

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that all women in Hawaii, regardless of income, should have meaningful access to effective reproductive health services. Public programs providing insurance coverage and direct services for reproductive health care and counseling to eligible, low-income women are currently available through the department of health and department of human services.

Thousands of women in Hawaii are in need of publicly-funded family planning services, contraception services and education, pregnancy-related services, prenatal care, and birth-related services. In 2010, sixteen thousand women in Hawaii experienced an unintended pregnancy, which can carry enormous social and economic costs to both individual families and to the State. Many women in Hawaii, however, remain unaware of the public programs available to provide them with contraception, health education and counseling, family planning, prenatal care, pregnancy-related, and birth-related services.

Because family planning decisions are time sensitive and care early in pregnancy is important, Hawaii must make every possible effort to advise women of all available reproductive health programs. In Hawaii, low-income women can receive immediate access to free or low-cost comprehensive family planning services and pregnancy-related care through Med-QUEST and the department of health's family planning program. Providers who contract with these programs are able to immediately enroll patients in these programs at the time of a health center visit.

Requiring facilities that provide pregnancy- or family planning-related services to provide accurate health information and to inform clients of the availability of and enrollment procedures for reproductive health programs will help ensure that all women in the State can quickly obtain the information and services that they need to make and implement informed, timely, and personally appropriate reproductive health decisions.

The purpose of this Act is to ensure that women in Hawaii are able to make personal reproductive health decisions with full and accurate information regarding their rights to access the full range of health care services that are available.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§321-A Limited service pregnancy centers; notice of reproductive health services. (a) For purposes of this section, “limited service pregnancy center” or “center”:

- (1) Means a facility that:
 - (A) Advertises or solicits clients or patients with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling;
 - (B) Collects health information from clients or patients; and
 - (C) Provides family planning or pregnancy-related services, including but not limited to obstetric ultrasound, obstetric sonogram, pregnancy testing, pregnancy diagnosis, reproductive health counseling, or prenatal care; and

- (2) Shall not include a health care facility. For the purposes of this paragraph, a "health care facility" means any facility designed to provide comprehensive health care, including but not limited to hospitals licensed pursuant to chapter 321, intermediate care facilities, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, federally qualified health centers, and other facilities providing similarly organized comprehensive health care services.
- (b) Every limited service pregnancy center in the State shall disseminate on-site to clients or patients the following written notice in English or another language requested by a client or patient:
 "Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.
 To apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.
 Only ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate."
 The notice shall contain the internet address for online medical assistance applications and the statewide phone number for medical assistance applications.
- (c) The information required by subsection (b) shall be disclosed in at least one of the following ways:
- (1) A public notice on a sign sized at least eight and one-half inches by eleven inches, written in no less than twenty-two point type, and posted in a clear and conspicuous place within the center's waiting area so that it may be easily read by individuals seeking services from the center; or
 - (2) A printed or digital notice written or rendered in no less than fourteen point type that is distributed individually to each patient or client at the time of check-in for services; provided that a printed notice shall be available to all individuals who cannot or do not wish to receive the notice in a digital format.
- (d) No limited service pregnancy center that collects health information from any individual seeking or receiving its services shall disclose any individually identifiable health information to any other person, entity, or organization without express written authorization from the subject individual. Any disclosure made under this section shall be limited by the express terms of the written authorization and all applicable state and federal laws and regulations, including the federal Health Insurance Portability and Accountability Act of 1996 and title 45 Code of Federal Regulations part 164.
- (e) A limited service pregnancy center that provides or assists in the provision of pregnancy testing shall provide the individual tested with a free written statement of the results of the pregnancy test in English or another language requested by a client or patient immediately after the test is completed.
- (f) Upon receipt of a written request from an individual to examine or copy all or part of the individual's recorded health information or other information retained by a limited service pregnancy center, the center shall, promptly as required under the circumstances but in no case later than fifteen working days after receiving the request:
- (1) Make the information available for examination by the individual during regular business hours;
 - (2) Provide a free copy to the individual, if requested;

- (3) Inform the individual if the information does not exist or cannot be found; and
- (4) If the center does not maintain the record or information, inform the individual of that fact and provide the name and address of the entity that maintains the record or information.

§321-B Limited service pregnancy centers; enforcement; private right of action. (a) A limited service pregnancy center that violates section 321-A shall be liable for a civil penalty of \$500 for a first offense and \$1,000 for each subsequent offense. If the center is provided with reasonable notice of noncompliance, which informs the center that it is subject to a civil penalty if it does not correct the violation within thirty days from the date the notice is sent to the center, and the violation is not corrected as of the expiration of the thirty-day notice period, the attorney general may bring an action in the district court of the district in which the center is located to enforce this section.

A civil penalty imposed pursuant to this subsection shall be deposited to the credit of the general fund.

(b) Any person who is aggrieved by a limited service pregnancy center's violation of section 321-A may bring a civil action against the limited service pregnancy center in the district court of the district in which the center is located to enjoin further violations and to recover actual damages sustained together with the costs of the suit including reasonable attorneys' fees. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained. If damages are awarded pursuant to this subsection, the court may, in its discretion, impose on a liable center a civil fine of not more than \$1,000 to be paid to the plaintiff.

A party seeking civil damages under this subsection may recover upon proof of a violation by a preponderance of the evidence.

For the purposes of this subsection, "person" includes a natural or legal person.

(c) The enforcement procedure and remedies provided by this section shall be in addition to any other procedure or remedy that may be available to the State or a person aggrieved by a violation of this chapter.

(d) This section and section 321-A are not intended to require regulation or oversight of limited service pregnancy centers by the department of health."

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 11, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.