

117TH CONGRESS
1ST SESSION

S. _____

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

IN THE SENATE OF THE UNITED STATES

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Women’s Health Pro-
5 tection Act of 2021”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Abortion services are essential health care
9 and access to those services is central to people’s

1 ability to participate equally in the economic and so-
2 cial life of the United States. Abortion access allows
3 people who are pregnant to make their own decisions
4 about their pregnancies, their families, and their
5 lives.

6 (2) Since 1973, the Supreme Court repeatedly
7 has recognized the constitutional right to terminate
8 a pregnancy before fetal viability, and to terminate
9 a pregnancy after fetal viability where it is nec-
10 essary, in the good-faith medical judgment of the
11 treating health care professional, for the preserva-
12 tion of the life or health of the person who is preg-
13 nant.

14 (3) Nonetheless, access to abortion services has
15 been obstructed across the United States in various
16 ways, including blockades of health care facilities
17 and associated violence, prohibitions of, and restric-
18 tions on, insurance coverage; parental involvement
19 laws (notification and consent); restrictions that
20 shame and stigmatize people seeking abortion serv-
21 ices; and medically unnecessary regulations that nei-
22 ther confer any health benefit nor further the safety
23 of abortion services, but which harm people by de-
24 laying, complicating access to, and reducing the
25 availability of, abortion services.

1 (4) Reproductive Justice requires every indi-
2 vidual to have the right to make their own decisions
3 about having children regardless of their cir-
4 cumstances and without interference and discrimina-
5 tion. Reproductive Justice is a human right that can
6 and will be achieved when all people, regardless of
7 actual or perceived race, color, national origin, immi-
8 gration status, sex (including gender identity, sex
9 stereotyping, or sexual orientation), age, or disability
10 status have the economic, social, and political power
11 and resources to define and make decisions about
12 their bodies, health, sexuality, families, and commu-
13 nities in all areas of their lives, with dignity and
14 self-determination.

15 (5) Reproductive Justice seeks to address re-
16 strictions on reproductive health, including abortion,
17 that perpetuate systems of oppression, lack of bodily
18 autonomy, white supremacy, and anti-Black racism.
19 This violent legacy has manifested in policies includ-
20 ing enslavement, rape, and experimentation on Black
21 women; forced sterilizations; medical experimen-
22 tation on low-income women's reproductive systems;
23 and the forcible removal of Indigenous children. Ac-
24 cess to equitable reproductive health care, including
25 abortion services, has always been deficient in the

1 United States for Black, Indigenous, and other Peo-
2 ple of Color (BIPOC) and their families.

3 (6) The legacy of restrictions on reproductive
4 health, rights, and justice is not a dated vestige of
5 a dark history. Presently, the harms of abortion-spe-
6 cific restrictions fall especially heavily on people with
7 low incomes, BIPOC, immigrants, young people,
8 people with disabilities, and those living in rural and
9 other medically underserved areas. Abortion-specific
10 restrictions are even more compounded by the ongo-
11 ing criminalization of people who are pregnant, in-
12 cluding those who are incarcerated, living with HIV,
13 or with substance-use disorders. These communities
14 already experience health disparities due to social,
15 political, and environmental inequities, and restric-
16 tions on abortion services exacerbate these harms.
17 Removing medically unjustified restrictions on abor-
18 tion services would constitute one important step on
19 the path toward realizing Reproductive Justice by
20 ensuring that the full range of reproductive health
21 care is accessible to all who need it.

22 (7) Abortion-specific restrictions are a tool of
23 gender oppression, as they target health care serv-
24 ices that are used primarily by women. These pater-
25 nalistic restrictions rely on and reinforce harmful

1 stereotypes about gender roles, women’s decision-
2 making, and women’s need for protection instead of
3 support, undermining their ability to control their
4 own lives and well-being. These restrictions harm the
5 basic autonomy, dignity, and equality of women, and
6 their ability to participate in the social and economic
7 life of the Nation.

8 (8) The terms “woman” and “women” are used
9 in this bill to reflect the identity of the majority of
10 people targeted and affected by restrictions on abor-
11 tion services, and to address squarely the targeted
12 restrictions on abortion, which are rooted in misog-
13 ny. However, access to abortion services is critical
14 to the health of every person capable of becoming
15 pregnant. This Act is intended to protect all people
16 with the capacity for pregnancy—cisgender women,
17 transgender men, non-binary individuals, those who
18 identify with a different gender, and others—who
19 are unjustly harmed by restrictions on abortion serv-
20 ices.

21 (9) Since 2011, States and local governments
22 have passed nearly 500 restrictions singling out
23 health care providers who offer abortion services,
24 interfering with their ability to provide those services
25 and the patients’ ability to obtain those services.

1 (10) Many State and local governments have
2 imposed restrictions on the provision of abortion
3 services that are neither evidence-based nor gen-
4 erally applicable to the medical profession or to
5 other medically comparable outpatient gynecological
6 procedures, such as endometrial ablations, dilation
7 and curettage for reasons other than abortion,
8 hysteroscopies, loop electrosurgical excision proce-
9 dures, or other analogous non-gynecological proce-
10 dures performed in similar outpatient settings in-
11 cluding vasectomy, sigmoidoscopy, and colonoscopy.

12 (11) Abortion is essential health care and one
13 of the safest medical procedures in the United
14 States. An independent, comprehensive review of the
15 state of science on the safety and quality of abortion
16 services, published by the National Academies of
17 Sciences, Engineering, and Medicine in 2018, found
18 that abortion in the United States is safe and effec-
19 tive and that the biggest threats to the quality of
20 abortion services in the United States are State reg-
21 ulations that create barriers to care. These abortion-
22 specific restrictions conflict with medical standards
23 and are not supported by the recommendations and
24 guidelines issued by leading reproductive health care
25 professional organizations including the American

1 College of Obstetricians and Gynecologists, the Soci-
2 ety of Family Planning, the National Abortion Fed-
3 eration, the World Health Organization, and others.

4 (12) Many abortion-specific restrictions do not
5 confer any health or safety benefits. Instead, these
6 restrictions have the purpose and effect of unduly
7 burdening people’s personal and private medical de-
8 cisions to end their pregnancies by making access to
9 abortion services more difficult, invasive, and costly,
10 often forcing people to travel significant distances
11 and make multiple unnecessary visits to the pro-
12 vider, and in some cases, foreclosing the option alto-
13 gether. For example, a 2018 report from the Univer-
14 sity of California San Francisco’s Advancing New
15 Standards in Reproductive Health research group
16 found that in 27 cities across the United States,
17 people have to travel more than 100 miles in any di-
18 rection to reach an abortion provider.

19 (13) An overwhelming majority of abortions in
20 the United States are provided in clinics, not hos-
21 pitals, but the large majority of counties throughout
22 the United States have no clinics that provide abor-
23 tion.

24 (14) These restrictions additionally harm peo-
25 ple’s health by reducing access not only to abortion

1 services but also to other essential health care serv-
2 ices offered by many of the providers targeted by the
3 restrictions, including—

4 (A) screenings and preventive services, in-
5 cluding contraceptive services; and

6 (B) testing and treatment for sexually
7 transmitted infections;

8 (C) LGBTQ health services; and

9 (D) referrals for primary care, intimate
10 partner violence prevention, prenatal care and
11 adoption services.

12 (15) The cumulative effect of these numerous
13 restrictions has been to severely limit the availability
14 of abortion services in some areas, creating a patch-
15 work system where access to abortion services is
16 more available in some States than in others. A
17 2019 report from the Government Accountability Of-
18 fice examining State Medicaid compliance with abor-
19 tion coverage requirements analyzed seven key chal-
20 lenges (identified both by health care providers and
21 research literature) and their effect on abortion ac-
22 cess, and found that access to abortion services var-
23 ied across the States and even within a State.

24 (16) International human rights law recognizes
25 that access to abortion is intrinsically linked to the

1 rights to life, health, equality and non-discrimina-
2 tion, privacy, and freedom from ill-treatment. United
3 Nations (UN) human rights treaty monitoring bod-
4 ies have found that legal abortion services, like other
5 reproductive health care services, must be available,
6 accessible, affordable, acceptable, and of good qual-
7 ity. UN human rights treaty bodies have likewise
8 condemned medically unnecessary barriers to abor-
9 tion services, including mandatory waiting periods,
10 biased counseling requirements, and third-party au-
11 thorization requirements.

12 (17) Core human rights treaties ratified by the
13 United States protect access to abortion. For exam-
14 ple, in 2018, the UN Human Rights Committee,
15 which oversees implementation of the ICCPR, made
16 clear that the right to life, enshrined in Article 6 of
17 the ICCPR, at a minimum requires governments to
18 provide safe, legal, and effective access to abortion
19 where a person's life and health is at risk, or when
20 carrying a pregnancy to term would cause substan-
21 tial pain or suffering. The Committee stated that
22 governments must not impose restrictions on abor-
23 tion which subject women and girls to physical or
24 mental pain or suffering, discriminate against them,
25 arbitrarily interfere with their privacy, or place them

1 at risk of undertaking unsafe abortions. Further-
2 more, the Committee stated that governments should
3 remove existing barriers that deny effective access to
4 safe and legal abortion, refrain from introducing
5 new barriers to abortion, and prevent the stigmatiza-
6 tion of those seeking abortion.

7 (18) UN independent human rights experts
8 have expressed particular concern about barriers to
9 abortion services in the United States. For example,
10 at the conclusion of his 2017 visit to the United
11 States, the UN Special Rapporteur on extreme pov-
12 erty and human rights noted concern that low-in-
13 come women face legal and practical obstacles to ex-
14 ercising their constitutional right to access abortion
15 services, trapping many women in cycles of poverty.
16 Similarly, in May 2020, the UN Working Group on
17 discrimination against women and girls, along with
18 other human rights experts, expressed concern that
19 some states had manipulated the COVID–19 crisis
20 to restrict access to abortion, which the experts rec-
21 ognized as “the latest example illustrating a pattern
22 of restrictions and retrogressions in access to legal
23 abortion care across the country” and reminded
24 U.S. authorities that abortion care constitutes essen-
25 tial health care that must remain available during

1 and after the pandemic. They noted that barriers to
2 abortion access exacerbate systemic inequalities and
3 cause particular harm to marginalized communities,
4 including low-income people, people of color, immi-
5 grants, people with disabilities, and LGBTQ people.

6 (19) Abortion-specific restrictions affect the
7 cost and availability of abortion services, and the
8 settings in which abortion services are delivered.
9 People travel across State lines and otherwise en-
10 gage in interstate commerce to access this essential
11 medical care, and more would be forced to do so ab-
12 sent this Act. Likewise, health care providers travel
13 across State lines and otherwise engage in interstate
14 commerce in order to provide abortion services to
15 patients, and more would be forced to do so absent
16 this Act.

17 (20) Health care providers engage in a form of
18 economic and commercial activity when they provide
19 abortion services, and there is an interstate market
20 for abortion services.

21 (21) Abortion restrictions substantially affect
22 interstate commerce in numerous ways. For exam-
23 ple, to provide abortion services, health care pro-
24 viders engage in interstate commerce to purchase
25 medicine, medical equipment, and other necessary

1 goods and services. To provide and assist others in
2 providing abortion services, health care providers en-
3 gage in interstate commerce to obtain and provide
4 training. To provide abortion services, health care
5 providers employ and obtain commercial services
6 from doctors, nurses, and other personnel who en-
7 gage in interstate commerce and travel across State
8 lines.

9 (22) It is difficult and time and resource-con-
10 suming for clinics to challenge State laws that bur-
11 den or impede abortion services. Litigation that
12 blocks one abortion restriction may not prevent a
13 State from adopting other similarly burdensome
14 abortion restrictions or using different methods to
15 burden or impede abortion services. There is a his-
16 tory and pattern of States passing successive and
17 different laws that unduly burden abortion services.

18 (23) When a health care provider ceases pro-
19 viding abortion services as a result of burdensome
20 and medically unnecessary regulations, it is often
21 difficult or impossible for that health care provider
22 to recommence providing those abortion services,
23 and difficult or impossible for other health care pro-
24 viders to provide abortion services that restore or re-
25 place the ceased abortion services.

1 (24) Health care providers are subject to license
2 laws in various jurisdictions, which are not affected
3 by this Act except as provided in this Act.

4 (25) Congress has the authority to enact this
5 Act to protect abortion services pursuant to—

6 (A) its powers under the commerce clause
7 of section 8 of article I of the Constitution of
8 the United States;

9 (B) its powers under section 5 of the Four-
10 teenth Amendment to the Constitution of the
11 United States to enforce the provisions of sec-
12 tion 1 of the Fourteenth Amendment; and

13 (C) its powers under the necessary and
14 proper clause of section 8 of Article I of the
15 Constitution of the United States.

16 (26) Congress has used its authority in the past
17 to protect access to abortion services and health care
18 providers' ability to provide abortion services. In the
19 early 1990s, protests and blockades at health care
20 facilities where abortion services were provided, and
21 associated violence, increased dramatically and
22 reached crisis level, requiring Congressional action.
23 Congress passed the Freedom of Access to Clinic
24 Entrances Act (Public Law 103–259; 108 Stat. 694)

1 to address that situation and protect physical access
2 to abortion services.

3 (27) Congressional action is necessary to put an
4 end to harmful restrictions, to federally protect ac-
5 cess to abortion services for everyone regardless of
6 where they live, and to protect the ability of health
7 care providers to provide these services in a safe and
8 accessible manner.

9 (b) PURPOSE.—It is the purpose of this Act—

10 (1) to permit health care providers to provide
11 abortion services without limitations or requirements
12 that single out the provision of abortion services for
13 restrictions that are more burdensome than those re-
14 strictions imposed on medically comparable proce-
15 dures, do not significantly advance reproductive
16 health or the safety of abortion services, and make
17 abortion services more difficult to access;

18 (2) to promote access to abortion services and
19 women’s ability to participate equally in the eco-
20 nomic and social life of the United States; and

21 (3) to invoke Congressional authority, including
22 the powers of Congress under the commerce clause
23 of section 8 of article I of the Constitution of the
24 United States, its powers under section 5 of the
25 Fourteenth Amendment to the Constitution of the

1 United States to enforce the provisions of section 1
2 of the Fourteenth Amendment, and its powers under
3 the necessary and proper clause of section 8 of arti-
4 cle I of the Constitution of the United States.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) **ABORTION SERVICES.**—The term “abortion
8 services” means an abortion and any medical or
9 non-medical services related to and provided in con-
10 junction with an abortion (whether or not provided
11 at the same time or on the same day as the abor-
12 tion).

13 (2) **GOVERNMENT.**—The term “government”
14 includes each branch, department, agency, instru-
15 mentality, and official (and other person acting
16 under color of law) of the United States or a State.

17 (3) **HEALTH CARE PROVIDER.**—The term
18 “health care provider” means any entity or indi-
19 vidual (including any physician, certified nurse-mid-
20 wife, nurse practitioner, and physician assistant)
21 that—

22 (A) is engaged or seeks to engage in the
23 delivery of health care services, including abor-
24 tion services, and

1 (B) if required by law or regulation to be
2 licensed or certified to engage in the delivery of
3 such services—

4 (i) is so licensed or certified, or

5 (ii) would be so licensed or certified
6 but for their past, present, or potential
7 provision of abortion services permitted by
8 section 4.

9 (4) MEDICALLY COMPARABLE PROCEDURE.—

10 The term “medically comparable procedures” means
11 medical procedures that are similar in terms of
12 health and safety risks to the patient, complexity, or
13 the clinical setting that is indicated.

14 (5) PREGNANCY.—The term “pregnancy” refers
15 to the period of the human reproductive process be-
16 ginning with the implantation of a fertilized egg.

17 (6) STATE.—The term “State” includes the
18 District of Columbia, the Commonwealth of Puerto
19 Rico, and each territory and possession of the
20 United States, and any subdivision of any of the
21 foregoing.

22 (7) VIABILITY.—The term “viability” means
23 the point in a pregnancy at which, in the good-faith
24 medical judgment of the treating health care pro-
25 vider, based on the particular facts of the case be-

1 fore the health care provider, there is a reasonable
2 likelihood of sustained fetal survival outside the
3 uterus with or without artificial support.

4 **SEC. 4. PERMITTED SERVICES.**

5 (a) **GENERAL RULE.**—A health care provider has a
6 statutory right under this Act to provide abortion services,
7 and may provide abortion services, and that provider’s pa-
8 tient has a corresponding right to receive such services,
9 without any of the following limitations or requirements:

10 (1) A requirement that a health care provider
11 perform specific tests or medical procedures in con-
12 nection with the provision of abortion services, un-
13 less generally required for the provision of medically
14 comparable procedures.

15 (2) A requirement that the same health care
16 provider who provides abortion services also perform
17 specified tests, services, or procedures prior to or
18 subsequent to the abortion.

19 (3) A requirement that a health care provider
20 offer or provide the patient seeking abortion services
21 medically inaccurate information in advance of or
22 during abortion services.

23 (4) A limitation on a health care provider’s abil-
24 ity to prescribe or dispense drugs based on current
25 evidence-based regimens or the provider’s good-faith

1 medical judgment, other than a limitation generally
2 applicable to the medical profession.

3 (5) A limitation on a health care provider's abil-
4 ity to provide abortion services via telemedicine,
5 other than a limitation generally applicable to the
6 provision of medical services via telemedicine.

7 (6) A requirement or limitation concerning the
8 physical plant, equipment, staffing, or hospital
9 transfer arrangements of facilities where abortion
10 services are provided, or the credentials or hospital
11 privileges or status of personnel at such facilities,
12 that is not imposed on facilities or the personnel of
13 facilities where medically comparable procedures are
14 performed.

15 (7) A requirement that, prior to obtaining an
16 abortion, a patient make one or more medically un-
17 necessary in-person visits to the provider of abortion
18 services or to any individual or entity that does not
19 provide abortion services.

20 (8) A prohibition on abortion at any point or
21 points in time prior to fetal viability, including a
22 prohibition or restriction on a particular abortion
23 procedure.

24 (9) A prohibition on abortion after fetal viabil-
25 ity when, in the good-faith medical judgment of the

1 treating health care provider, continuation of the
2 pregnancy would pose a risk to the pregnant pa-
3 tient's life or health.

4 (10) A limitation on a health care provider's
5 ability to provide immediate abortion services when
6 that health care provider believes, based on the
7 good-faith medical judgment of the provider, that
8 delay would pose a risk to the patient's health.

9 (11) A requirement that a patient seeking abor-
10 tion services at any point or points in time prior to
11 fetal viability disclose the patient's reason or reasons
12 for seeking abortion services, or a limitation on the
13 provision or obtaining of abortion services at any
14 point or points in time prior to fetal viability based
15 on any actual, perceived, or potential reason or rea-
16 sons of the patient for obtaining abortion services,
17 regardless of whether the limitation is based on a
18 health care provider's degree of actual or construc-
19 tive knowledge of such reason or reasons.

20 (b) OTHER LIMITATIONS OR REQUIREMENTS.—A
21 health care provider has a statutory right to provide abor-
22 tion services, and may provide abortion services, and that
23 provider's patient has a corresponding right to receive
24 such services, without a limitation or requirement that—

1 (1) is the same as or similar to one or more of
2 the limitations or requirements described in sub-
3 section (a); or

4 (2) both—

5 (A) expressly, effectively, implicitly, or as
6 implemented singles out the provision of abor-
7 tion services, health care providers who provide
8 abortion services, or facilities in which abortion
9 services are provided; and

10 (B) impedes access to abortion services.

11 (c) FACTORS FOR CONSIDERATION.—Factors a court
12 may consider in determining whether a limitation or re-
13 quirement impedes access to abortion services for purposes
14 of subsection (b)(2)(B) include the following:

15 (1) Whether the limitation or requirement, in a
16 provider’s good-faith medical judgment, interferes
17 with a health care provider’s ability to provide care
18 and render services, or poses a risk to the patient’s
19 health or safety.

20 (2) Whether the limitation or requirement is
21 reasonably likely to delay or deter some patients in
22 accessing abortion services.

23 (3) Whether the limitation or requirement is
24 reasonably likely to directly or indirectly increase the
25 cost of providing abortion services or the cost for ob-

1 taining abortion services (including costs associated
2 with travel, childcare, or time off work).

3 (4) Whether the limitation or requirement is
4 reasonably likely to have the effect of necessitating
5 a trip to the offices of a health care provider that
6 would not otherwise be required.

7 (5) Whether the limitation or requirement is
8 reasonably likely to result in a decrease in the avail-
9 ability of abortion services in a given State or geo-
10 graphic region.

11 (6) Whether the limitation or requirement im-
12 poses penalties that are not imposed on other health
13 care providers for comparable conduct or failure to
14 act, or that are more severe than penalties imposed
15 on other health care providers for comparable con-
16 duct or failure to act.

17 (7) The cumulative impact of the limitation or
18 requirement combined with other new or existing
19 limitations or requirements.

20 (d) EXCEPTION.—To defend against a claim that a
21 limitation or requirement violates a health care provider’s
22 or patient’s statutory rights under subsection (b), a party
23 must establish, by clear and convincing evidence, that—

1 (1) the limitation or requirement significantly
2 advances the safety of abortion services or the health
3 of patients; and

4 (2) the safety of abortion services or the health
5 of patients cannot be advanced by a less restrictive
6 alternative measure or action.

7 **SEC. 5. APPLICABILITY AND PREEMPTION.**

8 (a) IN GENERAL.—

9 (1) Except as stated under subsection (b), this
10 Act supersedes and applies to the law of the Federal
11 Government and each State government, and the im-
12 plementation of such law, whether statutory, com-
13 mon law, or otherwise, and whether adopted before
14 or after the date of enactment of this Act, and nei-
15 ther the Federal Government nor any State govern-
16 ment shall enact or enforce any law, rule, regulation,
17 standard, or other provision having the force and ef-
18 fect of law that conflicts with any provision of this
19 Act, notwithstanding any other provision of Federal
20 law, including the Religious Freedom Restoration
21 Act of 1993 (42 U.S.C. 2000bb et seq.).

22 (2) Federal statutory law adopted after the
23 date of the enactment of this Act is subject to this
24 Act unless such law explicitly excludes such applica-
25 tion by reference to this Act.

1 (b) LIMITATIONS.—The provisions of this Act shall
2 not supersede or apply to—

3 (1) laws regulating physical access to clinic en-
4 trances;

5 (2) insurance or medical assistance coverage of
6 abortion services;

7 (3) the procedure described in section
8 1531(b)(1) of title 18, United States Code; or

9 (4) generally applicable State contract law.

10 **SEC. 6. EFFECTIVE DATE.**

11 This Act shall take effect immediately upon the date
12 of enactment of this Act. This Act shall apply to all re-
13 strictions on the provision of, or access to, abortion serv-
14 ices whether the restrictions are enacted or imposed prior
15 to or after the date of enactment of this Act, except as
16 otherwise provided in this Act.

17 **SEC. 7. LIBERAL CONSTRUCTION.**

18 (a) LIBERAL CONSTRUCTION.—In interpreting the
19 provisions of this Act, a court shall liberally construe such
20 provisions to effectuate the purposes of the Act.

21 (b) RULE OF CONSTRUCTION.—Nothing in this Act
22 shall be construed to authorize any government to inter-
23 fere with a person’s ability to terminate a pregnancy, to
24 diminish or in any way negatively affect a person’s con-
25 stitutional right to terminate a pregnancy, or to displace

1 any other remedy for violations of the constitutional right
2 to terminate a pregnancy.

3 **SEC. 8. ENFORCEMENT.**

4 (a) ATTORNEY GENERAL.—The Attorney General
5 may commence a civil action for prospective injunctive re-
6 lief on behalf of the United States against any government
7 official that is charged with implementing or enforcing any
8 limitation or requirement that is challenged as a violation
9 of a statutory right under this Act. The court shall hold
10 unlawful and set aside the limitation or requirement if it
11 is in violation of this Act.

12 (b) PRIVATE RIGHT OF ACTION.—

13 (1) IN GENERAL.—Any individual or entity, in-
14 cluding any health care provider, aggrieved by an al-
15 leged violation of this Act may commence a civil ac-
16 tion for prospective injunctive relief against the gov-
17 ernment official that is charged with implementing
18 or enforcing the limitation or requirement that is
19 challenged as a violation of a statutory right under
20 this Act. The court shall hold unlawful and set aside
21 the limitation or requirement if it is in violation of
22 this Act.

23 (2) HEALTH CARE PROVIDER.—A health care
24 provider may commence an action for prospective in-
25 junctive relief on its own behalf and/or on behalf of

1 the provider's patients who are or may be adversely
2 affected by an alleged violation of this Act.

3 (c) **EQUITABLE RELIEF.**—In any action under this
4 section, the court may award appropriate equitable relief,
5 including temporary, preliminary, or permanent injunctive
6 relief.

7 (d) **COSTS.**—In any action under this section, the
8 court shall award costs of litigation, as well as reasonable
9 attorney fees, to any prevailing plaintiff. A plaintiff shall
10 not be liable to a defendant for costs in any non-frivolous
11 action under this section.

12 (e) **JURISDICTION.**—The district courts of the United
13 States shall have jurisdiction over proceedings under this
14 Act and shall exercise the same without regard to whether
15 the party aggrieved shall have exhausted any administra-
16 tive or other remedies that may be provided for by law.

17 (f) **ABROGATION OF STATE IMMUNITY.**—A State
18 shall not be immune under the Eleventh Amendment to
19 the Constitution of the United States from an action in
20 Federal or State court of competent jurisdiction for a vio-
21 lation of this Act. In any action against a State for a viola-
22 tion of the requirements of this Act, remedies (including
23 remedies both at law and in equity) are available for such
24 a violation to the same extent as such remedies are avail-

1 able for such a violation in an action against any public
2 or private entity other than a State.

3 **SEC. 9. SEVERABILITY.**

4 If any provision of this Act, or the application of such
5 provision to any person, entity, government, or cir-
6 cumstance, is held to be unconstitutional, the remainder
7 of this Act, or the application of such provision to all other
8 persons, entities, governments, or circumstances, shall not
9 be affected thereby.