

# The Washington Post

## Federally funded abortions are in our future

By Kathleen Parker

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Health care is the next-to-last thing I want to write about. The last thing is abortion, so this column is a banquet of tortures.

Usually, I would not return so soon to a topic that I tend to associate with the pleasures of head-banging, but broad misunderstanding about what's in the health-care-reform law justifies another lap.

Still cloudy is whether the new law of the land allows funding for abortions and whether President Obama's executive order is of any real (judicially enforceable) value. The answer to the latter is in little dispute. It is no. An executive order cannot override a statute.

As to the funding issue, well, it's intentionally complicated. And suffice to say, it shouldn't be.

Defenders argue that: (1) nowhere does the bill say funds will go toward abortion; (2) the Hyde Amendment, which prohibits federal funding for abortion, applies.

Both assertions are true -- up to a point. The issue isn't what the bill says; it's what it doesn't say.

No one should apologize for being confused, by the way. If not for the patient tutoring of brilliant lawyers, Capitol Hill staffers, medical experts and others, I would be hugging my knees alternately muttering "Who's Jacob?" and "Ibid, Subsection C (1)(a)."

To the first argument: Of *course* the bill doesn't explicitly state that it appropriates abortion funding. In fact, it takes pains to use terminology that seems to explicitly forbid it. But other areas are swampier. And, indeed, funds could be used to pay for abortion under circumstances that predictably will evolve.

History and precedent tell us this much.

For one thing, the Hyde Amendment is a

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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.

Rather than following the usual course of funding community health centers (CHCs) through the Labor/HHS budget, the health-care-reform measure does an end run around Hyde by directly appropriating billions of dollars into a new CHC fund.

Because the Obama administration's "fix-it" bill did not include the abortion-ban language proposed by Rep. Bart Stupak (D-Mich.), those billions appropriated to CHCs simply are not covered by Hyde.

Now, the president's executive order purports to address this gap by extending the Hyde Amendment to these dollars as well. The problem is that, regardless of Obama's stated intentions, he can't actually do this without an act of Congress.

As Dorinda Bordlee, an attorney with the Bioethics Defense Fund, wrote: "If a president could do that, there would be no need to have a majority of Congress pass the Hyde Amendment each and every year to prevent abortion funding using Medicaid dollars for low-income government health care. Instead, we could have simply prevailed on each

president to issue an executive order saying agencies can't use Medicaid money for abortion. Congress controls the purse strings, not the president. That's Civics 101."

It is telling that the nation's largest abortion provider -- Planned Parenthood -- is claiming "victory" because "we were able to keep the Stupak abortion ban out of the final legislation and President Obama did not include the Stupak language in his executive order."

Several supporters of the bill have argued that this debate is otherwise irrelevant because abortions aren't performed at CHCs. While currently true, this doesn't mean that CHCs wouldn't like to offer abortion among their reproductive services.

Under the new law, they can. There's nothing to stop them.

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Here's why. By statute, CHCs are required to provide all "required primary health care services," defined to include "health services related to . . . obstetrics or gynecology that are furnished by physicians."

Federal courts long have 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. Voilà.

One may believe that poor women should have affordable access to abortion. This is a reasonable position and it is likely to be the result of this bill. But it is not what Americans have been led to believe is true, nor is it what most want. A January Quinnipiac University poll found that 67 percent of Americans oppose public funding for abortion, down from 72 percent in December.

Prediction: Abortions *will* be performed at community health centers. You can bet your foreclosed mortgage on that. There was always a will by this administration, and now there's a way.

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In a recent column I wrote that Margaret Chase Smith was the first woman elected to the U.S. Senate. She was the first

elected to both houses. The first woman elected to the Senate was Hattie Caraway of Arkansas.

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*For more on the debate over abortion and health care, read Rep. Bart Stupak on "Why I voted for health-care reform."*

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