

## What's Wrong with the Executive Order on Abortion Restrictions?

On Sunday, March 21, 2010, as part of the negotiations over the healthcare reform bill, President Barack Obama promised to issue a new Executive Order on abortion restrictions upon passage of the bill by the House.

The Order is a damaging turn in the reprehensible saga over abortion that has played out in the healthcare reform bill. In an unprecedented move, it allows a small number of extremist members of Congress to effectively determine policy for the entire executive branch, despite their inability to persuade Congressional colleagues to alter legislation in response to their demands.

The Executive Order reiterates the administrative hurdles in the Nelson provisions of the Senate-passed healthcare bill and requires the development of new rules to establish strict accounting rules for abortion-related insurance plans in the new insurance marketplaces, called exchanges. Yet it is silent on the unworkable, stigmatizing and burdensome effects of the Nelson language, which threaten coverage for abortions in the exchanges.

### **The Hyde and Nelson Amendments Already Severely Burden Access to Abortion**

The Hyde Amendment and similar provisions drastically restrict access to federal dollars except in cases of reported rape, reported incest, or where the life of the pregnant woman is threatened.

In addition, the Nelson amendment also imposes severe burdens on access to reproductive health. The punishing provisions of the Nelson Amendment will require individuals who choose a health plan that includes abortion coverage to make two separate payments of insurance premiums, one for abortion coverage and one for everything else.

As an analysis from George Washington University experts shows, these restrictions will likely result in insurance companies choosing to drop abortion coverage in exchanges, and may have a spillover

effect to insurance plans not in the exchanges. This violates the President's promise that those who like the insurance plans they already have will be able to keep them after healthcare reform, as a majority of private health insurance plans currently cover abortion.

The Nelson Amendment also has a lopsided conscience clause that only protects those who oppose abortion from being discriminated against by insurance plans. Finally, it allows states to prohibit abortion coverage altogether from plans offered through the exchanges.

### **The Executive Order Makes a Bad Situation Worse**

Against this backdrop, the Executive Order lends the imprimatur of the White House to the Hyde amendment and Nelson language, and works numerous harms, both concrete and symbolic, upon women's rights. In detail, the pending Executive Order:

- Facilitates the stigmatization and policy burdens that anti-choice forces seek to impose upon abortion policies in the healthcare context;
- Lends unfounded credibility to fictional claims from anti-choice members of Congress that the clear strictures of the Nelson amendment would somehow nonetheless allow federal funding for abortions, by asserting that the order was "necessary;"
- Labels the Hyde Amendment's restrictions "longstanding" despite the fact that the Hyde limitations have never been made part of permanent law, and instead are re-enacted each year in annual appropriations bills and have changed many times over the past three decades;
- References the need for "a comprehensive, government-wide set of policies and procedures" to ensure Federal funds are not used for abortion services inconsistent with the Hyde restrictions, raising the specter of

policies on segregation of funds that could extend the reach of Nelson far beyond the scope in current appropriations bills;

- Includes a lopsided approach to conscience clauses, providing anti-discrimination protection for only those “unwilling” to provide abortions and leaving unprotected those who would provide them, despite ample evidence of violence, intimidation and harassment of abortion providers;
- Reinforces the extremely burdensome administrative provisions in the Nelson amendment, which limit cost-spreading by insurance companies among types of services and require multiple accounts for policyholders, and will therefore likely discourage insurance companies from offering abortion coverage;
- Directs the Office of Management and Budget and the Secretary of Health and Human Services to quickly develop a model set of segregation guidelines for state health insurance commissioners and provide information for “regular audits” of insurance companies in the exchange, thus offering an opportunity to develop rules that chill insurance companies from providing abortion coverage;
- Reiterates that Community Health Centers, which already are barred by law from performing abortions outside the Hyde amendment’s limitations, must comply with Hyde and will be instructed as part of their receipt of federal grant monies to do so.

### **The Real Cost to Women’s Lives and Health**

Tragically, the Order lends misplaced justification and Presidential gravitas to a set of restrictions that have long proven disastrous for low-income women and others affected by them. Hyde-type restrictions on the books today limit access to services for poor women and families on Medicaid, millions of whom will be added by health reform, as well as federal employees, women in the military, Native American women, and women in prison.

We recently highlighted the story of **DJ**, a federal employee who sought termination of her pregnancy when she learned that her fetus was anencephalic and could not live. Three weeks after the procedure, she received a bill for \$9,000. She was outraged when she learned that politicians in Washington had decided that her circumstances were unworthy of insurance coverage, and that current federal limitations stripped her of financial security unless the risks of her pregnancy directly threatened her life.

As this and countless other stories show, the “status quo” on abortion funding is unacceptable. It is unfortunate indeed that the President’s Executive Order, rather than challenging this tragic state of affairs, affixes it more firmly in Administration policy.

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