

# Over-the-Counter Oral Contraceptives in the Context of State Abortion Bans



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The Food and Drug Administration (FDA) recently issued its first approval of an oral contraceptive medication for access without a clinician's prescription.<sup>1</sup> Opill, the brand name of the progestin-only norgestrel tablet, was first approved by the FDA in 1973, the year after the Supreme Court recognized unmarried people's constitutional right to contraception, and the same year it established a constitutional right to abortion in *Roe v. Wade*.

The FDA's decision to make Opill available over-the-counter (OTC) is undoubtedly a win for reproductive health. More people will have the ability to decide if and when they become pregnant, and the FDA's announcement suggests this could result in fewer unplanned pregnancies.<sup>1</sup> One might also expect this will lead to fewer people seeking to terminate unplanned pregnancies, including in states that imposed severe restrictions on abortion care following the Supreme Court's reversal on abortion rights in *Dobbs v. Jackson Women's Health Organization*.

Despite the clear potential health benefits, increased accessibility of oral contraceptives offers no real solution to ongoing threats to patients' reproductive health and moral rights created by post-*Dobbs* abortion restrictions, as some have suggested.<sup>2</sup> To secure their patients' reproductive health and well-being, clinicians must work to maximize the benefits of OTC oral contraceptives without relenting in their advocacy for safe and accessible abortion care.

## POTENTIAL BENEFITS OF OVER-THE-COUNTER ORAL CONTRACEPTIVES

The FDA's decision to make oral contraceptives available without prescription has the potential to decrease morbidity and mortality risks from pregnancies that otherwise

would have occurred against a patient's wishes. Increasing access to these medications also could have substantial downstream public health benefits, such as improved child health and welfare, reduced adolescent pregnancy, and greater educational and workforce attainment among women.<sup>3</sup>

OTC oral contraceptives offer a tremendous opportunity for improving equity in reproductive health, since many patients who face barriers to visiting a prescribing clinician now will have easier access to birth control medications.<sup>4</sup> This will particularly benefit low-income populations, who often cannot visit clinicians due to lack of insurance, long work hours, and limited transportation. Patients also will no longer be as vulnerable to providers who refuse to prescribe or dispense oral contraceptives due to their personal religious commitments, and minors and young adults will have greater ability to access these medications without risking their medical privacy.

Making Opill available OTC undoubtedly increases access, but how much this will increase usage of the medication and impact health concerns like unintended pregnancy remains uncertain. These outcomes depend on many factors, such as whether patients who would benefit from Opill can find and afford to purchase it at their local pharmacy. Although many health insurance plans cover oral contraceptives at no cost to patients, some plans require a prescription for full coverage, while plans for some religious organizations deny coverage for any contraceptives. Inadequate education about OTC oral contraceptives and social stigma against their use also could reduce their population health benefits.<sup>3</sup>

Some critics have argued that the risks of OTC oral contraceptives outweigh the potential benefits because patients might not use these medications appropriately, or because OTC access could decrease patient encounters with clinicians for routine and preventive care. Multiple studies have refuted these concerns, however, and the FDA ultimately determined that the clinical and public health benefits of expanding Opill's availability decisively outweigh the risks.<sup>4</sup>

Crucially, OTC oral contraceptives offer people greater control over their reproductive health, which is inherently valuable as a matter of justice. Reproductive justice requires social and political systems that

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empower people to decide if and when to become pregnant and subsequently to parent their children in healthy and safe environments.<sup>5</sup> The FDA's recent decision has the potential to promote reproductive justice by lowering barriers to accessing oral contraceptives.

### NOT A PARTIAL SOLUTION TO SEVERE RESTRICTIONS ON ABORTION CARE

The FDA's decision to expand access to Opill arrives after dozens of states have moved to severely restrict abortion or to ban the procedure outright.<sup>6</sup> Some media coverage has suggested that OTC oral contraceptives might be a partial solution to the harms wrought by these abortion restrictions: greater access will lead to fewer unintended pregnancies, thereby reducing the need for abortions in those states.<sup>2</sup>

OTC oral contraceptives are neither an ethically nor medically adequate solution to recent encroachments on abortion access in the USA. Abortion access is not only a matter of reproductive justice; it is essential to reproductive health, and no degree of access to contraception will eliminate the need for abortion care.

Many people who intentionally become pregnant ultimately need abortions due to unforeseen pregnancy complications or severe fetal anomalies. In July, a judge ruled against Texas's strict abortion ban after thirteen women testified to experiencing physical suffering and mental anguish after being denied abortions for pregnancies that became life-threatening or where the fetus had a fatal condition.<sup>7</sup> (Texas has appealed the ruling.) Improved access to oral contraceptives will not mitigate the health harms and rights violations suffered by these women and others who need abortion care for intended pregnancies.

Oral contraceptives also cannot substitute for abortion care for people who become pregnant due to rape. States with severe abortion restrictions either provide no exception for such cases or impose burdensome requirements on pregnant survivors.<sup>6</sup> OTC oral contraceptives do nothing to address the injustice of these gratuitous barriers to care, unless one expects everyone with a functioning uterus to take such medications to avoid becoming pregnant from sexual assault.

Anti-abortion advocates might claim that legal restrictions are justified because people who become pregnant unintentionally after choosing to have sex are negligent for failing to use easily accessible OTC oral contraceptives. This specious argument unjustly burdens individuals with the responsibility to avoid suffering the consequences of oppressive laws. Cost, insufficient insurance coverage, inadequate education, and social stigma can prevent the most marginalized people from accessing OTC oral

contraceptives, and contraceptive failures will occur nevertheless, despite consistent use.

Even if OTC oral contraceptives ultimately reduce unintended pregnancies in states with severe abortion restrictions, many people will continue to suffer egregious, avoidable health harms and rights violations from being denied abortion care. In other words, improved access to oral contraceptives offers little solace in the face of state-mandated pregnancy and childbirth.

### CLINICIANS' DUTIES OF REPRODUCTIVE JUSTICE

Clinicians have an ethical responsibility to promote the health of their patients and communities. Fulfilling this duty for reproductive health entails optimizing the potential benefits of OTC oral contraceptives by educating patients about the value of these and other effective contraception methods, and by advocating for their affordability and accessibility.

Reproductive health also requires accessible, affordable, timely, and legal abortion care. Among the women who testified in Texas, some can no longer become pregnant due to complications from being denied a needed abortion; others have chosen not to become pregnant again because Texas law compromises their ability to have children in a safe and healthy environment.<sup>7</sup> These are clear reproductive injustices impacting health.

Clinicians must continue to advocate for the repeal of state laws that risk the lives and health of pregnant people and violate their moral rights to bodily autonomy and equal respect. Although accessible OTC oral contraception offers real potential benefits, a comprehensive reproductive health care system still must ensure safe and effective abortion care for all patients.

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### Declarations

**Conflict of Interest** The authors have no conflicts of interest to declare.

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