

## LOCAL LAW “D” FOR 2024

### A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK CREATING CHAPTER 182 OF THE ALBANY COUNTY CODE, PROHIBITING FALSE AND MISLEADING STATEMENTS BY CRISIS PREGNANCY CENTERS

Introduced: 4/8/24

By Plotsky, Reidy, McLean Lane, Cunningham, McLaughlin, Lekakis and Pedo:

A local law creating Chapter 182 (Healthcare) of the Albany County Code to prohibit inaccurate and misleading statements and advertising by crisis pregnancy centers in Albany County.

BE IT ENACTED by the Albany County Legislature as follows:

#### **Section 1. Title.**

This local law hereby creates Chapter 182, **Healthcare**.

#### **Section 2. Crisis Pregnancy Centers**

This local law hereby creates Chapter 182, Article 1, **Crisis Pregnancy Centers**.

#### **Section 3. § 182-1 - Legislative Purpose and Intent.**

New York has traditionally protected access to reproductive services, including abortion care. In 2022, the United States Supreme Court overturned Roe v. Wade, ending legal abortion in states throughout the country. However, over the years, anti-abortion facilities often affiliated with religious groups have appeared throughout New York. These facilities are often referred to as crisis pregnancy centers (CPCs).

In New York, crisis pregnancy centers outnumber abortion clinics – there are 120 of these crisis pregnancy centers compared with 74 abortion clinics, with 8 crisis pregnancy centers located in Albany County. None of these crisis pregnancy centers are licensed medical facilities, and their staff are not licensed medical professionals. These facilities attempt to convey the impression that they are medical clinics – often dressing staff in scrubs and lab coats and setting the centers up with “exam rooms” with medical equipment, where staff perform ultrasounds – yet the facilities and their staff are exempt from the regulatory, licensure, credentialing and ethical oversight that applies to health care facilities and professionals, and are also not subject to rules related to informed consent, client confidentiality, or the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA).

In 2022, a study of CPCs in New York State by a team of researchers at Albany Medical Center found that, in an initial call to CPCs to explore options for an unplanned pregnancy, 76% percent of CPCs provided medically-inaccurate

information about the precision of urine pregnancy tests and ultrasound testing, the safety of various abortion options and possibility of “abortion reversal”, and/or gave inflammatory misinformation about abortion procedures. Pregnant women have been told that abortions can cause breast cancer, mental health issues and infertility, and that abortion is dangerous or even deadly – all of which have been medically disproven.

These levels of inaccuracy and misinformation are lower than in other states where abortion rights are not protected, but remain unacceptably high for Albany County residents. The actions of these non-medical facilities and non-medical professionals directly impacts the ability of Albany County women to obtain accurate, non-coercive health care information and timely access to available reproductive and sexual health care services. As such, this Legislature finds that there is a clear need to regulate false and misleading statements and advertising by crisis pregnancy centers in Albany County.

#### **Section 4. § 182-2 - Definitions.**

1) “Abortion” and/or “Abortion care” means any intervention intended to terminate a pregnancy so that it does not result in a live birth.

2) “Client” means an individual who is inquiring about or seeking services at a pregnancy services center, whether in person, via the internet, or via telephone or text communication.

3) “Health information” means 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.

4) “Crisis pregnancy center” means a facility or entity, including a mobile facility, the primary purpose of which is to provide services to clients who are or may be pregnant, that:

A) Either

(1) is not a health care facility licensed by the State of New York under Article 28 of the Public Health Law or Articles 31 and 32 of the Mental Hygiene Law; or

(2) is not providing services under the direction of a health care provider licensed under Title 8 of the Education Law who is acting within his or her scope of practice; and

B) Either

(1) offers obstetric ultrasounds, obstetric sonograms, and/or prenatal care to pregnant women; or

(2) has the appearance of a medical facility; and

C) fails to provide or refer for the full range of comprehensive reproductive and sexual health care services reimbursed under the New York's Medicaid

program including, but not limited to contraception, testing and treatment of sexually transmitted infections, abortion care, and prenatal care.

A facility or entity has the appearance of a medical facility if two or more of the following factors are present:

- a) The facility offers pregnancy testing and/or pregnancy diagnosis;
- b) The facility has staff or volunteers who wear medical attire or uniforms, including but not limited to scrubs or lab coats;
- c) The facility contains one or more examination tables;
- d) The facility contains a private or semi-private room or area containing medical supplies and/or medical instruments;
- e) The facility has staff or volunteers who collect health information from clients; or
- f) The facility is located on the same premises as a state-licensed medical facility or provider or shares facility space with a state-licensed medical provider.

5) “Medically-inaccurate information” means information which contravenes medically-accurate information.

6) “Medically-accurate information” means information which is verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, and the American College of Obstetricians and Gynecologists.

#### **Section 5. § 182-3 – Prohibition on False Advertising.**

- A. It shall be unlawful for any crisis pregnancy center to disseminate or cause to be disseminated to Albany County residents or visitors, or to disseminate to the public anywhere from Albany County, any advertising about the services or proposed services performed at that center if the management and/or staff of the center knows or, by the exercise of reasonable care, ought to know such information is untrue or is clearly designed to mislead the public about the nature of services provided at the facility.
- B. Advertising shall include representations made directly to consumers; marketing practices; communication in any print medium such as newspapers, magazines, mailers or handouts; any broadcast medium such as television or radio, telephone marketing; and/or advertising over the Internet such as through websites, web ads and search engine results.

#### **Section 6. § 182-4 – Prohibition on Inaccurate and Fraudulent Statements to Clients.**

A. It shall be unlawful for any crisis pregnancy center to disseminate or cause to be disseminated to Albany County clients or those clients who have travelled to Albany County:

- a. any medically-inaccurate information about the accuracy or precision of urine pregnancy tests and ultrasound testing;
- b. any medically-inaccurate information about the client's then current pregnancy status, including the then current length or date of the pregnancy;
- c. any medically-inaccurate information about the possibility of medically disproven cancers, mental health issues and/or infertility or sterility due to undergoing legal abortion procedures and care;
- d. any medically-inaccurate information about the procedures of legal abortion procedures and care;
- e. any medically-inaccurate information about the safety of legal abortion procedures and care;
- f. and any medically-inaccurate information about the possibility of "abortion reversal treatment"

if the owner, operator, management and/or staff of the center knows or, by the exercise of reasonable care, ought to know that such information is untrue or is clearly designed to mislead clients about their medical options and the nature of services provided at the facility, and if the owner, operator, management and/or staff of the center intends for clients to rely on such information.

B. It shall be unlawful for any crisis pregnancy center to disseminate or cause to be disseminated to Albany County clients or those clients who have travelled to Albany County any medically-inaccurate information or legally-inaccurate information about the timing or gestational age of a pregnancy as it relates to the ability of a client to obtain abortion care in New York State if the owner, operator, management and/or staff of the center intends for clients to rely on such information.

C. Intent requirements under this Local Law shall be defined as state in Penal Law § 15.05.

### **Section 7. § 182-5 – Notice Requirement.**

All crisis pregnancy centers located within Albany County must post a notice on the premises, in a location clearly noticeable from the waiting area(s) and examination area(s), stating:

- i. That the facility is not a medical facility.
- ii. That there is not a licensed medical doctor, registered nurse, or other licensed medical practitioner on regular staff at the center directing the medical care of clients; and

iii. Whether abortion care, emergency contraception, or referrals for abortion care and/or emergency contraception are available at or provided by the center; and

iv. That abortion care, emergency contraception, and referrals for abortion care or emergency contraception are legal pursuant to New York law.

### **Section 8. § 182-6 - Enforcement.**

A. Albany County may apply to any court of competent jurisdiction for injunctive relief compelling compliance with any provision of this Local Law and correcting the effects of the false, misleading, and/or deceptive statements or advertising.

B. Such an injunction may require a crisis pregnancy center to:

a) Pay for and disseminate appropriate corrective statements to clients including medically accurate information provided by a licensed medical professional.

b) Pay for and disseminate appropriate corrective advertising in the same form as the false, misleading, or deceptive advertising.

c) Any other relief that the court deems necessary to remedy the adverse effects of the false, misleading, or deceptive advertising on clients seeking pregnancy-related services.

C. Upon a finding by a court of competent jurisdiction that a crisis pregnancy center has violated this Local Law, Albany County shall be entitled to recover civil penalties from each party responsible for the violation of not less than \$500 and not more than \$5,000 per violation. In addition, if Albany County prevails it shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

D. Nothing in this section shall be interpreted as restricting, precluding or otherwise limiting a separate or concurrent criminal prosecution under New York State Penal Law § 190.20.

### **Section 9. Severability**

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by Federal or State law or regulation, the validity of the remainder of this Act shall not be affected.

### **Section 10. SEQRA Compliance.**

This County Legislature determines that this local law constitutes a "Type II action" pursuant to the provisions of the State Environmental Quality Review Act (SEQRA), and that no further action under SEQRA is required.

### **Section 11. Effective Date.**

This local law shall take effect immediately after its filing with the Secretary of State.