

federal taxes ↓ will fund abortions

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The key isn't what the new health care law says, but it doesn't say - or what it doesn't forbid.



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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 associate with the pleasures of head-banging, but 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.

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. It 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 dozens of brilliant lawyers, Capitol Hill staffers, medical experts and others, I would be in a fetal curl 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 abortions under circumstances that predictably will evolve.

PLAYING HYDE AND SEEK

History and precedent tell us this much. For one thing, the Hyde Amendment is a rider that must be lobbied and attached each year to the annual Labor/Health and Human Ser-

vices appropriations bill. Under its terms, the amendment applies *only* to those funds.

Rather than following the usual course of funding community health centers through the Labor/HHS budget, the health care reform 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, 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."

ADDING IN ABORTIONS

Several supporters of the bill have argued that this debate is irrelevant because abortions aren't performed at CHCs. While true now, 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.

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."

Based on federal precedent, a statute requiring "health" services must be interpreted to include abortion unless it is explicitly excluded. Voila.

One may believe that poor women should have affordable access to abortion. This is a reasonable position and it likely will be the outcome as a result of this bill. But it is not what Americans have been led to believe is true, nor is it what most want. A 2009 Quinnipiac University poll found that 72 percent of Americans oppose public funding for abortion.

Prediction: Abortions will be performed at CHCs and paid for with federal funds; you can bet your foreclosed mortgage on that. There was always a will by this administration, and now there's a way.

Correction: In a recent column I wrote that Margaret Chase Smith of Maine 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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