

Clinic Accountability and Standards Enforcement Act

Summary: The Clinic Accountability and Standards Enforcement Act provides that if a facility holds itself out as if it were a regulated free medical clinic, then that facility must comply with the rules that apply to a free medical clinic.

[NOTE: The substance of the bill doesn't mention UPCs. As written, it would apply to any facility. This makes it more likely to stand up in court, but please consider whether there are any facilities in the State that need explicit exemptions.]

SECTION 1. SHORT TITLE

This Act shall be called the "Clinic Accountability and Standards Enforcement Act."

SECTION 2. FINDINGS

The legislature finds that:

1. The State of [State] has a number of [or say how many] free medical clinics [if the state has a different name for free medical clinics, substitute it throughout this bill], which provide medical care mostly to residents who cannot afford health care services because they lack health insurance or are underinsured. These free medical clinics are staffed by licensed health care providers who treat patients within their scope of practice, often with administrative assistance from laypeople. Free medical clinics are licensed under [cite code section] and their health care providers are licensed under [cite code sections].
2. Free medical clinics must comply with standard health care regulations, such as those guaranteeing the privacy and security of clients' sensitive information; limits on who can diagnose, order and interpret diagnostic tests or initiate and manage treatments; credential requirements for those who operate specific types of medical equipment and those who provide mental health treatment or counseling; and basic rules of sanitation and safety.
3. The State of [State] has a number of [or say how many] Unregulated Pregnancy Clinics (UPCs) [or use another name if it's common for your state], also known as "crisis pregnancy centers," which are organizations that primarily counsel clients against having an abortion. While individuals and organizations certainly have the right to free speech, many UPCs intentionally advertise as if they were free medical clinics in order to entice potential clients inside. Further, many UPCs are made to look like medical clinics, with waiting rooms, examination rooms, medical equipment, and staff – including nonmedical volunteers – dressed like doctors and nurses. [BILL DRAFTING NOTE: Paragraph 3 should probably be omitted in a state that funds UPCs.]

4. If a facility holds itself out to be a free medical clinic, then it should be subject to the requirements and accountability protocols of a free medical clinic.

SECTION 3. COMPLIANCE WITH RULES OF A FREE MEDICAL CLINIC

After section XXX, the following new section XXX shall be inserted:

(A) REQUIREMENTS

1. A facility that holds itself out to clients as a free medical clinic shall be subject to the state regulations that apply to a free medical clinic, including but not limited to [add applicable citations to state law]: protecting the privacy and security of clients' sensitive information; limits on who can diagnose, who can order and interpret diagnostic tests, and who can initiate and manage treatments; credential requirements for those who provide mental health treatment or counseling; the use of specific types of medical equipment such as ultrasound; and basic rules of sanitation and safety.
2. The determination of whether a facility holds itself out as a free medical clinic shall be based on the totality of the circumstances, with the following taken into consideration. If a facility:
 - (a) Advertises itself, including on the Internet, as if it provides free medical services.
 - (b) Has signage that would make a potential client believe that the facility provides free medical services.
 - (c) Is made to look like a medical office, with medical examination tables or equipment not generally found in a nonmedical counseling center.
 - (d) Has staff providing medical services or health care counseling who are not licensed medical providers but wearing medical scrubs or uniforms.
 - (e) Has staff who claim to be certified for particular medical tasks but that certification is not recognized by the State of [State].
 - (f) Claims to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA).
 - (g) Claims that clients are able to file complaints against the facility with a particular federal or state health agency, if those agencies do not accept complaints for the type of facility being run.

(h) Lists in advertising or on-site, a medical director who is not licensed under [cite code section for a physician, and if appropriate, for a physician assistant or nurse practitioner] or lists a medical director who is licensed but does not directly supervise, in person, the provision of all medical services provided at the facility. [NOTE: Many states have laws or regulations that define “direct supervision.” Ask your in-state advocates and bill drafters to ensure that the legislation uses language that fits your state.]

(i) Requires clients to fill out an intake form before receiving services which asks for private health information, such as a listing of prescriptions the client is taking or a listing of medical conditions that are unrelated to establishing a client’s pregnancy.

3. The Attorney General may promulgate regulations on the determination of whether a facility holds itself out as a free medical clinic of some kind.

(B) ENFORCEMENT

1. Whenever the Attorney General or a district attorney [if applicable: a city attorney, a county counsel] has reasonable cause to believe that a facility has violated this section, the Attorney General may issue a civil investigative demand pursuant to [cite code].

2. The Attorney General may commence an action in any court of competent jurisdiction for injunctive relief to compel compliance with the provisions of this section, and for civil penalties for violations.

3. Prior to commencing an action in court, the Attorney General shall give written notice to the facility to cure such violations not later than 10 business days after receipt of the written notice.

4. Upon a finding by the court that a facility has violated this section, the state shall be entitled to recover:

(a) civil penalties of up to three thousand dollars for a first violation;

(b) civil penalties of up to ten thousand dollars for a second or subsequent violation; and

(c) reasonable attorneys’ fees and costs.

5. In determining the overall amount of civil penalties to assess against a facility, the court shall include, but not be limited to the following in its consideration:

(a) the nature and severity of the violation;

- (b) the size, scope, and type of the offending organization; and
- (c) the good faith cooperation of the offending organization with any investigations conducted by the Attorney General pursuant to this section.

SECTION 4. EFFECTIVE DATE

This law shall become effective on July 1, 20XX.