

August 10, 2022

MEMORANDUM

To: Neighborhoods, Education, Civil Rights & Culture Committee
From: Ann Gorman, Analyst
Subject: Council Bill 120399 - False advertising by Limited Services Pregnancy Centers

On Friday, August 12, the Neighborhoods, Education, Civil Rights & Culture Committee (Committee) will discuss and may vote on [Council Bill \(CB\) 120399](#). This bill would establish false advertising prohibitions that apply specifically to limited services pregnancy centers (LSPCs), which do not provide access and/or referrals to a full range of reproductive health care services. CB 120399 would establish prohibitions on false advertising – either by statement or by omission – that apply to LSPCs. It would also establish an enforcement system, including penalties, for LSPCs that violate those prohibitions.

This memorandum describes CB 120399 and discusses potential next steps.

Background

LSPCs are also referred to as crisis pregnancy centers or pregnancy resource centers. These facilities are distinct from other reproductive health clinics in that the counseling and other services that they provide to clients have an ideological perspective rather than a medical one – i.e., that abortion and contraception are wrong. A 2021 report by the Alliance State Advocates for Women’s Rights and Gender Equality found that none of the LSPCs in Washington State provided contraception¹.

In the United States, LSPCs were first established in the late 1960s in response to several states’ removal of existing limitations on abortion². They were generally affiliated with religious groups or with national or international antiabortion organizations, and the same is true today. Care Net, a nonprofit that supports a network of LSPCs across North America including 45 percent of LSPCs in Washington State and a mobile clinic that is regularly stationed in Seattle, reported in 2022 that over the past seven years more than 1.2 million people “heard the gospel” at one of their facilities³. LSPCs’ affiliation with such organizations provides them with a sustained funding level that on an annual basis far outpaces aggregate philanthropic contributions that support abortion access and services⁴.

¹ The Alliance State Advocates for Women’s Rights and Gender Equality, [Designed to Deceive: A Study of the Crisis Pregnancy Center Industry in Nine States](#), 2021 (<https://alliancestateadvocates.org/wp-content/uploads/sites/107/Alliance-CPC-Study-Designed-to-Deceive.pdf>)

² <https://erlc.com/resource-library/articles/a-brief-history-of-pregnancy-resource-centers>

³ *Ibid.*

⁴ National Committee for Responsive Philanthropy, [“The Threat of Crisis Pregnancy Centers to the Future of Abortion Access”](#)

Researchers have documented various deceptions and deceptive practices of LSPCs, including the provision of false or misleading medical information about the health risks of contraception and abortion. LSPCs also often locate themselves near full-service reproductive health clinics and use similar names⁵, and they have been shown to mislead clients about their conception dates following a sonogram⁶. Based on these deceptions, an individual may present at an LSPC believing that it is a medical clinic, and the same individual may be diverted from a desired timely referral to an abortion provider, increasing the risk of complications from a later procedure or the foreclosure of abortion as an option. For individuals seeking options other than abortion, LSPCs have been shown to delay access to medically legitimate prenatal care⁷.

The Revised Code of Washington⁸ provides for the regulation of health care facilities by the state, but LSPCs work to avoid being subject to the statute – for instance, by evading its definitions relating to “health care.” Section 4A.10 of the King County Board of Health Code⁹ addresses LSPCs for the purpose of the County’s complaint-based regulation of these entities. Board of Health Regulation 2018-05, which was passed in 2018, defined “health care facility” and “limited service pregnancy center” and sought to compel disclosures from LSPCs that they were not medical facilities, but staff at Seattle – King County Public Health observed a response trend of LSPCs’ changing their staffing practices such that the County regulation’s definition of “health care facility” applied to them (but the RCW did not) and they became exempt from the disclosure requirement. There is currently no mechanism at the state or the local level to address and correct the deceptive practices of LSPCs.

Although such practices affect all pregnant individuals who are seeking services or counseling, many LSPCs’ services are low cost or free, so pregnant individuals with financial constraints or who do not have insurance may choose an LSPC over a medical reproductive health clinic. There are examples of LSPCs disproportionately targeting BIPOC individuals¹⁰.

It is not clear how many LSPCs currently operate in Seattle due both to these facilities’ practice of changing their names and the questionable reliability of information they include on their websites.

⁵ Abigail Abrams and Vera Bergengruen, “[Anti-Abortion Pregnancy Centers are Collecting Troves of Information that Could be Weaponized Against Women](#),” *Time*, June 22, 2022

⁶ [Consumer Advisory Warning of the Office of Attorney General Maura Healey](#), Mass.gov, July 6, 2022

⁷ Melissa N. Montoya, Colleen Judge-Gordon, and Jonas J. Swartz, “[The Problems with Crisis Pregnancy Centers: Reviewing the Literature and Identifying New Directions for Future Research](#),” *International Journal of Women’s Health*, 2022, 14: 757–763

⁸ Revised Code of Washington Chapter 70.02, “[Medical Records – Health Care Information Access and Disclosure](#)”

⁹ King County Board of Health Code Title 4a, “[Information Disclosure for Care Other than Health Care](#)”

¹⁰ Jill Litman, “[The Crisis of Crisis Pregnancy Centers](#),” *The Public Health Advocate*, Fall 2018

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Historically, LSPCs have cited the First Amendment’s free speech protections in defense of their approach to communications with clients. In a June 2018 decision¹¹, the Supreme Court ruled on this basis that the State of California could not compel LSPCs to provide information about public programs for low-cost or free contraception and abortion services.

However, two days later in a different case the Court let stand lower court rulings that upheld a 2011 San Francisco ordinance preventing LSPCs from engaging in false or misleading advertising¹². In its 2017 ruling, the U.S. 9th Circuit Court of Appeals had found that the ordinance regulated only unprotected commercial speech thus First Amendment protections did not apply. In the San Francisco case, the Court affirmed that ruling. Since 2018, other cities have sought to pass ordinances that follow the San Francisco model.

CB 120399 would hew closely to the Court-tested San Francisco ordinance, contextualizing its prohibitions in commercial speech. In simple terms, these prohibitions are the dissemination “before the public anywhere” of untrue statements by an LSPC about the pregnancy-related services it offers, including statements of omission. Examples of a violation could include the display of a poster that made false claims about the range of services that a client could expect from the LSPC or the LSPC’s making of false statements about the health effects of contraception or abortion.

The bill would direct enforcement by the Department of Finance and Administrative Services’ (FAS) Consumer Protection Division, and it would provide two distinct tracks for enforcement.

- For violations for which there is a corrective action that an LSPC could take – for instance, taking down a non-conforming poster – FAS would issue a Notice of Violation specifying the desired corrective action and a compliance due date. An LSPC could request a review of the notice in writing, which would result in its being sustained, withdrawn, or for its review to continue. For sustained violations, the penalty would be \$500 per violation day for the first ten days and \$1000 per day for each day beyond ten days until compliance was achieved.
- For violations for which there is no corrective action available – for instance, the making of false statements – FAS would issue a civil citation to the LSPC, which would include a statement that the citation represents a determination that a violation has been committed. In this case the LSPC would have the option of requesting a mitigation hearing by the Office of the Hearing Examiner. The penalties would be \$500 for a first violation and \$1000 for any second violation within five years, although the Hearing Officer could reduce these amounts based on any valid mitigating factors introduced at the hearing.

¹¹ [National Institute of Family and Life Advocates, dba NIFLA, et al., v. Becerra, Attorney General of California, et al.](#), 585 U.S. ____ (2018)

¹² <https://www.sfcityattorney.org/2018/06/28/u-s-supreme-court-denies-review-sf-crisis-pregnancy-law-ordinance-stands/>

The bill would also permit the FAS Director (Director) to achieve enforcement by any other legal and equitable means, and it would permit the Director to request that the City Attorney prosecute violations criminally, as an alternative to the procedures described above.

Enforcement of this legislation would affect three departments: FAS, the Office of the Hearing Examiner, and the City Attorney's Office (CAO). As the designated enforcement agency for conducting investigations and assessing penalties, FAS would absorb the majority of enforcement work. Currently, FAS estimates that the Consumer Protection division would not have capacity to conduct discretionary investigations related to CB 120399 without adding staffing resources or reducing compliance efforts elsewhere. Absent such increased staff or reduced focus in other regulated areas, investigation and enforcement would be strictly complaint based. Therefore, while this legislation has no anticipated direct fiscal impacts, the lack of included incremental funding may blunt its reach.

Educating staff about the new legislation may require training, and educating the public may require the development of outreach materials.

Next Steps

CB 120399, if recommended for passage by the Committee on Friday, may be considered by the City Council as early as August 16.

Central Staff continues to research other potential regulations to protect Seattle residents seeking abortion services or those who travel here to seek such services. Legislation implementing those regulations may be considered by the Council prior to 2023 budget deliberations. [Ordinance 126634](#), which was passed by the Council earlier this month, established Seattle as a sanctuary city for abortion rights. On August 9 the Council passed legislation prohibiting discrimination based on pregnancy outcomes against Seattle residents or visitors who seek abortion services here ([CB 120374](#)) and expanding the City's authority to pursue criminal charges against those who impede access to or disrupt the operations of health care facilities, including those that provide abortion services ([CB 120376](#)).

Please contact me if you have questions about this proposed legislation.

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