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Pregnancy Resource Centers

Ensuring Access and Accuracy of Information

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Executive Summary

According to critics, California Crisis Pregnancy Centers (CPCs) routinely disseminate inaccurate medical information about pregnancy options available in this state. The problem is not exclusive to California. At least six states have already addressed it, either by enacting new legislation or by enforcing existing laws prohibiting misleading advertising and unfair business practices.

New legislation could focus on:

- **Signage:** Signage requirements aim to inform clients about the services a facility offers and whether licensed medical personnel are available.
- **Licensing:** By licensing providers of pregnancy services or those who give advice about pregnancy services, this allows a state to better regulate entities and gives notice of the scope of services offered.
- **Enforcement:** Creating a feedback loop between the public and the enforcement agencies ensures compliance.
- **Private Cause of Action:** Allowing injured individuals to sue CPCs that violate the law can provide enforcement independent of government action.

Existing California laws could be amended to incorporate these elements. Laws and regulations governing medical professionals and false or misleading advertising are the best candidates. For example, Business and Professions Code § 4999, which regulates Medical Telephone Advice Servicicers, allows only appropriately licensed health care professionals to provide patients with medical advice over the phone, and prohibits the use of misleading professional titles that may cause a caller to be confused about a staff member's qualifications. This provision could be used to address CPC practices by including language that covers any CPC volunteer or worker who disseminates medical information to an inquiring caller, regardless of whether an individual is a "health care professional".

To protect Californians who encounter CPCs other than over the phone, Business and Professions Code § 17500 – which prohibits false or misleading advertising – could be amended to clarify its application to noncommercial entities like CPCs.

Either approach must balance protecting First Amendment rights against the need to curb false and misleading practices about the services CPCs offer. Additionally, judicial scrutiny will inevitably follow the enforcement of laws and regulations touching the controversial issue of abortion.

Introduction

The California Assembly Committee on Business, Professions and Consumer Protection asked the Public Law Research Institute to investigate the feasibility of using legislative tools to regulate Crisis Pregnancy Centers (CPCs).

What is a CPC?

CPCs are pro-life (largely Christian belief-based) organizations that offer a limited range of free pregnancy options, counseling, and other services to individuals that visit a center.¹ CPCs typically do not offer services that conflict with pro-life pregnancy options, like abortion referrals or procedures.² In contrast, full-service organizations (like Planned Parenthood) offer a wider variety of services including administering medical tests, performing medical procedures (including abortions), and providing counseling in pregnancy options.³ At least 228 CPCs exist in California⁴ and approximately 2,500 exist

¹ Care Net, *History*, available at <https://www.care-net.org/care-net-history> (stating that Care Net was originally founded as the Christian Action Council in 1975, and “[f]rom its earliest days, Care Net has sought to engage faithful men and women in promoting life-affirming decisions.”); *see also* Care Net, *What Is a Pregnancy Center?*, available at <https://www.care-net.org/what-is-a-pregnancy-center> (discussing services available at centers); Melissa Kleder and S. Malia Richmond-Crumm, *The Truth Revealed: Maryland Crisis Pregnancy Center Investigations* (2008), available at <http://www.prochoicemd.org/assets/bin/pdfs/cpreportfinal.pdf>.

² *See* Care Net, Care Net, *What Is a Pregnancy Center?*, available at <https://www.care-net.org/what-is-a-pregnancy-center>; Bakersfield Pregnancy Center, *Our Services*, available at <http://www.wehelpyou.org>; Silent Voices, *Profile*, available at <http://www.silentvoices.org/home.aspx>; Corona Life Services, *What We Do*, available at <http://www.coronalife.org>; Pregnancy Help Center of San Gabriel Valley, *Programs and Services*, available at <http://pregnancyhelpsgv.com/programs-and-services>; Alpha Pregnancy Resource Center, *Options*, available at <http://www.alphaprc.org/programs/options>; Ventura County Pregnancy Center, *Services*, available at <http://venturacpc.org/services/>; National Abortion Federation (2006). National Abortion Federation, *Crisis Pregnancy Centers: An Affront to Choice*, available at https://www.prochoice.org/wp-content/uploads/cpc_report.pdf; Melissa Kleder and S. Malia Richmond-Crumm, *The Truth Revealed: Maryland Crisis Pregnancy Center Investigations* (2008), available at <http://www.prochoicemd.org/assets/bin/pdfs/cpreportfinal.pdf>.

³ *See* Planned Parenthood, *Health Center*, available at <http://www.plannedparenthood.org/health-center>; Melissa Kleder and S. Malia Richmond-Crumm, *The Truth Revealed: Maryland Crisis Pregnancy Center Investigations* (2008), available at <http://www.prochoicemd.org/assets/bin/pdfs/cpreportfinal.pdf>.

⁴ *See* Ramah International, *CA-California Pregnancy Resource Centers*, available at <http://ramahinternational.org/california.html>.

nationwide.⁵ CPC networks claim that centers collectively extended pregnancy services to approximately 1.8 million women between 2008 and 2013.⁶

CPC Structure & Resources

CPCs are local non-profit organizations, generally receiving substantial funding and resources from at least one large pro-life umbrella organizations such as: Care Net, International Heart Beat, and the National Institute of Family and Life Advocates (“NIFLA”).⁷ These pro-life donor organizations offer access to information for an individual or group planning to launch a local center.⁸ Additionally, a CPC that formally establishes affiliation with a donor organization acquires member benefits such as access to discounted or free pregnancy center staff trainings, materials, and professional services and resources.⁹ Donor organizations require CPCs to follow their affiliation rules to access resources.¹⁰ Such rules are designed to direct a CPC and its staff to operate according to the donor’s pro-life religious-based beliefs.¹¹ Additionally, donor organizations generally require CPCs to become incorporated as non-profits before the entity can apply to become a donor affiliate, and will only extend benefits to centers after they have incorporated.¹²

⁵ Pam Belluck, *Pregnancy Centers Gain Influence in Anti Abortion Arena*, N.Y. Times (Jan. 4, 2013), available at <http://www.nytimes.com/2013/01/05/health/pregnancy-centers-gain-influence-in-anti-abortion-fight.html>. Some sources estimate that as many as 4,000 centers were in operation in the early 2000s. See Ziba Kashef, *The Fetal Position*, Mother Jones (January/February 2003), available at <http://www.motherjones.com/politics/2003/01/fetal-position>.

⁶ Care Net, *Impact Report*, available at <http://cdn2.hubspot.net/hub/367552/file-2184494817-pdf/ImpactReport-12-4-2014.pdf>.

⁷ See United States House of Representatives Committee on Government Reform – Minority Staff, *False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers*, prepared for Rep. Henry A. Waxman (July 2006), available at <http://www.chsourcebook.com/articles/waxman2.pdf>.

⁸ Heartbeat International, *Frequently Asked Questions*, available at <http://www.heartbeat-services.org/about-us/faqs>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Care Net, *Starting a Pregnancy Center*, available at <http://www.care-net.org/starting-a-pregnancy-center>. Corporations are registered with the California Secretary of State. Non-profit public benefit corporations for “public and charitable purposes” receive tax exemption benefits under section 501(c)(3) of the Internal Revenue Code. CPCs are established for the purpose of reaching and offering their version of pregnancy services to the public and are therefore likely to register under “public benefit.” Additionally, some counties in California do not require non-profit organizations to

Because CPCs are typically non-profit organizations that offer charitable services, centers rely on sponsor organizations, donated labor (volunteer health professionals, counselors, receptionists, etc.), and donated funds to cover their costs.¹³ While some CPCs offer employment, these positions are generally at a director or managerial level.¹⁴ A CPC primarily builds its staff by recruiting local volunteers dedicated to Christian pro-life objectives and training individuals for job functions within a center accordingly.¹⁵ The majority of CPC volunteers are not medical professionals with formal medical training or licensure. An entity is required, however, to become a medical clinic with an appropriately qualified staff, licensure, insurance, and materials, before performing medical services like ultrasounds.¹⁶ Consequently, a CPC offering ultrasounds to patients is required to do the following: (1) hire a Medical Director with either a D.O. and/or an M.D.; (2) operate under the Medical Director's licensure; (3) retain medical clinic insurance; (4) hire an ultrasound technician, trained nurse, or other trained health professional (depending on a particular state's regulations), and; (5) have the Medical Director perform the ultrasounds.¹⁷

The Issue

CPCs have been accused of misrepresenting the nature of abortion as a physically, mentally, and spiritually harmful procedure.¹⁸ CPC messaging presents two distinct problems:

operate with a business license. For example, Alameda County does not require non-profit organizations to operate with a business license. See Alameda County, *Treasurer – Tax Collector; FAQs Business License Tax*, available at <http://www.acgov.org/treasurer/faqbus.htm#what>.

¹³ See Andrew Yuengert and Joel Fetzer, *Location Decisions of Abortion Clinics and Crisis Pregnancy Centers in California*, 15 *The Catholic Social Science Review* 211, 214 (2010), available at <https://faculty.pepperdine.edu/ayuenger/Yuengert%20Fetzer%20location%20decisions.pdf>.

¹⁴ See Care Net, *Career Opportunities*, available at <https://www.care-net.org/career-opportunities..>

¹⁵ Care Net, *Community Volunteer Opportunities*, available at <https://www.care-net.org/community-volunteer-opportunities>.

¹⁶ Heartbeat International, *Frequently Asked Questions*, available at <http://www.heartbeatservices.org/about-us/faqs>.

¹⁷ *Id.*

¹⁸ See, e.g., United States House of Representatives Committee on Government Reform – Minority Staff, *False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers*, prepared for Rep. Henry A. Waxman (July 2006), available at <http://www.chsourcebook.com/articles/waxman2.pdf>.

- Individuals seeking counseling and wide-ranging pregnancy services may inadvertently access a CPC that does not provide a full range of birth control or pregnancy treatment options; and
- Once at a CPC, individuals may receive false or incomplete medical advice.

This report analyzes options for regulating pregnancy resource centers with these two problems in mind. It examines executive and judicial regulatory enforcement efforts in other jurisdictions, the California Business & Professions Code, and newly created statutes aimed at regulating CPCs in other jurisdictions.

Discussion

Our research revealed several approaches aimed at regulating CPCs. These approaches include: using existing provisions in the California Business and Professions Code, drafting new legislation, and judicial enforcement of regulations to curb misleading CPC practices. In this section, we will discuss the functions, features, and tradeoffs of each approach.

Modifying or Leveraging Existing B&P Code Provisions

The California Business & Professions Code contains several provisions that may be useful for regulating pregnancy resource centers. In particular, provisions that address telephone medical advice and false and misleading advertisements may be modified to provide an enforcement mechanism for regulating pregnancy resource centers.

Cal. Business & Professions Code, Sections 4999, 4999.7 & 4999.3

Individuals may access pregnancy resource centers by telephone. Cal. B&P Code § 4999 requires medical advice telephone services to register with the Telephone Medical Advice Bureau and renew their memberships every two years. Section 4999.7 requires services to ensure that only appropriately licensed health care professionals provide medical advice. Section 4999 defines “Health Care Professionals” as a licensed medical professional such as a doctor, nurse, psychologist, etc., and “Telephone Medical Advice” as a telephone conversations between a health care professional whose main job is to respond to patient inquiries over the phone.

Further, § 4999 prohibits staff members who give telephone medical advice from using a title that misrepresents their professional qualifications. Services are required to keep records for two years of each telephone medical advice service provided to California patients, including complaints. Moreover, records of complaints against a servicer who provided medical advice to a patient are forwarded to the Department of Managed Care and to the entity that issued an offending service’s license.

Section 4999.3 grants the Department of Consumer Affairs (“DCA”) the ability to discipline (including suspend, revoke, or deny registration) servicers for certain acts performed by registrants or its employees. The DCA may discipline a service that has operated incompetently, very carelessly, or dishonestly.

Cal Business & Professions Code, Section 17500

Cal. B&P Code § 17500 prohibits any person that performs services, professional or otherwise, from making statements which are known or should be known to be misleading or untrue to induce the public to enter into an obligation connected with those services. A statement can be false or misleading if it (1) omits material information, (2) creates unjustified expectations, or (3) makes unsubstantiated comparisons.

California’s Attorney General has broad authority to enforce false advertisement and unfair competition laws.¹⁹ Attorneys general often rely on Business and Profession Codes, which have been used to regulate the behavior of pregnancy resource centers in both California and New York.

The New York action involved a motion to quash a subpoena issued by the Attorney General of New York. The subpoena was aimed at uncovering allegedly deceptive practices by nine CPCs in violation of consent decrees signed by those centers in 1987 and 1995.²⁰ The case settled, and a limited record was available for review. However, it is clear that the challenge was primarily based on First Amendment free speech violations.

The California suit involved a private action brought against Planned Parenthood seeking to compel the center to discuss contested medical research related to the effects of abortion with all of its clients. The court found that the statements at issue were noncommercial speech fully protected by the United States Constitution, and not actionable under Cal. B&P Code § 17500. Further, the court declined to weigh in on an “issue of genuine scientific debate” where there was conflicting medical research.

In sum, the exercise of false advertising laws against pregnancy resource centers has been largely unsuccessful when challenged in court because of First Amendment concerns, and the courts’ reluctance to weigh in on matters of genuine scientific debate. These hurdles may prevent the court from addressing issues regarding the accuracy of medical information or advice provided by pregnancy centers.

¹⁹ Cal. Const. Art 5 § 13 (West 2015); *see also* Cal. Attorney General Consumer Protection, <http://ag.ca.gov/consumers.php>, which serves as a clearinghouse for consumer fraud complaints.

²⁰ *See Pregnancy Resource Center v. Spitzer*, memorandum seeking to quash the subpoena, filed by Winston and Strawn, Attorneys for Pregnancy Resource Center; *Bernardo v. Planned Parenthood Federation of America*, 115 Cal. App. 4th 322 (2004).

Related Provisions

Other existing enforcement provisions could also be useful for regulating pregnancy resource centers. These provisions regulate unprofessional conduct,²¹ causes for discipline,²² suspension or revocation of nursing licenses,²³ and the illicit practice of medicine.²⁴ Because these provisions regulate medical services, they would not apply to services provided at CPCs without substantial revision.

New Legislation Targeting Deceptive Practices

In addition to modifying existing law, the other main approach to addressing the problem is drafting new legislation. Six jurisdictions have proposed or enacted legislation regulating CPCs.

Washington State: House and Senate Bills

Proposed Legislation: “Limited service pregnancy center” is defined as an organization that does not provide prenatal care, comprehensive birth control services, abortion or referrals for abortion. All reproductive health information provided in these centers must be medically and scientifically accurate. Limited-service pregnancy centers must immediately disclose that abortion or comprehensive birth control services, referrals, or medical care for pregnant women are not provided. Further, this must be in writing posted at the main entry door of the facility.

Issue: The committee chair pulled the bill because of strong opposition from the local community.

Actual Resolution: Bill did not pass.

Applicability to California: The political feasibility in Washington will suggest the political feasibility in California because they share similar political demographics (primarily Democratic states, with western Democratic cities, and Eastern Republican sides). A similar statute in California will likely have many conservative constituents that would oppose it.

Montgomery County, Maryland

Ordinance: Limited-service pregnancy centers must post a sign in the center stating that a) “the center does not have a licensed medical professional on staff,” and b) the county “encourages women who are or may be pregnant to consult with a licensed health care provider.”

²¹ Cal. B & P Code § 2271

²² *Id.* at § 2761

²³ *Id.* at § 2878

²⁴ *Id.* at § 2052. Section 2308 broadly defines diagnosis to include gratuitous services.

Issue: The ordinance is on hold pending outcome of a First Amendment challenge. Challengers assert that the ordinance is unconstitutional because only CPCs (and not full service centers) are required to post a sign. This restriction is content based and “presumptively invalid.”²⁵ The Council also issued a press release stating that the Resolution was a response to past speech of pro-life pregnancy centers “to dissuade women from choosing abortion.”

Actual Resolution: Pending

Applicability to California: As a federal constitutional question, the outcome of the case, although not binding on California, will show the likely constitutionality of a similar ordinance in California. Although the ordinance is a restriction on speech, the Court has repeatedly upheld reasonable restrictions for safety. As long as the purpose of a statute is safety, and it is not passed for a pro choice/life agenda, it will likely be upheld.

City of Baltimore, Maryland

Ordinance: Limited-service pregnancy centers must place a sign “indicating that the center does not provide or refer for abortions or nondirective comprehensive birth-control services. If the center provides or refers for some birth-control services, it may indicate on the disclaimer sign what birth-control services it does provide and/or refer for.”

Issue: Like Montgomery County, Maryland, the ordinance is being challenged on constitutional grounds. The suit alleges the ordinance violates First Amendment rights by 1) requiring centers to post a sign before offering advice and 2) regulating religious organizations (many centers tend to be religious non-profits).

Actual Resolution: Pending

Applicability to California: As a federal constitutional question, the resolution of the case will show the likely constitutionality of a similar ordinance in California. However, the holding of the Court is not binding on California.

City of New York, New York

Ordinance: The proposed ordinance requires limited-service pregnancy centers to place a sign in the waiting area that notifies clients that the center does not provide abortions or birth control. It also requires notification in writing if a licensed medical professional is not available.

Issue: The ordinance was recently introduced and its feasibility is not yet ascertainable.

Actual Resolution: Pending

²⁵See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992).

Applicability to California: This ordinance has a higher likelihood of being upheld because it has been proposed as a consumer protection ordinance with greater distance from the abortion debate.

Austin, Texas

Ordinance: The ordinance requires pregnancy centers that do not provide abortions or birth control to post two signs (one in English and one in Spanish) at the center's entrance.

Issue: The ordinance targets limited-service centers, which are predominantly pro-choice. Therefore, it may be deemed a First Amendment violation.

Actual Resolution: The ordinance recently passed and litigation is expected.

Applicability to California: California must address the same constitutional issue.

The State of Texas: House and Senate Bills

Proposed Statute: The statute would require "alternative to abortion organizations" to be state licensed and create rules to ensure the health and safety of clients.

Issue: For unknown reasons, the bills died in committee.

Actual Resolution: None, the bills died in committee.

Applicability to California: California is a distinctly different political environment.

Federal Legislation

Proposed Statute: Statute would allow the Federal Trade Commission to regulate CPCs.
















Issue: The bill was proposed in 2006, referred to the Subcommittee on Commerce, Trade and Consumer Protection, and never resurfaced.

Actual Resolution: The bill has been reintroduced.

Applicability to California: If the bill is passed it would pre-empt any state or local ordinances.

Recommendations

We determined the feasibility of each above-described approach based on the following criteria: effectiveness, cost, enforcement, political pressure, and constitutionality.

How Each Proposal Meets Goals and Objectives of Protecting Consumers			
Goals:	B&P Code 4999	B&P Code 17500	New Statute
Effectiveness			
Cost			
Enforcement			
Political Pressure			
Constitutionality			

Statutory Solution

The advantages to drafting new legislation include tailoring a comprehensive solution to the problem and creating a regulatory scheme that allows for adaptation in the face of constitutional challenges. However, drafting new legislation presents several barriers that make this approach difficult to implement. Those barriers include cost, political pressure from opposition, and constitutional issues. Appendix I includes a proposed statute that attempts to overcome some of the barriers other jurisdictions have encountered.

Effectiveness: Effectiveness is the most difficult element to assess prior to implementation. The primary goals of the statute are to (1) ensure clients know what services a center provides, and (2) ensure that clients receive accurate medical information.

Cost: Costs may be addressed through a statute that requires little or no enforcement, charging fees, or creating a cause of action against centers that fail to meet the requirements of the statute. These are incorporated in the proposed statute to create a positive budgetary impact and reinforce the effectiveness of the statute.

Enforcement: The proposed statute targets the two primary ways that clients learn about centers: websites and advertising at the location.²⁶ The statute authorizes the Secretary of

²⁶ See NARAL Pro-Choice California Foundation, *Unmasking Fake Clinics: The Truth About Crisis Pregnancy Centers in California* (2010), available at <http://www.prochoiceamerica.org/ca-cpcs/full-report-un.html>; Bakersfield Pregnancy Center, available at <http://www.wehelpyou.org>; Silent Voices, available at <http://www.silentvoices.org>; Corona Life Services, available at <http://www.coronalife.org>;

Health and Human Services (“Secretary”) to create regulations because the Secretary is in the best position to set regulations regarding medical establishments or places purporting to be a medical establishment. This logic is twofold: (1) the Secretary can create regulations within the spirit of the statute to close unforeseen loopholes or prevent unintended consequences, and (2) should any portion of the statute be made void through a constitutional or pre-emption issue, the Secretary could develop rules that are legally enforceable and within the spirit of the statute without the legislature having to start again from scratch.

Additionally, some CPCs do not have medical staff on-site.²⁷ The proposed statute addresses this issue in two ways: (1) it embraces the signage requirement proposed in other jurisdictions, and (2) gives the Secretary the authority to require licensing and to promulgate regulations.

Political Pressure and Constitutionality: The key weakness of other legislative attempts is that they have only targeted CPCs. Because these centers are often religiously affiliated, any regulation that affects only CPCs will likely be seen as unconstitutionally infringing the speech of a religious organization. We address this issue by regulating all pregnancy resource centers equally.

Another constitutional issue is privacy. Requiring signs on the doors of centers may make centers more noticeable, thereby reducing the privacy of clients. The confidentiality provision is designed to address this issue.

Cal B&P Sections 4999 & 4999.3 & 4999.7

Individuals seeking medical advice and pregnancy counseling face privacy issues when determining whether to access pregnancy resource center services over the phone or in-person. This Chapter’s basic framework is an appropriate platform for addressing and regulating medical information provided by CPCs over the phone. The primary obstacles to expanding Section 4999 et seq. to CPCs arise from the limited scope of the statute as it currently exists. If the limited definitions of medical advice, healthcare professionals and the criteria triggering licensing requirements by the state are modified to expand the scope of the existing statute to CPCs, then this approach is a feasible option for addressing the problem.

Enforcement: Enforcement is the essential criteria to make this approach feasible. To make the Chapter’s licensing provision enforceable it must be amended to cast a wider net.

Pregnancy Help Center of San Gabriel Valley, available at <http://www.phc-sgv.org>; Alpha Pregnancy Resource Center, available at <http://www.alphaprc.org>; Ventura County Pregnancy Center, available at <http://www.venturacpc.org>; National Abortion Federation, *Crisis Pregnancy Centers: An Affront to Choice*. (2006), available at http://www.prochoice.org/about_abortion/facts/cpc.html.

²⁷ See *supra*, note 10.

CPCs rely heavily on volunteers whose positions and schedules may fluctuate as frequently as a particular CPC's needs change.²⁸ The current provision only extends to servicers that employ at least five full-time health care professionals whose main purpose is to give telephone medical advice. Therefore, the Chapter must be modified to include part-time volunteers. Further, the requisite number of staff members should be abolished. For example, the following language could be added: "A volunteer that functions to disseminate medical information and advice over the phone to inquiring callers, including but not limited to part-time or full-time volunteers or employees, is covered under this provision."

The Chapter also requires that anyone offering medical advice be a "Health Care Professional." Pregnancy resource centers may have very few, if any, volunteers that fit this definition and a particular center may not be able to provide this service under the current provision. The Chapter should be modified to state "any volunteer or employee that disseminates medical information shall be treated as a "Health Care Professional" under this Chapter, regardless of professional training.

Finally, CPCs can avoid giving callers "medical advice" by characterizing information about pregnancy and abortion as "research" or "facts." Therefore, it is recommended that the following language be added to the Chapter: "Any medically-based research, facts, or advice disseminated to a patient about the patient's medical condition falls under this Chapter."

The current provisions extend to telephone medical advice given to any patient in California regardless of whether the servicer is located inside or outside of California. If applied to CPCs, this location specification would prevent organizations located outside of California from sidestepping the state's consumer protection laws. Therefore, it is recommended that language be added to the Chapter that specifies the following: "Any medically based research, facts, or advice disseminated to a patient in California about the patient's medical condition falls under this Chapter."

Costs: Enforcement costs will likely increase as the provisions expand to reach pregnancy resource centers. The Department of Managed Care would be responsible for keeping pregnancy resource center records and complaints in addition to managing its current telephone medical advice servicer records. Without implementing fees, no new revenue could be garnered to offset these additional costs. Further, the effectiveness of this approach is contingent upon Department of Consumer Affairs enforcement efforts.

Political Pressure and Constitutionality: We have attempted to minimize political pressure and First Amendment free speech issues by expanding the scope of an existing enforcement mechanism to include pregnancy resource centers rather than specifically targeting CPCs.

²⁸ For example, a part-time volunteer could work as a telephone pregnancy counselor on some days and as a fundraising coordinator on others.

Cal. B&P Code Section 17500

Cal. B&P § 17500 is a catch-all provision that is intended to prevent false and misleading information from being disseminated to the public. It has the potential to aid in regulating CPCs, however, it has two major pitfalls: (1) it only applies to commercial entities, and (2) there are significant constitutional issues implicated. If the constitutional issues can be circumvented the provision would need to be modified to include non-commercial entities.

Effectiveness: This provision has the potential to effectively regulate false or misleading messaging from CPCs if it is amended to include messaging from entities providing services to the public, regardless of whether they are commercial in nature or not. Therefore, we recommend broadening the scope of Cal. B&P § 17500 accordingly.

Cost and Enforcement: The costs associated with enforcement are primarily derived from Attorney General enforcement of the provisions. Because the Attorney General has discretion to prosecute violations, it is unlikely to significantly impact their overall budget.

Political Pressure and Constitutionality: These are the primary obstacles to making this approach feasible. Prior attempts to regulate pregnancy resource centers with false advertising laws have been ineffective in both California and New York. The courts found that First Amendment implications of regulating CPC speech ultimately trumped the Attorney General's role in protecting consumers. Because approaches that have treated CPCs and full-service-pregnancy centers differently have been challenged as violating the First Amendment, a principle feature of our proposal is the need to regulate all pregnancy centers, not just CPCs, in a uniform manner.

Conclusion

The best approach to addressing CPCs strikes a balance between protecting First Amendment rights and the need to curb false and misleading messaging and practices. We recommend incorporating the elements below into existing California Business and Professions Code provisions.

- **Signage:** Signage requirements inform clients about services offered and the availability of licensed medical personnel at the facility.
- **Licensing:** Broaden the scope of licensing requirements to include CPCs within the purview of state regulatory authority.
- **Enforcement:** Include a feedback loop between the public and the enforcing body to ensure compliance.
- **Private cause of action:** This supplements government enforcement by allowing individuals to bring suit for violations of the law.

Drafting new legislation is not our primary recommendation because the legislative process is long and cumbersome. Accordingly, leveraging existing regulations is the preferred approach.

Appendix I: Proposed Statute

(a) Definitions.

- (1) “Client” means a client or potential client.
- (2) “Licensed medical professional on staff” means one or more individuals who:
 - (A) are licensed to act in a medical capacity under the Business and Professions Code Section 101(b), (d), (m), (n), (z), (ab), (ad), (ag), (ah), or other certification authorized by the Secretary of Health and Human Services.
 - (i) provide medical-related services at the Center by either:
 - (i) providing medical services to clients at the Center; or
 - (ii) directly overseeing medical services provided at the Center.
- (3) “Pregnancy Resource Center” or “Center” means an organization, center, or individual that:
 - (A) has a primary purpose or advertises to provide pregnancy-related services; and
 - (B) provides information about pregnancy-related services, for a fee or as a free service.
- (4) “Medical Qualifications” means the level or medical education or state licensing under (a)(2)(A).
- (5) “Secretary” means the Secretary of Health and Human Services.
- (6) “Contraceptives” means all drugs and medical devices that have been approved by the United States food and drug administration for use as contraception.
- (7) “Periods of operation” means any time the center is open to clients or the public or allows clients or the public onto the premises for information or treatment.
- (8) “Medical capacity” means offering medical treatment or medical advice to clients or directly supervising others in the giving of medical advice or medical treatment, as authorized by law.
- (9) “Facility” means the building and private parking lot of a pregnancy resource center.

(b) Disclaimer required.

- (1) A pregnancy resource center must post at least 1 sign in the Center Stating:
 - (A) “This pregnancy center provides abortions”; or
 - (B) “This pregnancy center provides abortion referrals”; or
 - (C) “This pregnancy center does NOT provide abortions or abortion referrals”; and
 - (D) “The Center provides contraceptives”; or
 - (E) “The Center does NOT provide contraceptives”
- (2) A pregnancy resource center must post a sign on its door during all periods of operation when a medical professional as defined in (a)(2)(A) is not present AND acting in a medical capacity; and shall prominently display on letter-size paper that is clearly visible from the area at which the center conducts intakes the following notice:

[Name of center] is not a medical facility.
[Name of center] is not a licensed medical provider qualified to diagnose or accurately date pregnancy.

(3) The disclosures required by this subdivision must be provided in writing, in English and Spanish:

- (A) on at least one sign conspicuously posted in the entrance and any areas where individuals wait to receive services and to be written in such size and style as determined in accordance with rules promulgated by the Secretary;
- (B) if the pregnancy resource center has a website, clearly visible on such website is such size and style as determined in accordance with rules promulgated by the Secretary; and
- (C) in any advertisement promising the services of such pregnancy resource center is clear and prominent ledger type and in such size and style as determined in accordance with rules promulgated by the Secretary.

(c) Confidentiality of health and personal information.

- (1) All health information and personal information provided by a client in the course of inquiring about or seeking services at a pregnancy resource center shall be treated as confidential and not disclosed to any other individual, company or organization unless such client request or consents in writing to the release of such information or disclosure is required by operation of law or court order.
 - (A) Personal information shall include any information that could be used alone, or in combination with other information to identify the client; including but not limited to name, personal image, social security number, phone number, birth date, and career information.
- (2) The secretary shall have the authority to promulgate regulations ensuring privacy and confidentiality while visiting a pregnancy resource center. Such protections may extend 100 feet from the facility to ensure medical privacy and confidentiality.

(d) Licensing.

- (1) The Secretary of Health and Human Services is authorized to promulgate regulations requiring the licensing of pregnancy resource centers as defined under (a)(3). The secretary may establish a reasonable fee and promulgate regulations to ensure the health and safety of clients, the accuracy of advice and advertisements, the confidentiality of clients, and civil penalties for violation of the regulations. Violation of this statute or agency rules is grounds for suspension or removal of a license, and denial of subsequent licenses.
 - (A) Unless deemed otherwise by the Secretary, a center that opens in the same location or under substantially the same management shall be deemed the same center for purposes of licensing and penalties under this statute or agency regulations.
 - (B) A center shall be considered under substantially the same management if it receives more than 40% of its funding from the same source, has more than 30% of the same individuals that have ultimate authority over organizational decisions, or have more than 40% of the same employees or volunteers by head count working or volunteering more than 10 hours a week.

(e) Enforcement.

- (1) Any violation of this regulation is a civil violation punishable by a fine of two-hundred (200) dollars for the first violation, and two-thousand (2000) dollars for each subsequent violation;

- (A) After a center has received notice that it is in violation of this statute, each day it remains in violation is a subsequent violation for purposes of (c)(1);
- (2) Any party may seek enforcement of this statute against a pregnancy center in superior court.
 - (A) Upon a showing by a preponderance of the evidence that a pregnancy center violated this statute:
 - (i) the pregnancy center shall be fined in accordance with (c)(1); and
 - (ii) the party bring suit shall receive costs and reasonable attorney's fees.
- (3) Violation of any provision shall constitute a cause of action for any injured party, and such party may receive actual, punitive, injunctive, and declaratory damages.
- (4) The Secretary may set separate penalties for violations of regulations promulgated under the authority of this statute.

(f) Severability.

- (1) If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

Note: All statutes would be easier to enforce by allowing suit in small claims court in addition to superior court.

Appendix II: Statutes and Bills

Washington House and Senate Bill

1 AN ACT Relating to limited service pregnancy centers; and adding a
2 new chapter to Title 70 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) Seeking or obtaining health care is fundamental to public
6 health and safety;

7 (b) Health care information is personal and sensitive information
8 that if improperly used, released, or withheld from a patient may do
9 significant harm to a patient's interests in privacy, health care, or
10 other interests;

11 (c) The provision of medically inaccurate information may harm
12 individual access to needed health care and jeopardizes the public
13 health and consumer protection; and

14 (d) Some limited service pregnancy centers have misled people about
15 the nature of their services, have provided medically inaccurate
16 information about reproductive health, and have withheld health care

17 records, including the results of pregnancy tests, from individuals
18 seeking services.

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1 (2) It is the intent of the legislature that limited service
2 pregnancy centers operating in Washington state provide truthful
3 information about their services, ensure that any reproductive health
4 information provided is medically accurate, and maintain the privacy of
5 and respect a person's right to his or her health care information.

6 NEW SECTION. **Sec. 2.** As used in this chapter:

7 (1) "Comprehensive birth control services" means the provision of
8 nondirective counseling on methods and efficacy of contraception, the
9 prescription of contraceptive drugs or devices, the provision of
10 contraceptive drugs or devices, and medical diagnosis and care related
11 to the prescription or provision of contraceptive drugs or devices.

12 (2) "Limited service pregnancy center" means an organization that
13 advertises, offers, or provides pregnancy tests or ultrasounds, and
14 information about adoption or abortion, whether for a fee or as a free
15 service, but does not provide any of the following: Prenatal medical
16 care, comprehensive birth control services, abortion or referrals for
17 abortion. "Limited service pregnancy center" does not include health
18 care entities licensed under Title 18 RCW, hospitals and entities
19 licensed under Title 70 RCW, family planning clinics under contract
20 with the department of health or the department of social and health
21 services to provide family planning services, family planning clinics
22 receiving federal Title X funds, or health care providers licensed
23 under Title 18 RCW. A limited service pregnancy center remains subject
24 to the provisions of this chapter notwithstanding the presence of a
25 licensed health care provider in the governance of, on the staff of, or
26 acting as a volunteer with the limited service pregnancy center.

27 (3) "Health care information" has the same meaning as in RCW
28 70.02.010(7).

29 (4) "Medically and scientifically accurate" has the same meaning as
30 in RCW 28A.300.475(2).

31 (5) "Reproductive health information" means information about: (a)
32 The medical risks of pregnancy, abortion, miscarriage, and sexually
33 transmitted infections; and (b) methods of prevention of pregnancy and
34 sexually transmitted infections.

35 NEW SECTION. **Sec. 3.** (1) A limited service pregnancy center shall
36 make the following disclosures to a person seeking services:

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1 (a) That the center does not provide abortion or comprehensive
2 birth control services;

3 (b) That the center does not provide referrals to individuals or
4 organizations that provide abortion or comprehensive birth control
5 services; and

6 (c) That the center does not provide medical care for pregnant
7 women.

8 (2) The disclosure required by subsection (1) of this section must
9 be provided as follows:

10 (a) Verbally, in such a manner as to be reasonably understandable
11 to the person seeking services, upon first communication or first
12 contact with a person seeking services, whether by telephone,
13 electronic communication, or in person; and
14 (b) In writing, as follows:
15 (i) In English and in Spanish, in thirty-point font size or larger,
16 on eight and one-half inch by eleven inch paper or larger, posted (A)
17 on the main entry door of the organization and (B) inside the building
18 housing the organization in such a manner as to be clearly visible from
19 the area at which the organization conducts intakes; and
20 (ii) In English and in Spanish, clearly visible on the home page of
21 the organization's web site, in the primary font size used on the web
22 site; and
23 (iii) In any advertisement or notice promoting the center's
24 services.
25 (3) A limited service pregnancy center shall, before providing a
26 pregnancy test that uses an over-the-counter product to perform the
27 pregnancy test, inform the person seeking to be tested that the
28 pregnancy test is an over-the-counter product and shall give the test
29 kit to the person seeking to be tested to self-administer.
30 **NEW SECTION. Sec. 4.** All reproductive health information provided
31 by a limited service pregnancy center, whether provided orally or in
32 writing, must be medically and scientifically accurate.
33 **NEW SECTION. Sec. 5.** (1) A limited service pregnancy center that
34 collects health care information from a person seeking or receiving its
35 services shall not disclose health care information about that person
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1 to any other person, entity, or organization without the service
2 recipient's written authorization. A disclosure made under a service
3 recipient's written authorization must conform to the authorization.
4 (2) To be valid, a service recipient's authorization shall conform
5 to the requirements of RCW 70.02.030(3).
6 (3) A limited service pregnancy center that provides or assists in
7 the provision of pregnancy testing, whether for a fee or without
8 charge, whether those tests are over-the-counter or laboratory tests,
9 shall provide the person tested with a free written statement of the
10 results of the pregnancy test immediately after the test is completed.
11 (4) Upon receipt of a written request from a service recipient to
12 examine or copy all or part of the recipient's recorded health care
13 information, a limited service pregnancy center, as promptly as
14 required under the circumstances, but no later than fifteen working
15 days after receiving the request shall:
16 (a) Make the information available for examination during regular
17 business hours and provide a free copy to the service recipient, if
18 requested;
19 (b) Inform the service recipient if the information does not exist
20 or cannot be found; and
21 (c) If the limited service pregnancy center does not maintain a
22 record of the information, inform the service recipient and provide the

23 name and address, if known, of the entity that maintains the record.

24 NEW SECTION. **Sec. 6.** The legislature finds that the practices
25 covered by this chapter are matters vitally affecting the public
26 interest for the purpose of applying the consumer protection act,
27 chapter 19.86 RCW. A violation of this chapter is not reasonable in
28 relation to the development and preservation of business and is an
29 unfair or deceptive act in trade or commerce and an unfair method of
30 competition for the purpose of applying the consumer protection act,
31 chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are
32 cumulative and not exclusive.

33 NEW SECTION. **Sec. 7.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

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1 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 70 RCW.

Washing State Committee Report

As of January 28, 2010

Title: An act relating to limited service pregnancy centers.

Brief Description: Concerning limited service pregnancy centers.

Sponsors: Senators Tom, Kohl-Welles, Kline, McDermott, Marr, Keiser, Prentice, Ranker, Eide and Pridemore.

Brief History:

Committee Activity: Health & Long-Term Care: 1/27/10.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Rhoda Donkin (786-7465)

Background: Crisis pregnancy centers are numerous in Washington State and can be found in the yellow pages of the phone book under Abortion Alternatives. These facilities typically offer free pregnancy tests and counseling for women who suspect they are pregnant. These clinics receive personal health information from women, and provide information about sex, pregnancy, contraception, adoption, and abortion. These clinics do not provide abortion or referral to abortion services. They are not regulated as medical facilities in the state because they do not provide medical services to pregnant women. Many of these clinics are associated with churches or religious organizations. There is concern these facilities may not be fully disclosing their anti-abortion focus to prospective clients. There is further concern they are communicating misleading or false information regarding abortion and that health information about women may be disseminated without their consent.

Senate Bill Report - 1 - SB 6452

Limited service pregnancy centers must inform a woman when she is about to receive an over-the-counter pregnancy test, and allow her to self-administer it. Regardless of how a pregnancy test is processed, the results must be provided in writing to the client immediately after it is completed. When a limited service pregnancy center collects health information from a person seeking services, this may not be disclosed without the individual's written authorization. Health information recorded concerning clients will be

made available to them promptly, but no later than 15 working days after receiving the request. Violation of the conditions of this act are considered violations of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The goal of the bill is to protect medical privacy and make sure that medical information is accurate and not philosophical. These centers use inaccurate information to frighten women who are already in crisis because they don't want to be pregnant. The facilities target young, low income women who are particularly vulnerable. The information regarding birth control, sexually transmitted disease, and abortion, is false and misleading. The centers withhold test results, which is agonizing for women who fear pregnancy. This makes women more susceptible to their scare tactics. Personal health information is not kept private. This bill is necessary to protect women from thinking these are legitimate health clinics where they will receive medical care and a complete understanding of their choices.

CON: These centers use no public funds. Most are faith-based and if we don't tell folks what to say in church, we shouldn't be telling people what they can say in these centers. The bill will end up consuming valuable state resources and infringe important liberties guaranteed by the state and federal constitutions. It will have a significant negative impact on the enforcement of state consumer protection statutes. This bill will reduce women's choices because they will have nowhere to go to get support for bringing new life into the world. These centers offer help with things like diapers and newborn clothes. Women should know before they choose an abortion that it will cause both physical and psychological suffering. Some of these clinics do provide medical care, and in these cases the care is provided by licensed medical professionals. This bill will harm the women it purports to protect.

Montgomery County Ordinance

Background

1. County Code §2-65, as amended effective August 10, 2000, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On December 1, 2009, the County Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. On January 25, 2010, the Health and Human Services Committee held a work session on this regulation and recommended the Council adopt the regulation as amended.

5. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that requiring a disclaimer for certain pregnancy resource centers is necessary to protect the health of County residents. The Board of Health's concern is that clients may be misled into believing that a Center is providing medical services when it is not. Clients could therefore neglect to take action (such as consulting a doctor) that would protect their health or prevent adverse consequences, including disease, to the client or the pregnancy.

Action

Required Disclaimers for Certain Pregnancy Resource Centers

(a) Definitions.

(1) "*Client*" means a client or potential client.

(2) "*Licensed medical professional on staff*" means one or more individuals who:

(A) are licensed by the appropriate State agency under Title 8, 14, or 15 of the Health Occupations Article of the Maryland Code;

(B) provide medical-related services at the Center by either:

(i) providing medical services to clients at the Center at least 20 hours per week; or

(ii) directly overseeing medical services provided at the Center; and

(C) are employed by or offer their services at the Center.

(3) "*Limited Service Pregnancy Resource Center*" or "*Center*" means an organization, center,

or individual that:

(A) has a primary purpose to provide pregnancy-related services;

(B) does not have a licensed medical professional on staff; and

(C) provides information about pregnancy-related services, for a fee or as a free service.

(b) Disclaimer required.

(1) A limited service pregnancy resource center must post at least 1 sign in the Center indicating that:

(a) the Center does not have a licensed medical professional on staff; and

(b) the Montgomery County Health Officer encourages women who are or may be pregnant to consult with a licensed health care provider.

(2) The sign required in paragraph (b)(1) must be:

(a) written in English and Spanish;

(b) easily readable; and

(c) conspicuously posted in the Center's waiting room or other area where individuals await service.

(c) Enforcement.

(1) Any violation of this regulation is a Class A civil violation.

2 RESOLUTION No. 16-1252

(2) The County Attorney may file an action in a court with jurisdiction

to enjoin repeated violations of this regulation.

(3) The Department of Health and Human Services must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation when compliance cannot be obtained otherwise. If the Department learns that a limited service pregnancy resource center is in violation of this regulation, the Department must, before issuing a citation, issue a written notice ordering the Center to correct the violation within either:

- (a) 10 days of the notice; or
- (b) a longer period that the Department specifies in the notice.

Baltimore City Ordinance

A. Definitions

i. “Limited-service pregnancy center” means any person:

a) Whose primary purpose is to provide pregnancy-related services; and

b) Who

(1) For a fee or as a free service, provides information about pregnancy-related services; but

(2) Does not provide or refer for:

(a) Abortions; or

(b) Nondirective and comprehensive birth-control services.

ii. “Nondirective comprehensive birth-control services” means birth-control services which only a licensed healthcare professional may prescribe or provide but may include other birth-control services.

B. Disclaimer Sign Posting.

i. Except as provided in subsection ii. below, each limited-service-pregnancy center shall post in its waiting room or other area where individuals await service:

a) one or more disclaimer signs

b) in English and Spanish

c) indicating that the center does not provide or refer for abortions or nondirective comprehensive birth-control services.

ii. If the center provides or refers for some birth-control services, it may indicate on the disclaimer sign what birth-control services it does provide and/or refer for.

iii. A center may indicate on the disclaimer sign that the sign is required by Baltimore City ordinance.

C. Ability to Read Disclaimer Sign

i. An individual with normal vision should be able to read at least one disclaimer sign from any location in the waiting area.

ii. The disclaimer sign need not use any particular words but its content shall be limited to statements of fact as provided in Section B. above.

D. Enforcement

i. If the Health Commissioner learns that a center is in violation of this subtitle, the Commissioner shall issue a written notice ordering the center to correct the violation within 10 days of the notice or within any longer period that the Commissioner specifies in the notice.

- ii. If the center fails to comply with the order, then the Commissioner may issue:
 - a) an environmental citation under City Code Article 1, Subtitle 40; or
 - b) a civil citation under City Code Article 1, Subtitle 41.
- iii. The issuance of a citation does not preclude the Commissioner from pursuit of any other civil or criminal remedy or enforcement action authorized by law

I. BACKGROUND

A. Legal Authority

Title 3, Subtitle 5 of the Health Code requires a limited-service pregnancy center to post conspicuously in its waiting area an easily readable disclaimer sign in English and Spanish that it does not provide or make referrals for abortion or comprehensive birth-control services. Section 3-503 of the Health Code provides that the Health Commissioner is responsible for enforcing the requirement. Under § 2-106 of the Baltimore City Health Code, the Health Commissioner may adopt and enforce regulations to carry out his duties.

B. Proposed Regulation

To provide limited-service pregnancy centers guidance on how to meet the requirements of the Title 3, Subtitle 5 of the Health Code, the Health Department proposes this regulation. The regulation would take effect 30 days after adoption.

The proposed regulation does not mandate specific wording in the disclaimer sign. It merely requires the sign to reflect accurately whether the limited-service pregnancy center provides or refers for abortions, and whether it provides or refers for nondirective comprehensive birth-control services. If the center provides or refers for some, but not comprehensive, birth-control services, then the sign may indicate that.

This proposed regulation does not regulate or address what other material or signs a limited-service pregnancy center may choose to have in its waiting areas.

New York City

By Council Members Lappin, the Speaker (Council Member Quinn), Arroyo, Ferreras, Mendez and Reyna

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to limited service pregnancy centers.

Be it enacted by the Council as follows:

Section 1. Chapter 5 of Title 20 of the administrative code of the city of New York I amended by adding a new subchapter 17 to read as follows:

SUBCHAPTER 17

LIMITED SERVICE PREGNANCY CENTERS

§ 20-815 Definitions.

§ 20-816 Required disclosures.

§ 20-817 Confidentiality of health and personal information.

§ 20-818 Penalties.

§ 20-819 Hearing Authority.

§ 20-820 Civil cause of action.

§ 20-815 Definitions. For the purpose of this subchapter, the following terms shall have the following meanings: a. "Abortion" shall mean the termination of a pregnancy for purposes other than producing a live birth, which includes but is not limited to a termination using pharmacological agents. Abortion does not include the termination of an ectopic pregnancy.

b. "Client" shall mean an individual who is inquiring about or seeking services at a limited service pregnancy center.

c. "FDA-approved contraceptive drugs and devices" shall mean all drugs and medical devices that have been approved by the United States food and drug administration for use as contraception.

d. "Health information" shall mean any oral or written information in any form or medium that relates to the past, present, or future physical or mental health or condition of a client.

e. "Limited service pregnancy center" shall mean a facility where the primary purpose is to provide commercially valuable pregnancy-related services, regardless of whether they are offered for a fee: (1) does not provide or refer for abortions or FDA-approved contraceptive drugs and devices; (2) is not licensed by the state of New York or the United States government to provide medical services.

f. "Licensed medical provider" shall mean a person licensed or otherwise authorized under the education law of New York to practice as a physician, physician assistant, specialist assistant, nurse, or midwife.

g. "Personal information" shall mean the name, address, date of birth, social security number, driver's license number or non-driver photo identification card number of a client. This term shall apply to all such data, notwithstanding the method by which such information is maintained.

h. "Premises" shall mean land and improvements or appurtenances or any part thereof.

§ 20-816 Required disclosures. a. (1) A limited service pregnancy center shall disclose to a client that the limited service pregnancy center does not provide abortion or FDA-approved contraceptive drugs and devices and does not provide referrals to individuals or organizations that provide abortion or FDA-approved drugs and devices.

(2) The disclosures required by this subdivision must be provided in writing, in English and Spanish: (i) on at least one sign conspicuously posted in the entrance and any areas where individuals wait to receive services and to be written in such size and style as determined in accordance with rules promulgated by the commissioner; (ii) if the limited services pregnancy center has a website, clearly visible on such website is such size and style as determined in accordance with rules promulgated by the commissioner; and (iii) in any advertisement promising the services of such limited service pregnancy center is clear and prominent ledger type and in such size and style as determined in accordance with rules promulgated by the commissioner.

b. If a licensed medical provider is not present at a limited service pregnancy center, such limited service pregnancy center shall disclose to a client that a licensed medical provider is not available. Such disclosure must be provided in writing, in English and Spanish on at least one sign conspicuously post in the entrance and nay areas where individuals wait to receive services and to be written in such size and style as determined in accordance with rules promulgated by the commissioner.

§ 20-817 Confidentiality of health and personal information. a. All health information and personal information provided by a client in the course of inquiring about or seeking services at a limited service pregnancy center shall be treated as confidential and not disclosed to any other individual, company or organization unless such client request or consents in writing to the release of such information or disclosure is required by operation of law or court order.

b. Any consent for the release or health or personal information required pursuant to subdivision of this section must:

- 1) be in writing, dated and signed by the client;
- 2) identify the nature of the information to be disclosed;
- 3) indentify the name and institutional affiliation of the person or class of persons to whom the information is to be disclosed;
- 4) identify the organization or individual who is to make the disclosure;
- 5) identify the client; and

6) contain an expiration date or an expiration event that relates to the client or the purpose of the use or disclosure.

§20-818 Penalties. a. Any limited service pregnancy center that violates section 20-816 or 20-817 or any rule or regulation promulgated hereunder shall be liable for a civil penalty of not less than two hundred dollars nor more than one thousand dollars for the first violation and a civil penalty of not less than five hundred dollars nor more than two thousand-five hundred dollars for each succeeding violation.

b. (1) If any limited service pregnancy center is found to have violated the provisions of section 20-816 on three or more separate occasions within two years, then, in addition to imposing the penalties set forth in subdivision a of this section, the commissioner after notice and a hearing shall be authorized to order that the limited service pregnancy center be sealed for a period not to exceed five consecutive days, except that such premises may be entered with the permission of the commissioner solely for actions necessary to remedy past violations of section 20-816 or prevent future violations. For the purpose of this subdivision, any violations at a limited service pregnancy center shall not be included in determining the number of violations of any subsequent limited service pregnancy center at that location unless the commissioner establishes that the subsequent operator of such limited service pregnancy center acquired the premises or limited service pregnancy center, in whole or in part, for the purpose of permitting the previous operator of the limited service pregnancy center who had been found guilty of violating section 20-816 to avoid the effect of violations.

(2) Orders of the commissioner issued pursuant to paragraph 1 of this subdivision shall be posted at the premises on which the activity occurs in violation for section 20-816.

(3) Ten days after the posting of an order issued pursuant to paragraph 1 of this subdivision and upon the written directive of the commissioner, officers and employees of the department and officers of the New York city police department are authorized to act upon and enforce such orders.

(4) A closing directed by the department pursuant to this paragraph shall not constitute an act of possession, ownership, or control by the city of the closed premises.

(5) Mutilation or removal of a posted order of the commissioner or his designee shall be punishable by a fine of not more than two hundred fifty dollars or by imprisonment not exceeding fifteen days, or both, provided such order contains a notice of such penalty. Any other intentional disobedience or resistance to any provision of the orders issued pursuant to this subdivision, including using or occupying or permitting any other person to sue or occupy any premises ordered closed without the permission of the department as described in subdivision b shall, in addition to any other punishment prescribed by law, be punishable by a fine of not more than one thousand dollars, or by imprisonment not exceeding six months, or both.

§ 20-819 Hearing Authority. a. Notwithstanding any other provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of the provisions of this subchapter and any rules promulgated thereunder. The department shall have the power to render decisions and orders and to impose civil penalties not to exceed the amount specified in section 20-818 of this subchapter for each such violation. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by the commissioner. The penalties provided for in section 20-818 of this subchapter shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

b. All proceeding under this subchapter shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. Notice of any third violation for engaging in a violation of section 20-816 shall state that promises may be ordered sealed after a finding of a third violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in an served shall constitute notice of the violation charged, and if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 20-820 Civil cause of action. Any person claiming to be injured by the failure of a limited service pregnancy center to comply with section 20-817 shall have a cause of action against such limited service pregnancy center in any court of competent jurisdiction for any or all of the following remedies: compensatory and punitive damages; injunctive and declaratory relief; attorney’s fees and costs; and such other relief as a court deems appropriate.

§ 2. Effect of invalidity; severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionability or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 3. This local law shall take effect one hundred twenty days after its enactment into law, provided that the commissioner may promulgate any rules necessary for implementing and carrying out the provisions of this local law prior to its effective date.

Austin, Texas

**AN ORDINANCE AMENDING THE CITY CODE TO ADD CHAPTER 10-9 TO
4 REQUIRE SIGNS IN CERTAIN PREGNANCY COUNSELING FACILITIES;
5 CREATING AN OFFENSE; AND IMPOSING A PENALTY**

6

7 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

8

9 **PART 1:** A new Chapter 10-9 of the Code is adopted to read:

10

11 **CHAPTER 10-9 LIMITED SERVICE PREGNANCY CENTERS**

12

13 **ARTICLE 1. GENERAL PROVISIONS.**

14

15 **§10-9-1 DEFINITIONS.**

16

17 In this chapter:

18

19 (A) The term “ABORTION” has the meaning set forth in Section 170.001 of the
20 Texas Health and Safety Code.

21

22 (B) The term “COMPREHENSIVE BIRTH CONTROL SERVICES” means all
23 drugs and medical devices that have been approved by the U.S. Food and Drug
24 Administration for birth control.

25

26 (C) The term “LIMITED SERVICE PREGNANCY CENTER” or “CENTER”
27 means an organization or facility that:

28

29 (i) provides pregnancy counseling or information as its primary purpose, either
30 for a fee or as a free service;

31

32 (ii) does not provide Abortions or make referrals to Abortion providers;

33

34 (iii) does not provide Comprehensive Birth Control Services or make referrals
35 for Comprehensive Birth Control Services, and

36

37 (iv) is not licensed or certified by the state or federal government to provide
38 medical or health care services.

39

40 (D) “OWNER OR OPERATOR” means an individual or corporation that owns,
41 operates, or manages a Limited Service Pregnancy Center.

Page 2 of 2

42

43 **ARTICLE 2. OFFENSE.**

44

45 **§10-9-2 NOTICE REQUIRED.**

46

47 (A) The Owner or Operator of a Limited Service Pregnancy Center shall prominently
48 display, at the entrance of the Center, two black and white signs, one in English and one
49 in Spanish, that state as follows: “This center does not provide abortions or refer to
50 abortion providers. This center does not provide or refer to providers of U.S. Food and
51 Drug Administration approved birth control drugs and medical devices.”

52

53 (B) Each sign must be at least eight and one-half inches by eleven inches and the text
54 must be in a font size of at least 48 point.

55

56 **§10-9-3 PENALTY.**

57 A person who violates this chapter commits an offense. An offense under this chapter

58 is a Class C misdemeanor punishable by a fine of not less than \$250 for the first offense,
59 not less than \$350 for a second offense, and not less than \$450 for a third offense. A
60 culpable mental state is not required for a violation of this chapter and need not be
61 proved.

State of Texas

Senate Bill 1174

A BILL TO BE ENTITLED

AN ACT

relating to alternatives to abortion organizations; imposing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 173 to read as follows:

CHAPTER 173. ALTERNATIVES TO ABORTION ORGANIZATIONS

Sec. 173.001. DEFINITIONS. In this chapter:

(1) "Alternatives to abortion organization" means an organization, including a pregnancy counseling organization or crisis pregnancy center, that for a fee or as a free service provides pregnancy counseling or information but does not perform an abortion or refer a female to an abortion provider. The term does not include a licensed health care provider, a hospital, or a family planning clinic that provides abortions or contraception or provides abortion or contraception referrals.

(2) "Commission" means the Health and Human Services Commission.

(3) "Health care practitioner" means a physician, midwife, physician assistant, or nurse authorized to provide health care services under Subtitle B, C, or E, Title 3, Occupations Code.

(4) "Licensed counselor" means a person licensed as a counseling or mental health professional under Chapter 501, 502, 503, or 505, Occupations Code.

(5) "Patient" means a woman seeking information, assistance, or other services from an alternatives to abortion organization.

Sec. 173.002. LICENSE. (a) An alternatives to abortion organization may be licensed under this chapter.

(b) An alternatives to abortion organization may not directly or indirectly receive state money or other assistance unless the organization is licensed under this chapter.

(c) A license issued under this chapter is not transferable or assignable.

Sec. 173.003. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an alternatives to abortion organization license must submit an application to the commission on a form prescribed by the commission.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the commission.

(c) The application must contain evidence that:

- (1) at least one health care practitioner is on the organization's staff; or
- (2) at least one licensed counselor is on the organization's staff.

(d) The commission shall issue a license to the applicant if, after inspection and investigation, it finds that the alternatives to abortion organization meets the requirements of this chapter and the standards adopted under this chapter.

(e) As a condition for renewal of a license, the license holder must submit to the commission the annual license renewal fee.

(f) Information regarding the licensing status of an alternatives to abortion organization is an open record for the purposes of Chapter 552, Government Code, and shall be made available by the commission on request.

Sec. 173.004. INSPECTIONS. (a) The commission may inspect a licensed alternatives to abortion organization, or an applicant for a license, at reasonable times as necessary to ensure compliance with this chapter.

(b) The commission shall inspect an alternatives to abortion organization before renewing the organization's license under Section 173.003(e).

Sec. 173.005. FEES. The commission shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Sec. 173.006. ALTERNATIVES TO ABORTION ORGANIZATION LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the alternatives to abortion organization licensing fund and may be appropriated only to the commission to administer and enforce this chapter.

Sec. 173.007. ADOPTION OF RULES. The executive commissioner of the commission shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license.

Sec. 173.008. MINIMUM STANDARDS. (a) The rules adopted under Section 173.007 must contain minimum standards for licensed alternatives to abortion organizations to protect the health and safety of a patient.

(b) The standards may not be more stringent than Medicare certification standards, if any, for:

- (1) qualifications for professional and nonprofessional personnel;

- (2) supervision of professional and nonprofessional personnel;
- (3) sanitary and hygienic conditions within an alternatives to abortion organization;
- (4) the equipment essential to the health and welfare of a patient;
- (5) clinical records kept by an alternatives to abortion organization; and
- (6) management, ownership, and control of the organization.

(c) This section does not authorize the commission to:

- (1) establish the qualifications of a licensed practitioner; or
- (2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

Sec. 173.009. PRIVACY REQUIREMENTS; USE OF INFORMATION. (a) An alternatives to abortion organization may not reveal a patient's name or health information or any other identifying information without the patient's written consent.

(b) An alternatives to abortion organization must comply with Section 181.152.

(c) This section applies without regard to whether the alternatives to abortion organization is licensed.

Sec. 173.010. DISCIPLINARY ACTION. (a) An alternatives to abortion organization that violates Section 173.009 is ineligible to receive state funding.

(b) If the commission determines an alternatives to abortion organization violated Section 173.009, the commission shall withhold state money otherwise to be provided to the organization. The organization is liable to this state for any money the organization has already received from the state during the state fiscal year in which the determination is made. The organization is not eligible for state funding before the first anniversary of the date of the commission determination. The attorney general in the name of the state may bring an action to recover amounts owed to the state under this section.

(c) If the commission determines that an alternatives to abortion organization that does not receive state money or other assistance violated this chapter, the attorney general, at the request of the commission, shall bring an action to impose a civil penalty in an amount not to exceed \$5,000 for each violation.

(d) An alternatives to abortion organization may appeal a commission determination under this section to the State Office of Administrative Hearings. An appeal under this subsection is a contested case under Chapter 2001, Government Code.

House Bill 2223

An act relating to the regulation of crisis pregnancy centers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 172 to read as follows:

CHAPTER 172. REGULATION OF CRISIS PREGNANCY CENTERS

Sec. 172.001. DEFINITIONS. In this chapter:

(1) "Crisis pregnancy center" means an organization, including a pregnancy counseling organization or alternatives to abortion organization, that for a fee or as a free service provides pregnancy counseling or information but does not perform an abortion or refer a female to an abortion provider. The term does not include a licensed health care provider, a hospital, or a family planning clinic that provides abortions or contraception or provides abortion or contraception referrals.

(2) "Commission" means the Health and Human Services Commission.

(3) "Medically accurate information" means information supported by the weight of peer-reviewed research conducted in compliance with accepted scientific methods and recognized as accurate by leading professional organizations and agencies with relevant expertise in the field.

Sec. 172.002. RULES. The commission may adopt rules necessary to implement this chapter.

Sec. 172.003. FACTUALLY OR MEDICALLY ACCURATE INFORMATION REQUIRED. An agent of a crisis pregnancy center shall provide a woman who is seeking counseling or information about pregnancy or abortion only with information the agent knows to be factually or medically accurate information.

Sec. 172.004. NOTICE. (a) A crisis pregnancy center shall prominently display on letter-size paper that is clearly visible from the area at which the center conducts intakes the following notice:

[Name of center] is not a medical facility.

[Name of center] does not perform abortions or refer women for abortions.

[Name of center] does not provide information on pregnancy prevention or refer women for pregnancy prevention.

[Name of center] is not a licensed medical provider qualified to diagnose or accurately date pregnancy.

[Name of center] is not licensed by the State of Texas.

(b) A crisis pregnancy center shall verbally provide the information in Subsection (a) to each person who requests services from the center before the center provides any services to the person.

(c) A crisis pregnancy center shall include a printed copy of the information in Subsection (a) with any material distributed by the center.

Sec. 172.005. DISCIPLINARY ACTION. (a) A crisis pregnancy center that violates this chapter is ineligible to receive state funding.

(b) If the commission determines a crisis pregnancy center violated this chapter, the commission shall withhold state money otherwise to be provided to the center. The center is liable to the state for any money the center has already received from the state during the state fiscal year in which the determination is made. The center is not eligible for state funding before the first anniversary of the date of the commission determination. The attorney general in the name of the state may bring an action to recover amounts owed to the state under this section.

(c) A crisis pregnancy center may appeal a commission determination under this section to the State Office of Administrative Hearings. An appeal under this subsection is a contested case under Chapter 2001, Government Code.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Requiring Notice of Client Complaint Mechanism

The following section may be a stand-alone statute to help the state identify pregnancy-resource centers that are engaging in fraud or other illegal activity or may be added to one of the above recommended statutes to assist in enforcement.

(a) Definitions.

(1) "*Pregnancy Resource Center*" or "*Center*" means an organization, center, or individual that:

(A) has a primary purpose to provide pregnancy-related services; and

(B) provides information about pregnancy-related services, for a fee or as a free service

(b) Disclaimer required.

(1) A pregnancy resource center must post at least 1 sign in the Center stating *complaints should be directed to the attorney general's office*, and the sign shall list a current phone number for the California Attorney General's office.

(2) The sign required in paragraph (b)(1) must be:

(A) written in English and Spanish;

(B) easily readable; and

(C) conspicuously posted in the Center's waiting room or other area where individuals await service.

(c) Enforcement.

(1) Any violation of this regulation is a civil violation punishable by a fine of two-hundred (200) dollars for the first violation, and five-hundred (500) dollars for each subsequent violation;

(A) After a center has received notice that it is in violation of this statute, each day it remains in violation is a subsequent violation for purposes of (c)(1);

(2) any party may seek enforcement of this statute against a pregnancy-resource center in superior court.

(A) Upon a showing by a preponderance of the evidence that a pregnancy-resource center violated this statute:

(i) the pregnancy center shall be fined in accordance with (c)(1); and

(ii) the party bring suit shall receive costs and reasonable attorney's fees.

State Database Listing Services

This is the one option that would cost the state, although the cost would be minimal, and therefore may be less likely to succeed. This will help both in allowing women who are or may be pregnant to have access to all the necessary information in one location and in assisting the state in locating individuals practicing medicine without a license.

(a) Definitions.

(1) "*Pregnancy Resource Center*" or "*Center*" means an organization, center, or individual that:

(A) has a primary purpose to provide pregnancy-related services; and

(B) provides information about pregnancy-related services, for a fee or as a free service

(2) "*Operating*" means providing services or information regarding pregnancy or advertising regarding offering services or information regarding pregnancy.

(b) The California Department of Public Health (CDPH) shall keep a database accessible by internet of all pregnancy resource centers and the services they offer; and

(1) the California Department of Public Health may charge a fee reasonably assessed to cover the costs of creating and maintaining the database and website.

(c) all pregnancy resource centers must register with the state database within two (2) weeks of operating.

(c) Enforcement.

(1) after a warning notice, any violation of this regulation is a civil violation punishable by a fine of two-hundred (200) dollars for each violation;

(A) After a center has received notice that it is in violation of this statute, each week it remains in violation is a subsequent violation for purposes of (c)(1);

(2) any party may seek enforcement of this statute against a pregnancy-resource center in superior court.

(A) Upon a showing by a preponderance of the evidence that a pregnancy-resource center violated this statute:

(i) the pregnancy center shall be fined in accordance with (c)(1); and

(ii) the party bring suit shall receive costs and reasonable attorney's fees.

Note: All statutes would be easier to enforce by allowing suit in small claims court in addition to superior court.

Endnotes