

**OBAMACARE PERMITS FEDERAL FUNDS FOR ABORTIONS ...
OBAMACARE PERMITS IT I CAN GUARANTEE THAT! ...
NO IT DOESN'T, YES IT DOES, NO IT DOESN'T, YES IT DOES,
NO IT DOESN'T ... YES IT DOES, YES IT DOES!**

(Sung to the tune of “Anything You Can Do I Can Do Better, I Can Do Anything Better Than You!” – from the 1946 Broadway musical *Annie Get Your Gun* by Irving Berlin.)

Stephen L. Bakke – April 5, 2010

What Does the Administration Say?

So what’s the real deal? What do the administration’s comments imply? In a statement from Communications Director Dan Pfeiffer, it was declared:

Today, the President announced that he will be issuing an executive order after the passage of the health insurance reform law that will reaffirm its consistency with longstanding restrictions on the use of federal funds for abortion. While the legislation as written maintains current law, the executive order provides additional safeguards to ensure that the status quo is upheld and enforced, and that the health care legislation’s restrictions against the public funding of abortions cannot be circumvented.

The executive order itself states that this order establishes an enforcement mechanism to ensure that the law as implemented is:

... consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment ... maintains current Hyde Amendment restrictions governing abortion policy and extends those restrictions to the newly-created health insurance exchanges ...

The Act specifically prohibits the use of tax credits and cost-sharing reduction payments to pay for abortion services ... in health insurance exchanges that will be operational in 2014 ...

The Act establishes a new Community Health Center (CHC Fund within HHS, which provides additional Federal funds for the community health center program. Existing law prohibits these centers from using federal funds to provide abortion services ... as a result of both the Hyde Amendment and longstanding regulations containing the Hyde language ...

(Yeah, but!)

Nothing in this Executive Order shall be construed to impair or otherwise affect: (i) authority granted by law or presidential directive of an agency, or the

head thereof; or (ii) functions of the Director of the Office of Management and Budget ...

It's Not What the New Law Says, But What It Doesn't Say

Does the statement have any value in the courts for enforcing the provisions of the Hyde Amendment which prohibits federal funding for abortions? Very simply, no. No executive order can trump a statute such as the new health care bill if it is determined judicially that somehow abortions can be funded.

Defenders of the bill point out that nowhere does the bill say that federal funds will go to abortions. That is true. While language is in the bill certainly implies that Hyde still applies, I have to direct attention to the portion of the executive order which I show in bold above and repeat here:

*Nothing in this Executive Order shall be construed to impair or otherwise affect:
... authority granted by law or presidential directive of an agency, or the head thereof ...*

The above seems to point out the recognition by the President that his order can be trumped by authority given to an agency or its head, by any Federal legislation separate from the Hyde Amendment. Consider the fact that the status and authority of “Hyde” is very fragile, and always has been. As I understand it, the Hyde Amendment “is a rider that must be lobbied and attached each year to the annual Labor/Health and Human Services appropriations bill. Under its terms, the **amendment applies only to those funds.**” (Political analyst Kathleen Parker – in an excellent concise discussion of this topic – it’s well done).

Follow this progression of thought:

- Traditionally, community health centers, or their equivalent, (CHCs) have been funded by the annual Labor/Health and Human Services appropriations bill.
- Remember, the provisions of the Hyde Amendment stipulate that it applies only to funds in the annual HHS appropriation.
- The Obamacare bill changes that tradition of funding CHCs through the HHS appropriation by **funding them directly**.
- It can be logically assumed that the billions of dollars provided directly to CHCs by Obamacare are specifically not covered by “Hyde.”
- Because of the nature of executive orders, the President cannot proclaim otherwise – only Congress can declare it so through legislation.
- While abortions are not currently provided by CHCs, what prevents them from including abortion among their other reproductive services?
- In fact, by statute, CHCs will provide all “required primary health care services” which include “health services related to ... obstetrics or gynecology that are furnished by physicians.”

- “Federal courts have long held that when a statute requires provision of health services under such broad categories, then the statute must be construed to include abortion unless it explicitly excludes it.” (Analyst Parker)
- Under this theory, CHCs will eventually provide abortions because they can. In fact some argue that under Obamacare they must do it to fulfill their statutory mandate to provide all primary health care services including obstetrics and gynecology.
- Any prohibitions of “Hyde” don’t apply since CHCs are now funded directly by the new legislation, not the HHS appropriation to which Hyde exclusively applies.

If this theory is judicially confirmed, we are there! – federal funds for abortions.

After following this logic, add to the mix that Planned Parenthood, the largest U.S. abortion provider, is claiming “victory” following the legislation, and in spite of the executive order. Believe me ... if they were the least bit concerned that “Hyde” applied, they would not be so happy with the legislation.

It appears that what is important isn’t what the law says, but rather what it doesn’t say. And it’s not so important what the law specifically provides for or says, but what can, and likely will, become reality over time.

That’s an explanation of the opposition to this law by pro-life proponents. I believe they are correct in their prediction that CHCs can eventually provide abortions. It’s up to you to take a position whether that pleases you or not.