

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: August 18, 2016

TO: Honorable Members of the Health, Mental Health, and Education Committee

FROM: Sharon M. Tso *Sharon Tso* Council File No.: 16-0319  
Chief Legislative Analyst Assignment No.: 16-04-0370

## **Crisis Pregnancy Centers**

### **SUMMARY**

Crisis pregnancy centers (CPCs), also known as pregnancy resource centers or pregnancy support centers, are non-profit organizations that provide services and counseling to pregnant women but are opposed to abortion. A June 2013 factsheet from the University of Chicago School of Medicine states that CPCs largely aim to dissuade women against terminating their pregnancies while also offering services such as pregnancy testing and ultrasounds.

On April 20, 2016, the City Council approved a Motion (Martinez – Bonin) relative to CPCs (C.F. 16-0319). The Motion states that pregnancy decisions are time-sensitive and that thousands of women remain unaware of the public programs available that provide contraception, health education, counseling, family planning, prenatal care, abortion, or delivery. According to the Motion, many CPCs seek to mislead women into believing that their facilities offer all types of family planning services. Therefore, the Chief Legislative Analyst and City Attorney were instructed to report on the activities of other jurisdictions to limit the deceptive practices of CPCs, including recommendations on how deceptive advertising can be limited within the City of Los Angeles.

As instructed, this Office and the City Attorney researched CPC-related regulations in other jurisdictions. We found that the following jurisdictions have adopted laws to require CPCs to inform their clients of all possible family planning services or prohibit CPCs from engaging in false and misleading advertising: the State of California; the City of Oakland; the City and County of San Francisco; New York City; the City of Baltimore, Maryland; the City of Austin, Texas; and Montgomery County, Maryland. As described further in this report, courts have invalidated the majority of CPC restrictions in jurisdictions outside of California. The City of Los Angeles currently performs enforcement efforts relative to CPCs under the provisions of California law (AB 775 and California Business and Professions Code Section 17200).

Our Offices have also researched deceptive advertising practices associated with CPCs. Investigations by Congress and other entities have determined that some advertisements from CPCs on billboards, web searches, and other locations have deceived clients into believing that CPCs are comprehensive health facilities that provide all types of family planning services, including abortion, despite the fact that these services are not offered. CPCs have also incorrectly advised clients that there is an increased risk of long-term emotional harm, infertility, and breast cancer resulting from a terminated pregnancy.

On July 19, 2016, the Oakland City Council approved an ordinance to prohibit CPCs from making false or misleading statements to the public about pregnancy-related services performed or offered at these facilities. The proposed ordinance builds upon the disclosure requirements of AB 775. Among other factors, the measure was introduced out of concern that pregnant women

are harmed by even slight delays caused by CPCs who engage in false or misleading advertising. It should be noted that San Francisco adopted a similar ordinance in November 2011 to address CPCs that engage in false and misleading advertising.

Additional information on laws in other jurisdictions and the six CPCs located within the City of Los Angeles is included in the Background section of this report and in Attachment 1.

#### Current City of Los Angeles Enforcement Efforts Relative to CPCs

AB 775 (Chiu, Statutes of 2015) requires CPCs in California to provide specified notices to clients. The City Attorney is currently enforcing the provisions of AB 775 in coordination with the Los Angeles County Department of Business and Consumer Affairs. AB 775 requires CPCs to provide information on how to obtain affordable services for contraception, abortion, and prenatal care to their clients. The law also requires facilities that offer family planning services to post and provide this information to clients. Unlicensed medical facilities are required to disclose the fact that they are not allowed to offer medical assistance to their clients. Under AB 775, the failure to disclose required information is punishable by a civil penalty of \$500 for the first violation and \$1,000 for each additional violation.

The City Attorney has advised that the City currently has sufficient authority under Section 17200 of the California Business and Professions Code to bring an action against a CPC for false and misleading advertising without adopting an ordinance similar to the ones that have been adopted in San Francisco and Oakland. If the Council desires to enact an ordinance similar to these cities in order to formalize the prohibition of false and misleading advertising by CPCs, the City Attorney can be requested to prepare the appropriate ordinance or ordinances.

The City Attorney also states that it has sufficient resources to enforce the notice requirements and prohibitions on false and misleading advertising specified in State law. However, if the number of complaints against CPCs increases significantly or if there are changes in the County that result in a reduction of enforcement efforts, the City Attorney may request additional resources as part of the City Budget process.

#### **RECOMMENDATION**

That the City Council request the City Attorney to provide a status report within 90 days on the following relative to City Attorney/County investigations and resulting enforcement efforts against Crisis Pregnancy Centers: number of investigations, enforcement of disclosure requirements and prohibitions of false and misleading advertising as set forth in State law, resources used for investigations and enforcement, limitations on enforcement efforts, and related matters as may be appropriate.

#### **FISCAL IMPACT**

Approval of the recommendation in this report will not have a fiscal impact to the General Fund.

## **BACKGROUND**

### **I. Basis for Report**

On March 18, 2016, Motion (Martinez – Bonin) was introduced relative to CPCs. As stated in the Motion, more than 700,000 women in California become pregnant every year and one-half of these pregnancies are unintended. The Motion further states that thousands of women remain unaware of the public programs available which provide contraception, health education, counseling, family planning, prenatal care, abortion, or delivery. The Motion requests the Chief Legislative Analyst and the City Attorney to report on the activities of other jurisdictions to limit the deceptive practices of CPCs across the country, including recommendations on how deceptive advertising can be limited within the City. On April 20, 2016, the City Council approved the Motion (C.F. 16-0319).

### **II. Related State Law – AB 775 (2015)**

On October 9, 2015, Governor Jerry Brown signed AB 775 (Chiu) into law. AB 775 provides that CPCs will be required to offer information about affordable contraception, abortion and prenatal care to their clients. The law also requires facilities that offer family planning or pregnancy-related services to post and provide information on available services to clients on site at the time of check-in or arrival. Such facilities must also provide information on alternative accommodations that provide contraception, prenatal care, and abortion. The requirement to share information about reproductive health programs only applies to facilities that have entered into a license agreement with the State. In addition, unlicensed medical facilities must disclose the fact that they are unlicensed to their clients. Under AB 775, failure to disclose required information is punishable by a civil penalty of \$500 for the first offense and \$1,000 for each subsequent offense.

On October 10, 2015, clinics in Redding and Marysville filed a lawsuit which alleges that AB 775 compels the clinics to disseminate messages in violation of their First Amendment right to free speech. Both agencies are religious nonprofit corporations licensed by the State to operate clinics and offer various prenatal services at no charge to the client. AB 775 has withstood legal challenges and has been upheld in federal court. The Court of Appeals for the Ninth Circuit considered the matter on June 16, 2016 and will issue a decision at any time.

On May 23, 2016, in coordination with the Los Angeles County Department of Consumer and Business Affairs and after a review of the court ruling, the City Attorney announced that his Office would take enforcement actions related to AB 775. The City Attorney sent letters to six identified reproductive health facilities in the City (Attachment 1) regarding their legal obligations under AB 775.

All investigations will be conducted by the Los Angeles County Department of Consumer and Business Affairs. Subsequent referrals will be handled by the City Attorney. The City Attorney does not anticipate that additional resources, such as staffing, will be required at this time. However, this assessment may change in the future depending on the number of offending CPCs. City residents may contact the City Attorney's Consumer and Workplace Protection Unit, at (213) 473-6908 to report CPCs that do not comply with the provisions of AB 775.

### **III. Related State Law – Business and Professions Code Section 17200**

The City Attorney may bring an action against CPCs for false and misleading advertising under California Business and Professions Code Section 17200. This code section addresses a variety of businesses, including CPCs. A violation of this code section is a misdemeanor offense. There is no opportunity to cure, nor is there a grace period. Prosecution may occur if a determination is made that a violator knew, or should have known, that they engaged in false and misleading advertising. Unlike AB 775, violations of this code section are a crime as well as a civil violation. The City Attorney and the Los Angeles County Department of Consumer and Business Affairs will coordinate the review of websites, brochures, and other statements by CPCs to determine if CPCs have engaged in false or misleading advertising. City residents may contact the City Attorney's Consumer and Workplace Protection Unit, at (213) 473-6908 to report violations of California Business and Professions Code Section 17200.

### **IV. Restrictions on Crisis Pregnancy Centers Enacted In Other Jurisdictions**

The following are efforts by other jurisdictions to enact regulations that require CPCs to inform their clients of all possible family planning services or prohibit CPCs from engaging in false and misleading advertising.

#### **California Jurisdictions**

##### Oakland

On July 19, 2016, the Oakland City Council approved an ordinance to prohibit CPCs from making false or misleading statements to the public about pregnancy-related services the centers offer or perform. The proposed ordinance builds upon the disclosure requirements of AB 775 and was introduced out of concerns, among other factors, that women can be harmed by even slight delays caused by false advertising related to pregnancy-related services. A City of Oakland staff report states that the proposed ordinance balances the constitutional protected right of a woman to choose to terminate her pregnancy and the right of individuals to express their religious and ethical beliefs concerning abortion. The ordinance would be enforced by the Oakland City Attorney through a civil action. The CPC would be given ten days to cure false, misleading, or deceptive advertising after the City Attorney gives written notice of the violation.

##### San Francisco

On November 3, 2011, Mayor Edwin Lee signed an ordinance regarding CPCs into law. According to the Ordinance, legislation was needed as the result of concern that pregnancy clinics that oppose abortion have become common throughout the State. The Ordinance states that some centers do not acknowledge that they do not provide abortions, emergency contraception, or referrals for these services. The Ordinance further states that some CPCs seek to intentionally mislead women contemplating abortion into believing that their facilities offer abortion services or unbiased counseling.

The San Francisco law prohibits the use of false or misleading advertising with respect to services offered by any of these centers, and the law may be enforced by the San Francisco City Attorney through a civil action. Before filing an action, the City Attorney is required to provide the CPC with written notice of the violation and provide the CPC with an opportunity to correct the violation within ten days. If the CPC does not respond to or correct the violation, the City Attorney may file suit against a limited services pregnancy center for injunctive relief. A court may order the violator to pay for and disseminate appropriate corrective advertising; and to post a notice indicating whether a licensed doctor, nurse or nurse practitioner is present and if

abortions, emergency contraception or abortion referrals are available. On February 20, 2015, a federal District Court dismissed a suit challenging the ordinance. The matter is pending further review by the Court of Appeals for the 9<sup>th</sup> Circuit. A decision on this case is not yet available.

## **Jurisdictions Outside of California**

### New York City

In March 2011, the New York City Council approved and Mayor Michael Bloomberg signed Local Law 17. The law requires pregnancy service centers to make certain disclosures regarding the services that the centers provide. The law exempts facilities that are licensed to provide medical or pharmaceutical services or have a licensed medical provider on staff. The law requires CPCs to disclose the following:

1. Whether or not centers have a licensed medical provider on staff who provides, or directly supervises, the provision of services.
2. 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 provider.
3. Whether or not centers provide referrals to abortion, emergency contraception, or prenatal care.

The required disclosures must be displayed at entrances, waiting rooms, and advertisements. Furthermore, disclosures are required during telephone conversations. The law imposes civil fines on facilities that violate its provisions and grants the Commissioner of Consumer Affairs the authority to enforce disclosure requirements.

On June 17, 2014, a federal court approved a settlement agreement which prohibits New York City from enforcing the requirement that CPCs disclose whether they provide referrals to abortion, emergency contraception, or prenatal care. The settlement also prohibits New York City from requiring CPCs to inform clients about the Department of Health and Mental Hygiene policy of encouraging pregnant women to consult with a licensed doctor. The settlement allows New York City to require that CPCs inform clients whether there is a licensed medical provider on staff.

### Baltimore, Maryland

In 2010, the City of Baltimore, Maryland adopted a law requiring CPCs to post signs disclosing that they do not provide abortions or contraception.

In June 2012, a federal appeals court ruled that the Baltimore ordinance was unconstitutional. Subsequent to this decision, it was determined that the district court did not follow proper procedures. Therefore, the appeals court agreed to re-hear the case. The case was returned to the District Court for further consideration. A decision on this case is not yet available.

### Montgomery County, Maryland

On February 2, 2010, the Montgomery County Council adopted a Resolution which requires “limited service pregnancy resource centers” to post the following information: (1) that the centers do not have a licensed medical professional on staff and, (2) that the Montgomery County Health Officer encourages women who are or may be pregnant to consult with a licensed health care provider. The sign must be written in both English and Spanish, easily readable, and conspicuously posted in the center’s waiting room or other area where individuals await service. The Resolution identifies Montgomery County’s concern that clients may be misled into believing that a center is providing medical services when it is not. The Montgomery County

Department of Health and Human Services is responsible for investigating complaints of non-compliance and, after providing a ten day or more period to remedy the violation, issuing a civil citation. In June 2012, the federal 4<sup>th</sup> Circuit Court of Appeals ruled that the Montgomery County ordinance was unconstitutional. The appeals court subsequently agreed to re-hear the case and remanded the case to the District Court. In 2014, the court determined that the ordinance was unconstitutional.


#### Austin, Texas

In January 2012, the Austin City Council adopted an Ordinance which required operators of “unlicensed pregnancy services” to display a black and white sign affixed to the entrance of the center so that the sign is conspicuously visible to a person entering the center, that accurately discloses the following information: (1) whether the center provides medical services, (2) if the center provides medical services, whether all medical services are provided under the direction and supervision of a licensed health care provider, (3) if the center provides medical services, whether the center is licensed by a state or federal regulatory entity to provide those services. On June 23, 2014, a federal district court invalidated the ordinance.

### **V. Laws in Other Jurisdictions in Support of Crisis Pregnancy Centers**

At least twenty-three states have measures supporting CPCs, including eleven states that provide direct funding to CPCs. The following states provide direct funding to CPCs: Kansas, Louisiana, Michigan, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Pennsylvania, Texas, and Wisconsin.

Prior to undergoing an abortion, at least twenty states refer women to CPCs or require women to visit a CPC.



Brian Randol  
Analyst

Attachments:

1. CPCs located within the City of Los Angeles
2. Motion (Martinez – Bonin)

# ATTACHMENT 1

Crisis Pregnancy Centers Located Within the City of Los Angeles					
	Facility Name	Address	City	Zip Code	Council District
1.	Los Angeles Pregnancy Services	2524 West 7 <sup>th</sup> Street	Los Angeles	90057	1
2.	Pregnancy Counseling Center	10211 Sepulveda Boulevard	Los Angeles	91345	7
3.	Claris Health	11500 West Olympic Boulevard	Los Angeles	90064	11
4.	Open Arms Pregnancy Clinic	9535 Reseda Boulevard, Suite 303	Los Angeles	91324	12
5.	Avenues Pregnancy Center	862 North Vermont Avenue	Los Angeles	90029	13
6.	Harbor Pregnancy Help Center	705 W. Pacific Coast Highway	Los Angeles	90744	15

## MOTION

## HEALTH, MENTAL HEALTH AND EDUCATION

More than 700,000 California women become pregnant every year and one-half of these pregnancies are unintended. At the moment they learn that they are pregnant, thousands of women remain unaware of the public programs available to provide them with contraception, health education and counseling, family planning, prenatal care, abortion, or delivery.

In recent years, clinics that seek to counsel clients against pregnancy termination have become common throughout California. These clinics are often referred to as a crisis pregnancy center, (CPC). Although some CPCs are licensed to provide various medical services to pregnant women, most CPCs are not.

Pregnancy decisions are time sensitive, and care early in pregnancy is important, however low-income women often have the least amount of awareness of the types of services they are eligible for and may have even less awareness of how to access these services. Thus making them most susceptible to visiting an unlicensed facility. It is vital that pregnant women know when they are getting medical care from licensed professionals. Unlicensed facilities that advertise and provide pregnancy testing and care must advise clients, at the time they are seeking or obtaining care, that these facilities are not licensed to provide medical care.

Some CPCs openly acknowledge, in their advertising and facilities, that they do not provide pregnancy termination services, emergency contraception or refer clients to other providers of such services but unfortunately there are still many CPCs that seek to mislead women contemplating these services into believing that their facilities offer any type of family planning services.

CPCs often purchase "pay per click" ads in online search services such as Google for terms such as "abortion" so that persons searching for pregnancy termination services will see a link and advertisement for the CPC at the top of the results page, making it easier for someone searching for information to find them. In addition, they may advertise on billboards and mass transit facilities where potential clients may become aware of their existence.

Most clients do not come to a CPC as a result of a referral from a medical professional. It has been documented that CPC clients seeking information regarding options to terminate a pregnancy are commonly experiencing emotional and physical stress and are therefore especially susceptible to false or misleading elements in advertising by CPCs. These circumstances raise the need for regulation that is more protective of potential consumers of pregnancy center services. Some CPCs offer sonograms by unlicensed technicians. If a woman who has had an ultrasound mistakenly thinks she's had actual prenatal care, she may not go elsewhere for real care.

The City respects the right of limited services pregnancy centers to counsel against pregnancy termination if the centers are otherwise informing clients of what services they offer. However if women choose to terminate a pregnancy and are misled and delayed by the false advertising of CPCs the cost of providing more invasive and expensive options will fall on the government, which ultimately provides the medical services of last resort. When a woman is misled into believing that a clinic offers services that it does not in fact offer, she loses critical time in the decision making process. The City has an interest in protecting residents from false and misleading advertisements.

I THEREFORE MOVE that the CLA and City Attorney report within 30 days, on what other jurisdictions are doing to limit the deceptive practices of pregnancy crisis centers across the country, including recommendations on how we can limit deceptive advertising within the City of Los Angeles.

PRESENTED BY:

  
 NURY MARTINEZ  
 Councilwoman, 6<sup>th</sup> District

SECONDED BY:



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