Preventing False Advertising in Reproductive Services Act

Summary: The Preventing False Advertising in Reproductive Services Act prohibits ultrasound clinics from disseminating false advertising about their services.

[BILL DRAFTING NOTE: Please work with local advocates to decide the best way to identify the facilities affected.
Based on VT SB 37 (2023), but a different legal approach based on commercial speech

SECTION 1. SHORT TITLE

This Act shall be called the "Preventing False Advertising in Reproductive Services Act."

SECTION 2. FINDINGS

The legislature finds that:

1. Most Unregulated Pregnancy Clinics (UPCs) are facilities primarily intended to prevent women from seeking abortions. Such UPCs have the constitutional right to speak out against abortion.

2. However, most such UPCs present themselves to potential clients as if they were unbiased medical clinics, or even abortion clinics, providing a wide range of reproductive and maternal health services. This presentation is fraudulent.

3. Fraud against consumers is already prohibited under [cite the state law]. However, the existing statute does not provide protection against fraud by UPCs because they do not usually charge or bill insurance for their services.

4. Because of the significant health impacts of pregnancy, it is vital for clients to access early medical care to confirm pregnancy, gestational age, identify ectopic pregnancy, fetal anomaly, issues with the placenta or amniotic fluid, and any factors that could make the pregnancy high risk or dangerous. Early medical care may also be important for the health of the fetus. False and misleading advertising about the services offered by UPCs can delay the search for comprehensive prenatal care or for treatment for potentially life-threatening medical conditions.

5. If UPC advertisements have an economic motivation for the speech, then they may be regulated as "commercial speech," even if neither the client nor insurance pays for the UPC's services.

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SECTION 3. FRAUD PREVENTION

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

(A) APPLICATION

This section applies to a facility, including a mobile facility, that provides obstetric ultrasound examinations but is not a "covered entity" under the federal Health Insurance Portability and Accountability Act (HIPAA).

(B) UNLAWFUL FRAUD BY AN UNREGULATED PREGNANCY CLINIC

1. It is an unfair and deceptive act and practice in commerce and a violation of section [cite the consumer fraud section] of this title for a facility to disseminate or cause to be disseminated to the public any advertising about the services or proposed services performed at that center that is untrue or clearly designed to mislead the public about the nature of services provided.

2. Such advertising includes representations made directly to consumers; marketing practices; communication in any print medium, such as newspapers, magazines, mailers, or handouts; and any broadcast medium, such as television or radio, telephone marketing, or advertising over the Internet such as through social media, websites, and web ads.

3. This section applies only if the facility is engaged in commercial speech, that is, (a) the speech is an advertisement; (b) the advertisement refers to at least one specific product or service; and (c) there is an economic motivation. Such economic motivation does not have to be based on the client or the client's insurance paying for the product or service.

(C) 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.

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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.

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