became a state—would have devastating effects on the women of Arizona, including survivors of rape and incest and pregnant women facing medical emergencies endangering their health and wellbeing; and

WHEREAS, within minutes of the release of the Arizona Supreme Court’s ruling, I reiterated my longstanding call on the Legislature to immediately repeal A.R.S. § 13-3603; and

WHEREAS, on May 1, 2024—after weeks of unjustified delay leaving millions of Arizona women fearful and uncertain about the status of their reproductive freedom, healthcare, and wellbeing—the Legislature answered my call and passed H.B. 2677, repealing the 1864 abortion ban, and on May 2, 2024, I signed H.B. 2677 into law; and

WHEREAS, this repeal of the 1864 abortion ban was a critical win, but much work remains to be done and my Administration will continue to do everything in our power to secure reproductive freedom and healthcare in Arizona, including protecting and expanding access to abortion care, contraception, and in vitro fertilization treatment; and

WHEREAS, the Legislature has repeatedly refused to consider and pass H.B. 2678 and S.B. 1362, which would protect the rights of Arizonans to access contraception, while the Senate Republican Leader stated, “Bayer Company invented aspirin. Put it between your knees;” and

WHEREAS, providing birth control to women, including options at no cost and without the need to obtain a prescription, substantially reduces unplanned pregnancies, miscarriages, and stillbirths; and

WHEREAS, reducing barriers to contraception lowers other healthcare costs and alleviates suffering associated with conditions like polycystic ovary syndrome (“PCOS”), endometriosis, and premenstrual dysphoric disorder (“PMDD”); and

WHEREAS, my Administration previously reduced barriers to contraception through the Arizona Department of Health Services’ “Standing Order for Self-Administered Hormonal Contraception,” (“Standing Order”), which authorized the State Board of Pharmacy and the Arizona Department of Health Services to implement A.R.S. § 32-1979.01, permitting pharmacists to dispense self-administered hormonal contraception to women in Arizona; and

WHEREAS, my Administration will continue to identify options to safely expand access to free and affordable contraceptives in every Arizona community; and

WHEREAS, the Affordable Care Act (“ACA”) requires that health plans in the individual and small group markets must include an “essential health benefits” (“EHB”) package, 42 U.S.C. § 300gg-6(a); and

WHEREAS, pursuant to 45 C.F.R. §§ 147.150(a) and 156.115(a), to meet this requirement, health plans offered to individual and small group employers must cover essential health benefits that are “substantially equal” to an “EHB-benchmark plan” set by the State;

WHEREAS, recent updates to the federal regulations, 45 C.F.R. § 156.111(a), give States added flexibility to “change its EHB-benchmark plan by . . . selecting a set of benefits that would become the State’s EHB-benchmark plan;” and

WHEREAS, the State of Arizona provides healthcare coverage to its employees and retirees through a self-funded healthcare plan administered by the Arizona Department of Administration (the “State Plans”); and

WHEREAS, State Plan participants are entitled to certain essential health benefits designated under the State Plan at no cost; and

WHEREAS, prescription oral contraceptives are covered by the State Plan as an essential health benefit, but State Plan participants generally must first obtain a prescription from a healthcare provider in order to obtain such contraceptives at no cost; and

WHEREAS, the National Association of Community Health Centers estimates that thirty percent of Americans do not have a primary care physician due to a shortage of providers, and the Health Resources and Services Administration estimates that Arizona has only thirty-nine percent of the primary care physicians that it requires; and

WHEREAS, while public health experts recommend visiting a primary care provider annually to receive preventative care and screening, prescription requirements for oral contraceptives can be a barrier to access for Arizonans, especially for working adults, single-parents, and Arizonans living in rural communities; and

WHEREAS, on July 13, 2023, the Food and Drug Administration (“FDA”) approved Opill (0.075mg Oral Norgestrel Tablet) as the first oral birth control pill that can be purchased over-the-counter; and

WHEREAS, Opill has shipped to major retailers and pharmacies and was made available over-the-counter in Arizona beginning in March 2024 but it currently cannot be obtained at no-cost under the State Plan without a prescription.

NOW, THEREFORE, I, Katie Hobbs, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona, do hereby order and direct as follows:

1. The Arizona Department of Administration shall:
 - a. Designate Opill and future FDA-approved over-the-counter self-administered hormonal contraception as a preventative “essential health benefit” at no cost to participants, with or without a prescription, under the State Plan as soon as practicable and in compliance with State law;
 - b. Provide notice of this benefit change to State employees who are or can be enrolled in the State Plan; and
 - c. Provide a report to the Governor’s Office analyzing the benefits and feasibility of any additional options for expanding access to contraception under the State Plan for all State employees.

2. The Arizona Department of Administration and the Department of Insurance and Financial Institutions shall examine and provide a report to the Governor's Office regarding the benefits and feasibility of establishing a new Arizona Essential Health Benefits Benchmark Plan that would mandate additional reproductive healthcare benefits for all individual and small group private health insurance plans, including coverage for FDA-approved prescription and over-the-counter self-administered hormonal contraception, long acting reversible contraceptives, and infertility treatment, including in vitro fertilization.
3. To the fullest extent practicable and permitted under applicable law, the Arizona Department of Administration shall take steps to educate pharmacists regarding the contraception options available to State Plan participants under the Standing Order through coordination with MedImpact, the State's prescription drug plan.
4. To the fullest extent practicable and permitted under applicable law, the Arizona Department of Health Services, in coordination with the State Board of Pharmacy, shall take steps to: (a) educate Arizonans and pharmacists about the contraception options available under the Standing Order; and (b) identify and implement available strategies to increase utilization of the Standing Order.
5. The Arizona Health Care Cost Containment System shall consider available options to expand access to contraception for its members, and shall provide a report to the Governor's Office on the benefits, costs, and feasibility of those options by June 30, 2024.
6. This Executive Order shall not confer any legal rights or remedies upon any person and shall not be used as the basis for legal challenges to any action or inaction of a State Agency, officer, employee, or agent thereof.
7. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision or application of this Executive Order which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
8. This Executive Order shall take effect immediately upon signature, and shall remain in effect until repealed, replaced, or rescinded by future Executive Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona



GOVERNOR

DONE at the Capitol in Phoenix on this Seventeenth day of May in the Year Two Thousand Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

ATTEST:



SECRETARY OF STATE

