

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2011**

No. 17

By Council Members Lappin, the Speaker (Council Member Quinn), Arroyo, Ferreras, Mendez, Garodnick, Reyna, Foster, Brewer, Fidler, James, Koppell, Koslowitz, Lander, Palma, Rose, Van Bramer, Rodriguez, Chin, Dickens, Dromm, Mark-Viverito, Jackson and Barron

A LOCAL LAW

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

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. It is the Council's intention that consumers in New York City have access to comprehensive information about and timely access to all types of reproductive health services including, but not limited to, accurate pregnancy diagnosis, prenatal care, emergency contraception and abortion.

Based on the evidence before it, the Council finds that some pregnancy services centers in New York City engage in deceptive practices, which include misleading consumers about the types of goods and services they provide on-site, misleading consumers about the types of goods and services for which they will provide referrals to third parties, and misleading consumers about the availability of licensed medical providers that provide or oversee services on-site. Such deceptive practices are used in advertisements for pregnancy services centers, which are misleading as to the services the centers do or do not provide.

The Council further finds that such deceptive practices can impede and/or delay consumers' access to reproductive health services. Some pregnancy services centers have

engaged in conduct that wrongly leads clients to believe that they have received reproductive health care and counseling from a licensed medical provider. Prenatal care, abortion and emergency contraception are all time sensitive services. Increasing the proportion of women receiving adequate and early prenatal care is a pronounced objective of the United States Department of Health and Human Services. The federal Centers for Disease Control and Prevention urges that comprehensive prenatal care begin as soon as a woman decides to become pregnant. Similar to prenatal care, delayed access to abortion and emergency contraception poses a threat to public health. Delay in accessing abortion or emergency contraception creates increased health risks and financial burdens, and may eliminate a women's ability to obtain these services altogether, severely limiting her reproductive health options.

The Council seeks both to stop pregnancy services centers that are currently engaging in deceptive practices in New York City from continuing to do so and to prevent pregnancy services centers from engaging in deceptive practices in New York City in the future. The Council fully embraces the right of pregnancy services centers to express their views about reproductive health services and seeks only to prevent and/or mitigate the effects of deceptive practices. Existing laws do not adequately protect consumers from the deceptive practices targeted by this legislation. Specifically, anti-fraud statutes have proven ineffective in prosecuting deceptive centers because the vulnerable population served by these centers faces potential threats or injury to their well-being by bringing forward complaints which often contain highly sensitive personal information, such as the circumstances surrounding a client's unplanned pregnancy. Clients have demonstrated a reluctance to come forward and disclose the events that occurred when they attempted to obtain such services.

The Council also finds that pregnancy services centers may collect sensitive personal and

health information from consumers inquiring about or seeking services at such centers. However, most pregnancy services centers are not subject to the federal and state laws that limit the disclosure of such information by providers of medical care. If such information were to be improperly released, it could be significantly damaging to the consumers who utilize such centers. The release of such private information is particularly troublesome where the client is a victim of intimate partner violence and/or domestic abuse. As a result, the Council finds it necessary to create protections for the personal and health information provided by consumers inquiring about or seeking services at pregnancy services centers.

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

*SUBCHAPTER 17
PREGNANCY SERVICES 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 purposes 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.

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

pregnancy services center.

c. “Emergency contraception” shall mean one or more prescription drugs used separately or in combination, to prevent pregnancy, when administered to or self-administered by a patient, within a medically recommended amount of time after sexual intercourse, and dispensed for that purpose in accordance with professional standards of practice and determined by the United States food and drug administration to be safe.

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

e. “Licensed medical provider” shall mean a person licensed or otherwise authorized under the provisions of articles one hundred thirty-one, one hundred thirty-one-a, one hundred thirty-one-b, one hundred thirty-nine or one hundred forty of the education law of New York, to provide medical services.

f. “Personal information” shall mean any or all of the following: the name, address, phone number, email address, date of birth, social security number, driver's license number or non-driver photo identification card number of a client, a relative of a client or a sexual partner of a client. This term shall apply to all such data, notwithstanding the method by which such information is maintained.

g. “Pregnancy services center” shall mean a facility, including a mobile facility, the primary purpose of which is to provide services to women who are or may be pregnant, that either: (1) offers obstetric ultrasounds, obstetric sonograms or prenatal care; or (2) has the appearance of a licensed medical facility. Among the factors that shall be considered in determining whether a facility has the appearance of a licensed medical facility are the following: the pregnancy

services center (a) offers pregnancy testing and/or pregnancy diagnosis; (b) has staff or volunteers who wear medical attire or uniforms; (c) contains one or more examination tables; (d) contains a private or semi-private room or area containing medical supplies and/or medical instruments; (e) has staff or volunteers who collect health insurance information from clients; and (f) is located on the same premises as a licensed medical facility or provider or shares facility space with a licensed medical provider. It shall be prima facie evidence that a facility has the appearance of a licensed medical facility if it has two or more of the factors listed in subparagraphs (a) through (f) of paragraph (2) of this subdivision.

A pregnancy services center shall not include a facility that is licensed by the state of New York or the United States government to provide medical or pharmaceutical services or where a licensed medical provider is present to directly provide or directly supervise the provision of all services described in this subdivision that are provided at the facility.

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

i. "Prenatal care" shall mean services consisting of physical examination, pelvic examination or clinical laboratory services provided to a woman during pregnancy. Clinical laboratory services refers to the microbiological, serological, chemical, hematological, biophysical, cytological or pathological examination of materials derived from the human body, for purposes of obtaining information, for the diagnosis, prevention, or treatment of disease or the assessment of health condition.

§ 20-816 Required disclosures. a. A pregnancy services center shall disclose to a client that the New York City Department of Health and Mental Hygiene encourages women who are or who may be pregnant to consult with a licensed medical provider.

b. A pregnancy services center shall disclose if it does or does not have a licensed medical

provider on staff who provides or directly supervises the provision of all of the services at such pregnancy services center.

c. A pregnancy services center shall disclose if it does or does not provide or provide referrals for abortion.

d. A pregnancy services center shall disclose if it does or does not provide or provide referrals for emergency contraception.

e. A pregnancy services center shall disclose if it does or does not provide or provide referrals for prenatal care.

f. The disclosures required by this section must be provided:

(1) in writing, in English and Spanish in a size and style as determined in accordance with rules promulgated by the commissioner on (i) at least one sign conspicuously posted in the entrance of the pregnancy services center; (ii) at least one additional sign posted in any area where clients wait to receive services; and (iii) in any advertisement promoting the services of such pregnancy services center in clear and prominent letter type and in a size and style to be determined in accordance with rules promulgated by the commissioner; and

(2) orally, whether by in person or telephone communication, upon a client or prospective client request for any of the following services: (i) abortion; (ii) emergency contraception; or (iii) prenatal care.

§ 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 pregnancy services center shall be treated as confidential and not disclosed to any other individual, company or organization unless such client, in writing, requests or consents to the release of such information, or disclosure is required by operation of law or court order.

b. Any consent for the release of health or personal information required pursuant to subdivision a 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) identify 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;

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

c. Any client that consents to the release of health or personal information pursuant to subdivision b of this section must have a clear and complete understanding of the nature of such release and the content of such information.

d. Notwithstanding subdivisions a and b of this section, if any pregnancy services center employee or volunteer has reasonable cause to suspect that a client receiving services at a pregnancy services center is an abused or maltreated child, such employee or volunteer may report such abuse to the statewide central register of child abuse and maltreatment in accordance with section four-hundred thirteen or four-hundred fourteen of the social services law of New York, and to the administration for children's services, and/or the police department, and cooperate in the investigation related thereto to the extent permitted by applicable state and federal law. For the purposes of this subdivision, "abused child" and "maltreated child" shall be defined in accordance with section four-hundred twelve of the social services law of New York, or as a person under the age of eighteen whose parent or guardian legally responsible for such

person's care inflicts serious physical injury upon such person, creates a substantial risk of serious physical injury, or commits an act of sexual abuse against such person. Reporting child abuse and maltreatment as defined in this subdivision to an individual or entity other than the statewide central registrar of child abuse and maltreatment, the administration for children's services or the police department shall be a violation of this section.

§ 20-818 Penalties. a. Any pregnancy services center that violates the provisions of sections 20-816 or 20-817 of this subchapter or any rules or regulations promulgated thereunder 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 pregnancy services 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 pregnancy services 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 or to make the premises safe. For the purposes of this subdivision, any violations at a pregnancy services center shall not be included in determining the number of violations of any subsequently established pregnancy services center at that location unless the commissioner establishes that the subsequent operator of such pregnancy services center acquired the premises or pregnancy services center, in whole or in part, for the purpose of permitting the previous operator of the pregnancy services center who had been found guilty of violating section 20-816 of this subchapter to avoid the effect of such violations.

(2) Orders of the commissioner issued pursuant to paragraph one of this subdivision shall be posted at the premises that are the subject of the order(s).

(3) Ten days after the posting of an order issued pursuant to paragraph one 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 paragraph one of this subdivision 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 therein a notice of such penalty. Any other intentional disobedience or resistance to any provision of the orders issued pursuant to paragraph one of this subdivision, including using or occupying or permitting any other person to use 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.

c. For the purposes of this section, all violations committed on any one day by any one pregnancy services center shall constitute a single violation.

§ 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 amounts 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 proceedings 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 premises 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 and 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 pregnancy services center to comply with section 20-817 shall have a cause of action against such pregnancy services 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.

§ 3. 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 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.

§ 4. 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.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York,
passed by the Council onMarch 2, 2011..... and approved by the Mayor
onMarch 16, 2011.....

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 17 of 2011, Council Int. No. 371A) contains the correct text and was passed by the New York City Council on March 2, 2011, approved by the Mayor on March 16, 2011 and returned to the City Clerk on March 16, 2011.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.