Committee on Consumer and Worker Protection

Stephanie Jones, *Senior Legislative Counsel*

Noah Meixler, *Senior Policy Analyst*

Aliya Ali, *Finance Unit Head*



###### **THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION**

 **Andrea Vazquez, *Legislative Director***

**Rachel Cordero, *Deputy Director, Governmental Affairs Division***

**COMMITTEE ON CONSUMER AND WORKER PROTECTION**

**Hon. Marjorie Velázquez, *Chair***

##### June 21, 2022

**INT. No. 506:** By Council Members Rivera, Louis, Hudson, Hanif, Brooks-Powers, Nurse and Abreu (by request of the Bronx Borough President)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of consumer and worker protection to report information on pregnancy services centers in the city and implement an information campaign on such centers

1. **Introduction**

On June 21, 2022, the Committee on Consumer and Worker Protection, chaired by Council Member Marjorie Velázquez, will hold a legislative hearing on Int. No. 506, by Council Member Rivera, in relation to requiring the department of consumer and worker protection to report information on pregnancy services centers in the city and implement an information campaign on such centers. Those invited to testify include the Department of Consumer and Worker Protection, advocates and other interested parties.

1. **Background**
2. *Pregnancy Service Centers*

Pregnancy Service Centers (PSCs), also known as Crisis Pregnancy Centers (CPCs), advertise pregnancy related services and typically offer free pregnancy tests, while several offer ultrasounds.[[1]](#footnote-1) Providing these tests and ultrasounds helps foster an impression among women who visit these centers that PSCs are medical facilities, however, they are not actually licensed medical facilities. How PSCs hold themselves out to the public, makes it difficult to recognize that unlike medical providers who treat pregnant women and are subject to rigorous oversight by the State Department of Health, PSCs are not regulated by the government.[[2]](#footnote-2) PSCs also generally do not formally disclose to their clients whether they do or do not provide abortion or referrals for abortion; provide FDA-approved emergency contraception or referrals to organizations who provide emergency contraception; or provide prenatal care or referrals for prenatal care.

While PSCs allude to providing comprehensive reproductive care, they often engage in counseling that is misleading or false.[[3]](#footnote-3) The counseling services provided on abortion and contraception falls outside of accepted medical standards and guidelines for providing evidence-based information and treatment options to patients.[[4]](#footnote-4) PSCs have been found to suggest a link between abortion and subsequent serious mental health problems, despite multiple studies invalidating this assertion.[[5]](#footnote-5) PSCs cite debunked medical literature showing an association between abortion and breast cancer, and portray abortion as dangerous or even deadly.[[6]](#footnote-6) Notably, it’s been reported that PSCs outnumber licensed abortion clinics in the nation three to one.[[7]](#footnote-7)

In 2011, the City Council enacted Local Law 17 of 2011 (“LL 17/2011”) which regulated Pregnancy Service Centers (PSCs). Prior to the enactment of LL 17/2011, the Council heard from several witnesses about the harmful and deceptive practices at PSCs. An abortion counselor testified:

“There have been accounts . . . from my clients about these misrepresentations being taken even a step further, where some girls are set up for procedures with appointments, only to have these appointments canceled and rescheduled time and time again, in an attempt to prolong the process past a point when a woman can have access to a real and safe abortion procedure by a licensed provider.”[[8]](#footnote-8)

At a Council hearing in November of 2017 on the Administration’s enforcement of LL 17/2011, a healthcare educator from Harlem provided testimony detailing the experience of a seventh grade student who received services at a PSC across the street from a Planned Parenthood:

“At the center, she was ‘counseled’ by a staff person who told her [an] abortion would kill her unborn baby by ripping it apart and she was shown a video of a fetus in a more advance stage of development inside the womb and then another of dismembered fetuses. She was made to feel shamed for feeling that abortion was an answer to her unplanned pregnancy.”[[9]](#footnote-9)

PSCs often choose to locate in close proximity to hospitals or reproductive health clinics that do have a licensed medical provider on staff.[[10]](#footnote-10) PSCs in New York City are often located in the same building, across the street, or within walking distance from Planned Parenthood clinics,[[11]](#footnote-11) and a PSC mobile facility has been known to operate outside a reproductive healthcare clinic in the Bronx.[[12]](#footnote-12)

PSCs also may confuse potential clients through branding and marketing. Many of the PSCs in New York City have names that sound like certified reproductive health clinics, such as Expectant Mother Care and Pregnancy Resource Services.[[13]](#footnote-13) Additionally, PSCs have previously been listed in the Yellow Pages under categories titled “abortion” or “medical.”[[14]](#footnote-14) Employees working at PSCs, while not licensed clinicians, often wear white coats and see women in exam rooms to further give the false appearance that they are legitimate medical facilities.[[15]](#footnote-15)

Furthermore, PSCs are not required to abide by confidentiality rules applicable to licensed medical facilities, such as those contained in the federal Health Insurance Portability and Accountability Act (HIPAA). [[16]](#footnote-16)PSCs often request personal information, such as date of birth and employment information, and have used this information to harass women. In some cases, PSC employees have turned up at patient workplaces.[[17]](#footnote-17) This breach of confidentiality is of particular concern for women in abusive relationships who are often subject to attempts by their partners to control their reproductive decisions.[[18]](#footnote-18)

1. *Local Law 17 of 2011*

In 2011, the City Council enacted LL 17/2011 which regulated PSCs. PSCs are defined as “…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.”[[19]](#footnote-19) The law does not apply to a PSC “…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.”[[20]](#footnote-20) Section 20-815 lists several factors to help identify whether a facility has “the appearance of a licensed medical facility”:[[21]](#footnote-21)

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.

Section 20-815 further states that “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 above. Under the Local Law, PSCs are required to make a number of disclosures to patients, including:

(a) 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) whether the PSC 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) whether the PSC does or does not provide referrals for abortion;

(d) whether the PSC does or does not provide referrals for emergency contraception; and

(e) whether the PSC does or does not provide referrals for prenatal care.

 Following the passage of LL 17, the constitutionality of the law was challenged in the Court of Appeals for the Second Circuit.[[22]](#footnote-22) The Court held that only the disclosure regarding the presence of licensed medical providers survived First Amendment scrutiny. The United States Supreme Court denied the City’s petition for review of the decision.[[23]](#footnote-23)

 During a Council hearing in 2017 on the Administration’s enforcement of LL17/2011, the Department of Consumer Affairs (now the Department of Consumer and Worker Protection) testified that they received 23 complaints about nine purported PSC locations failing to post the licensed medical provider disclosure.[[24]](#footnote-24) The Department conducted 21 inspections, and two inspections resulted in the issuance of violations for the PSC failing to post the required license medical provider disclosure.[[25]](#footnote-25) However, the majority of facilities the city investigated did not meet the legal definition of a PSC and were therefore not required to post the disclosure.[[26]](#footnote-26)

1. *NYS Legislation*

In May 2022, a draft opinion of the Supreme Court’s plan to strike down *Roe v. Wade* was leaked to the press.[[27]](#footnote-27) The opinion is a repudiation of the 1973 *Roe v. Wade* decision, which guaranteed federal constitutional protections for abortion rights.[[28]](#footnote-28) In response to the impending overturning of *Roe,* the New York State legislature passed a package of bills to further enhance abortion protections in New York. On May 31, 2022, the NYS Senate passed S.470, sponsored by NYS Senator Brad Hoylman.[[29]](#footnote-29) The Assembly version of the bill, A.5499, had previously passed in April 2022.[[30]](#footnote-30) The bill authorizes the Commissioner of Health to conduct a study and issue a report examining the unmet health and resources needs facing pregnant women in New York, and the impact of limited services pregnancy centers on the ability of women to obtain accurate health care information. As part of this report, the Commissioner will gather information about the services provided by PSCs. This will include, but is not limited to, what services clients most frequently seek at PSCs, the number of women who access such services, whether PSCs collect medical information and how they handle collected medical information, and how PSCs advertise their services. On June 13, 2022, Governor Hochul signed A.5499/S.470 into law.[[31]](#footnote-31)

1. *Other Relevant Legislation*

In 2015, California enacted AB775, the Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act.[[32]](#footnote-32) The Act requires both licensed and unlicensed facilities providing family planning or pregnancy-related services to disseminate public notices. Licensed facilities are required to post the following notice: “California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number].”[[33]](#footnote-33) Unlicensed covered health facilities were required to disseminate a notice to clients stating, “This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services.”[[34]](#footnote-34) In response to the enactment the FACT Act, The National Institute of Family and Life Advocates (NIFLA) and two other religiously-affiliated pro-life PSCs sued the state of California, seeking to enjoin enforcement. NIFLA argued that the Act violates their free speech and free exercise rights under the First Amendment.[[35]](#footnote-35) The U.S. District Court for the Southern District of California denied NIFLA’s motion for a preliminary injunction.[[36]](#footnote-36) The Ninth Circuit court subsequently affirmed the District Court’s ruling, confirming that the District Court had not abused its discretion by denying the injunction.[[37]](#footnote-37) NIFLA filed a petition for the Supreme Court to hear the case. In *NIFLA, et al., v. Xavier Becerra, Attorney General of California, et al.*, the Supreme Court ruled in a 5-4 decision that the notices required by the FACT Act violated the First Amendment.[[38]](#footnote-38) The Supreme Court reversed the Ninth Circuit’s decision and remanded the case.[[39]](#footnote-39)

1. **LEGISLATIVE ANALYSIS**

**Int. 506**

This bill would require the Department of Consumer and Worker Protection (DCWP), in consultation with the Department of Health and Mental Hygiene, to submit a report to the Mayor and the Speaker of the Council on pregnancy services centers operating in the city. The report would be required to include information on the names and locations of the centers, the services they provide, and how they advertise themselves to the public. DCWP would have to submit the first report no later than March 15, 2024 and every five years thereafter. DCWP would be required to send a voluntary, informational survey to pregnancy services centers in the city to help inform the report.

The bill would also require DCWP to implement an informational media campaign about pregnancy services centers in English and Spanish, at a minimum, no later than six months after submitting the first report required by the bill.

Int. No. 506

By Council Members Rivera, Louis, Hudson, Hanif, Brooks-Powers, Nurse and Abreu (by request of the Bronx Borough President)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of consumer and worker protection to report information on pregnancy services centers in the city and implement an information campaign on such centers

..Body

Be it enacted by the Council as follows:

Section 1. Subchapter 17 of chapter 5 of title 20 of the administrative code of the city of New York, as added by local law number 17 for the year 2011, is amended by adding a new section 20-820.1 to read as follows:

§ 20-820.1 Report. a. No later than March 15, 2024 and every five years thereafter, the department, in consultation with the department of health and mental hygiene and any other organization at the discretion of the department, shall submit to the mayor and the speaker of the council, and post on the department’s website, a report on pregnancy services centers operating in the city of New York. Such report shall examine the health care needs of pregnant women in the city and the ability of pregnancy services centers to fulfill those needs; the impact of pregnancy services centers on the ability of pregnant women to gain timely access reproductive and sexual health services, including abortion and emergency contraception; and recommended actions for the mayor and the speaker of the council to take to help pregnant women in the city as prospective or actual clients of pregnancy services centers. The report shall contain the following information as reasonably available to the department, which may be summarized unless otherwise indicated:

1. The location, name and affiliation of each pregnancy services center;

2. Services provided by pregnancy services centers, the price ranges of those services, and which of those services are most frequently sought at pregnancy services centers;

3. Whether pregnancy services centers enroll women in public benefits programs or connect women to other services, and if so, a summary of the types of services;

4. The means by which pregnancy services centers advertise their services to the public, such as online applications or print advertisements; and how such centers depict their services and organizational mission to the public, including: (i) whether pregnancy services centers hold themselves out to the public as medical facilities or entities in which comprehensive, all-options pregnancy counseling is provided, and (ii) whether such centers disclose that abortions or referrals for abortions are not provided at such centers; and

5. State or federal funding, if any, directly or indirectly allocated to pregnancy services centers.

 b. To help acquire the information necessary to complete the report required by subdivision a of this section, the department shall develop and distribute a voluntary survey to pregnancy services centers in the city.

§ 2. No later than six months after the submission of the first report required by section one of this local law, the department of consumer and worker protection, in consultation with the department of health and mental hygiene, shall implement a media campaign to inform women in the city about what pregnancy services centers are, including the services such centers do and do not typically provide; how to access a licensed medical provider of reproductive health and pregnancy services, including abortion and emergency contraception; and how to make a complaint if a pregnancy services center has engaged in a deceptive trade practice. Such a media campaign shall be available on the (i) internet, (ii) television or radio, and (iii) print, and in English and Spanish at a minimum.

§ 3. This local law takes effect immediately.

SJ

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20. *Id.* [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
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