CITY OF SALEM BOARD OF HEALTH REGULATION # 32

REGULATION CONCERNING DECEPTIVE ADVERTISING PRACTICES OF LIMITED SERVICES PREGNANCY CENTERS

Section 1.0 Authority:

This regulation is promulgated under the authority of Section 31, Chapter 111 of the Massachusetts General Laws and amendments and additions thereto, in the interest of and preservation of public health.

Section 2.0 Definitions:

The following definitions shall apply to this regulation:

Abortion means the termination of a pregnancy for purposes other than producing a live birth. "Abortion" includes, but is not limited to, a termination of a pregnancy using pharmacological agents.

Client means an individual who is inquiring about or seeking services at a pregnancy services center.

Clinical laboratory services means the microbiological, serological, chemical, hematological, biophysical, cytological or pathological examination of materials derived from the human body for the purpose of obtaining information for the diagnosis, prevention or treatment of disease or the assessment of a health condition.

Emergency contraception means one or more prescription drugs:

a) used separately or in combination for the purpose of preventing pregnancy;
b) administered to or self-administered by a patient within a medically recommended amount of time after sexual intercourse;
c) dispensed for such purpose in accordance with professional standards of practice; and,
d) determined by the United States Food and Drug Administration to be safe for such purpose.

Health information means any oral or written information in any form or medium that relates to health insurance or the past, present or future physical or mental health or condition of a client.

Licensed health care provider means a person licensed under the provisions of federal or state law to provide health care or other medical services.

Limited services pregnancy center means a pregnancy services center that does not directly provide, or provide referrals for, abortions or emergency contraception.

Pregnancy-related service means any medical or health counseling service related to pregnancy or pregnancy prevention, including, but not limited to, contraception and contraceptive counseling, pregnancy testing, pregnancy diagnosis, pregnancy options counseling, obstetric ultrasound, obstetric sonogram, and prenatal care.

Pregnancy services center means a facility, including a mobile facility, the primary purpose of which is to provide services to clients who are or have reason to believe they may be pregnant and that either:

a) Offers obstetric ultrasounds, obstetric sonograms, pregnancy testing or diagnosis or prenatal care to pregnant clients, or;
b) Has the appearance of a medical facility by virtue of having two or more of the following factors present:

    (i) Staff or volunteers who wear medical attire and uniforms;
    (ii) One or more examination tables;
    (iii) A private or semiprivate room or area containing medical supplies or medical instruments;
    (iv) Staff or volunteers who collect health information from clients; or
    (v) The facility is located on the same premises as a licensed health care facility or licensed health care provider or shares facility space with a licensed health care provider.

Premises means land and improvements or appurtenances or any part thereof.

Prenatal care means services consisting of a physical examination, pelvic examination or clinical laboratory services provided to a client during pregnancy.

Section 3.0 Deceptive practices:

No limited services pregnancy center, with the intent to perform a pregnancy-related service, shall make or disseminate before the public, or cause to be made or disseminated before the public, in any newspaper or other publication, through any advertising device, or in any other manner, including, but not limited to, through use of the Internet, any statement concerning any pregnancy-related service or the provision of any pregnancy-related service that is deceptive, whether by statement or omission, and that a limited services pregnancy center knows or reasonably should know to be deceptive.

Section 4.0 Enforcement:

The provisions of this regulation shall be enforced by a noncriminal disposition pursuant to Massachusetts General Laws Chapter 40, Section 21D. Each failure to comply with the requirements set forth in this Regulation shall be deemed a separate offense. A person or entity violating any provisions of this Regulation shall be subject to:

i. A $300 civil penalty for the first violation;

ii. A $400 civil penalty for the second violation;

iii. And a $500 civil penalty for the third violation.

Nothing in this section shall prohibit the Board of Health from seeking any legal or equitable relief permitted by law.

Severability

If any section, paragraph, sentence, clause, phrase, or word of this regulation is declared invalid for any reason, that decision will not be applicable to the remaining portions of these regulations.

Effective Date

This regulation will take effect on January 1, 2023

City of Salem
Board of Health
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Paul Kirby
Geraldine Yuhas
Datanis Elias
Sara Moore

A summary of the regulation was published as a legal notice in the Salem Evening News on October 31, 2022.

After a vote of the Board of Health, at a posted meeting on December 13, 2022: affirmative 5; negative 0, the following signature is authorized.

Signed,

Dr. Jeremy Schiller, Chair