

Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? Section 2 of Local Law 17 of 2011 added a new subchapter 17 to Chapter 5 of Title 20 of the Administrative Code of the City of New York to require pregnancy services centers to disclose “if it does or does not have a licensed medical provider on staff who provides or directly supervises the provision of all of the services at such pregnancy services center.” The Department of Consumer Affairs proposes to add a new subchapter P to Chapter 5 of Title 6 of the Rules of the City of New York to publish rules that will implement and carry out the provisions of the law by: 1) clarifying the meanings of certain terms; 2) clarifying which facilities are exempt from making the disclosure; 3) specifying the language of the disclosure and manner in which a pregnancy services center must provide the disclosure on signs, advertisements, and orally; and 4) clarifying that a facility’s distribution of a pregnancy test kit shall not, by itself, be sufficient to establish that it has the “appearance of a licensed medical facility,” provided that the test is self-administered, self-diagnosed, and self-interpreted.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 12:00 pm on Monday, January 11, 2016. The hearing will be in the Department of Consumer Affairs hearing room at 66 John Street, 11th Floor, New York, NY 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Mary Cooley, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax comments to Department of Consumer Affairs, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0392. You can also sign up in the hearing room before the hearing begins on January 11th. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit comments to the proposed rule on or before January 11th.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. You must tell us by January 7th.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Office of Legal Affairs.

What authorizes the Department of Consumer Affairs to make this rule? Sections 1043 and 2203 of the City Charter and sections 20-104(b) and 20-816(f) of the Administrative Code of the City of New York authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department of Consumer Affairs's regulatory agenda for this Fiscal Year because it was not contemplated when the Department of Consumer Affairs published the agenda.

Where can I find the Department of Consumer Affairs rules? The Department of Consumer Affairs rules are in title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 20-816(b) of the Administrative Code, enacted as part of section 2 of Local Law 17 of 2011, provides that a pregnancy services center “shall disclose if it does or does not have a licensed medical provider on staff who provides or directly supervises the provision of all of the services at such pregnancy services center.” Section 20-815(g) defines a pregnancy services center as “a facility, including a mobile facility, the primary purpose of which is to provide services to women who are or may be pregnant, that either: (1) offers obstetric ultrasounds, obstetric sonograms or prenatal care; or (2) has the appearance of a licensed medical facility.” Section 20-815(g) excludes from this definition “a facility that is licensed by the state of New York or the United States government to provide medical or pharmaceutical services or where a licensed medical provider is present to directly provide or directly supervise the provision of all services described in this subdivision that are provided at the facility.”

Section 20-816(f) of the Administrative Code requires that the disclosure must be made “(1) in writing, in English and Spanish in a size and style as determined in accordance with rules promulgated by the commissioner on (i) at least one sign conspicuously posted in the entrance of the pregnancy services center; (ii) at least one additional sign posted in any area where clients wait to receive services; and (iii) in any advertisement promoting the services of such pregnancy services center in clear and prominent letter type and in a size and style to be determined in accordance with rules promulgated by the commissioner”. Section 20-816(f) additionally requires that the disclosure must be made orally.

The proposed rules:

- Clarify the meanings of the following terms: “services”, “directly provide”, “directly supervise”, “social media site”, and “social network site”.
- Clarify which facilities are excluded from the definition of “pregnancy services center”.
- Specify the language of the disclosure, and set forth the size, color and location of the signs required to be posted at the pregnancy services center and in advertisements promoting the services of the pregnancy services center.
- Specify the language of the disclosure that must be made orally.
- Clarify that a facility’s distribution of a pregnancy test kit shall not, by itself, be sufficient to establish that it has the “appearance of a licensed medical facility,” provided that the test is self-administered, self-diagnosed, and self-interpreted.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendment

Section 1. Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new subchapter P to read as follows:

SUBCHAPTER P

PREGNANCY SERVICES CENTERS

§ 5-266. Definitions.

As used in this chapter, the following terms have the following meanings:

Directly provide. The term “directly provide” means that the licensed medical provider provides the service.

Directly supervise. The term “directly supervise” means that the licensed medical provider is on site and directly overseeing the provision of the service from beginning to end.

Services. The term “services” means abortion, emergency contraception, obstetric ultrasounds, obstetric sonograms, prenatal care, pregnancy testing, pregnancy diagnosis, and other medical and/or pharmaceutical services.

Social media site or social network site. The term “social media site” or “social network site” means a form of electronic communication, such as a website for social networking or microblogging, which allows users to interact or through which users create online communities to share information, ideas, personal messages, and other content, and includes, but is not limited to, Facebook, Twitter, YouTube, Flickr, LinkedIn, Tumblr and Myspace.

§ 5-267. Exemption.

A pregnancy services center shall not include a facility:

(a) that is licensed by the state of New York or the United States government to provide medical or pharmaceutical services; or

(b) where a licensed medical provider is present to directly provide or directly supervise the provision of all services defined in Section 5-266 of this Subchapter that are provided at the facility.

§ 5-268. Display of Sign for Required Disclosure.

(a) Every pregnancy services center must display at its facility, including a mobile facility, a sign provided by the Department stating in English and Spanish: “This facility does not have a licensed medical provider present on site during all hours that the pregnancy services center is open and operating to directly provide or directly supervise the provision of all services at this facility.” The Department will provide both signs on its website for downloading by pregnancy services centers. The sign will measure eleven (11) inches by seventeen (17) inches and the lettering will be one inch high.

(b) Every pregnancy services center must post the sign at every public entrance. If the pregnancy services center is located in an office building or other structure containing two or more independent units, the sign must be posted at each entrance used exclusively for entry to the pregnancy services center. The sign must be: (1) posted on the outside of the entrance door and so that the distance from the top of the sign to the floor is between sixty-six (66) and seventy (70) inches and the distance between the frame of the door and the closest edge of the sign is not more than twelve (12) inches; (2) clearly and conspicuously visible to the client as she or he enters the pregnancy services center; and (3) laminated or protected by a clear sheeting or other suitable material so that the text will not be destroyed, soiled, distorted, or rendered illegible.

(c) Every pregnancy services center must post at least one sign in every area where clients wait to receive services. If the waiting area contains a reception desk, the sign must be posted on the reception desk or on a wall at a location not greater than 12 inches from the reception desk. If the sign is posted on a wall, it must be posted so that the distance from the top of the sign to the floor is between sixty-six (66) and seventy (70) inches.

§ 5-269. Disclosures in Advertising.

(a) “Advertisement promoting the services of a pregnancy services center” includes all promotional materials, statements, visual descriptions, or other visual representations of any kind

disseminated in print or electronically, including, but not limited to, mailings, postcards, signs, business cards, flyers, hand-outs, brochures, banners, billboards, subway or bus signs, window signs, store-front signs, newspaper print advertisements and listings, telephone directory listings, television advertisements, internet advertisements and social media or social network sites. “Advertisement promoting the services of a pregnancy services center” does not include communications or statements made by a center in the course of its operations that do not promote the center’s services to clients or the general public, and that are directed exclusively to the center’s non-client directors, employees, past financial donors, and interns.

(b) Every advertisement promoting the services of a pregnancy services center must include in English and Spanish the statement: “This facility does not have a licensed medical provider present on site during all hours that the pregnancy services center is open and operating to directly provide or directly supervise the provision of all services.” The lettering of such statements in printed materials must be clear, legible, and in the same color and darkness, and in a type size at least one-third as high and one-third as broad, as the largest print in the advertisement. The lettering of such statement in television and internet advertisements must be clear and legible and in close proximity to the description of services provided at the pregnancy services center. The lettering of such statement on business cards may be printed on the back of the cards.

(c) Every pregnancy services center must also post the statement provided in Subsection (b) of this Section on its website and social media or social network sites. The lettering of such statement must be clear, legible, in the same color and darkness, and in a type size at least one-third as high and one-third as broad, as the largest print on the website. The statement must be posted on every page of the website and social media or social network site. Where a page of the website or social media or social network site contains the description of services provided by such pregnancy services center, the statement must also be contained on that page, in close proximity to the services description.

(d) In addition to the disclosure requirements provided in subsection (c), for each Tweet posted on a Twitter site, the statement provided in subsection (b) shall be attached as a photo image and the lettering shall be consistent with the requirements described in subsection (c). Each tweet that does not comply with this requirement shall constitute a single violation, except that for the purpose of imposing a sealing order pursuant to section 20-818(b)(1) of the administrative code, each day of noncompliance shall be treated as a separate occasion.

§ 5-270. Oral Disclosure.

Upon a client or prospective client request for an abortion, emergency contraception and/or prenatal care service, a pregnancy services center shall orally disclose in English and Spanish the statement: “This facility does not have a licensed medical provider present on site during all hours that the pregnancy services center is open and operating to directly provide or directly supervise the provision of all services at this facility.”

§ 5-271. Evidence.

(a) It shall be prima facie evidence that a facility has the appearance of a licensed medical facility if it has two or more of the factors listed in subparagraphs (a) through (f) of Title 20, Subchapter 17, Section 20-815(g)(2) of the New York City Administrative Code.

(b) A facility’s distribution of a pregnancy test kit shall not, by itself, be sufficient to establish that it has the “appearance of a licensed medical facility,” provided that the test is self-administered, self-diagnosed, and self-interpreted. Notwithstanding, a facility’s distribution of a pregnancy test kit – even if the pregnancy test kit was exclusively self-administered, self-interpreted, and self-diagnosed – may be relied upon, in combination with another legally permissible factor, to establish the “appearance of a licensed medical facility.”

NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Disclosure by Pregnancy Services Centers

REFERENCE NUMBER: 2015 RG 120

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 2, 2015

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Disclosure by Pregnancy Services Centers

REFERENCE NUMBER: DCA-39

RULEMAKING AGENCY: DCA

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the violations pose significant risks to public health and safety which make a cure period impracticable under the circumstances.

/s/ Elvita Dominique
Mayor's Office of Operations

December 2, 2015
Date