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UPDATE 3/20/10: [Letter from Prof. Robert A. Destro](#) on why the CHC funds will pay for abortions.

MEMORANDUM TO: Interested Parties

FROM: Douglas Johnson, NRLC Legislative Director
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SUBJECT: Senate-passed health bill (H.R. 3590) opens door to direct federal funding of abortion without restriction
in 1,250 Community Health Centers

DATE: Updated on March 18, 2010

The health bill passed by the U.S. Senate on December 24, 2009 (H.R. 3590) contained multiple, far-reaching pro-abortion provisions. These have been described in a number of documents issued by the National Right to Life Committee (NRLC), including a letter sent to members of the U.S. House of Representatives on January 14, 2010, which is posted here:

<http://www.nrlc.org/AHC/HouseLetteronAbortionProvisions.html>

This memorandum provides more detailed information on just one of the pro-abortion provisions contained in H.R. 3590: The language that will allow direct federal funding of abortion, without restriction, in about 1,250 Community Health Centers.

The provision in question was added to H.R. 3590 near the end of the Senate's amendment process, as part of a 383-page Manager's Amendment unveiled by Senator Reid on December 19. Senator Reid immediately filed a cloture petition on the Manager's Amendment, preventing consideration of any revisions to it, and severely limiting opportunities for analysis and debate. The Manager's Amendment was adopted on December 22, and H.R. 3590 passed the Senate on December 24.

Buried deep in the Manager's Amendment was new language making a direct appropriation of funds for Community Health Centers (CHCs) (which are also called Federally Qualified Health Centers, or FQHCs), totaling \$7 billion (\$7,000,000,000) over five years. (See Sec. 10503 on page 2355 of H.R. 3590.) Because this is a direct appropriation in the health care bill itself, these funds will not flow through the annual appropriations bill for the Department of Health and Human Services. Therefore, these funds would not be covered by the Hyde Amendment.

(The Hyde Amendment is a limitation provision that has been attached to the annual HHS appropriations bill in past years; this provision, so long as it is renewed annually, prevents the use of funds appropriated through that bill to pay for abortion or for plans that cover abortion, except to save the life of the mother, or in cases of rape and incest.)

There is no other language in H.R. 3590 that would prevent the use of the new funds to pay for abortions performed at Community Health Centers. Section 1303 of H.R. 3590 contains certain abortion-related language that is associated with Senator Ben Nelson (D-Ne.), language that was also added by the Reid Manager's Amendment. This "Nelson language" applies only to a proposed program of tax credits and cost sharing for health insurance for low-income individuals. The Nelson language has no bearing at all on the Community Health Centers provision, Section 10503, which is the subject of this memorandum. (NRLC believes that the Nelson language would result in an unacceptable abortion policy with respect to the programs to which it pertains. This subject is outside the scope of this memorandum, but is explained in other NRLC documents, including the January 14, 2010 letter referenced above.)

There is no restriction in the current laws authorizing CHCs that prevents these centers from performing abortions. [See 42 U.S.C. 254b and Section 330 of the Public Health Services Act.] Under these laws, CHCs can only use these so-called "Section 330 funds" for purposes within the scope of their grants, but one can assume

that grant applications that included (for example) "reproductive services" would not be deemed objectionable under the Obama Administration, and abortions could be subsumed under various other classifications as well. The authorizing legislation [42 U.S.C. 254b] specifically states that the Community Health Center funding is to be used to provide "required primary health services" which the statute defines to include "health services related to . . . obstetrics, or gynecology." Abortion funding would fall within this authorization, absent a statutory prohibition on the use of this funding for that purpose.

However, until now, these centers have been largely dependent on federal funds that flow through the annual HHS appropriations bill and that therefore have been governed by the Hyde Amendment. As noted above, the \$7 billion appropriated for CHCs by H.R. 3590 would not flow through that pipeline and therefore would not be restricted with respect to abortion.

This is not a merely hypothetical concern. There is already an organized effort underway by the Reproductive Health Access Project to encourage Community Health Centers to perform abortions, "as an integrated part of primary health care." For evidence, see "Frequently Asked Questions About Integrating Abortion into Community Health Centers, Potential Obstacles and Possible Solutions" at http://www.reproductiveaccess.org/getting_started/faq.htm

Indeed, the Reproductive Health Access Project and the Abortion Access Project have produced an "administrative billing guide" to help CHCs integrate abortion into their practices within the confines of existing federal and state restrictions. See "Administrative Billing Guide for Medical Abortion at Facilities that Receive Title X, Section 330, and other Federal Funding," at <http://www.nrlc.org/AHC/ReproductiveHealthAccessProjectAdminBillingGuide.pdf>

On February 22, 2010, President Obama released a list of changes that he recommends to H.R. 3590. Among these, he proposed to increase the direct funding for CHCs from the Senate-approved \$7 billion to \$11 billion. He did not propose adding any restriction on the use of the funds for abortion, even though the fact that H.R. 3590 would allow the use of the CHC funds to pay for abortion had been widely publicized by NRLC during January and February.

The problem described in this memorandum does not exist with respect to the health bill passed by the House of Representatives on November 7, 2009 (H.R. 3962). The House-passed bill authorizes (but does not appropriate) \$12 billion for CHCs (see Section 2101), but this provision - like the rest of H.R. 3962 - would be governed by the Stupak-Pitts Amendment (Section 265), which prevents any funds authorized or appropriated in the bill from being used for abortion (except to save the life of the mother, or in cases of rape or incest).

NOTE: *The memo above was originally posted on February 12, 2010. The following related material was submitted on March 16, 2010, to the website PoliticsDaily.com, in response to [an essay](#) on the subject posted by David Gibson.*

Mr. Gibson asserts that Community Health Centers (CHCs) "have never provided abortions and are not about to start, nor can they do so under federal law." While he does not here provide any basis for these assertions, I assume that he is relying un skeptically on a recent press release from the National Association of Community Health Centers (NACHC) that asserted that CHCs "do not plan to, nor are they seeking to, become providers of abortion."

But the NACHC has no authority to govern what services are provided by any of the approximately 1,250 CHCs that are funded by the federal government, nor should it be assumed that any CHC that decided to provide abortions would feel obligated to notify the association. It is telling that Mr. Gibson studiously avoids mentioning the national campaign that is being conducted by the Reproductive Health Access Project (RHAP) precisely to encourage CHCs to expand into providing abortions, even though this campaign has been prominently mentioned in NRLC and USCCB documents on this subject. The RHAP's detailed "frequently asked questions about integrating abortion into Community Health Centers" certainly cast doubt on the blanket statements that none of the CHCs are currently performing or planning to perform abortions.

For instance, one of the RHAP's "frequently asked questions" focuses on CHCs that don't want to become publicly known as an "abortion service" if they introduce abortion services, yet want to get the word out to their patients without advertising it. To overcome this obstacle, RHAP suggests that the practitioner mention the availability of abortion services to patients during examinations, such as during an annual exam.

Another FAQ deals with CHC administrators who are supportive of adding abortion services, but think that their

local board will not allow it. To overcome this obstacle, RHAP recommends scrutinizing the authority of the local board in this matter, and whether it is the Board's "customary practice" to determine the scope of medical care. RHAP asks, "did they go to the board when colposcopy services were added?"

There is much more of the same kind of thing. You can read it for yourself here:

http://www.reproductiveaccess.org/getting_started/faq.htm

The truth is, neither Mr. Gibson, nor the NACHC, know how many CHCs are currently performing abortions or prescribing the RU486 abortion pill. Up until now CHCs have, in the aggregate, received roughly two-thirds of their funds from federal appropriations that have flowed through the Hyde Amendment filter, but the rest of the funding comes from other sources. The RHAP and the Abortion Access Project has produced an entire billing manual to instruct federally funded CHCs how to provide abortions and pay for them with these non-federal funds. Again, Mr. Gibson carefully avoids mentioning this manual, although it has been discussed in NRLC documents on this issue since January. You can view it here: <http://www.nrlc.org/AHC/ReproductiveHealthAccessProjectAdminBillingGuide.pdf>

Everything I have said so far applies to the situation up until now, in which the federal funds received by CHCs flowed mainly through the HHS appropriations bill and therefore are filtered by the Hyde Amendment. But the current dispute is about the \$7 billion directly appropriated by the Senate health care bill (H.R. 3590) which would not flow through the regular appropriations bill to which the Hyde Amendment has annually been affixed. In an effort to pass the bill, Secretary Sebelius is asserting that her agency will apply existing regulations on appropriated funds, barring funding of abortions, to the new funds in the bill. But this is a circular argument, because regulations are enforceable only when they rest on some statutory authority -- which is, in this case, the Hyde Amendment. Under past administrations, attempts to employ federal administrative authority to extend restrictions on abortion beyond the explicit statutory prohibitions enacted by Congress usually have not fared well in the federal courts (and efforts by state legislatures or other non-federal actors have fared even worse), except in the special area of foreign aid. There is no reason to believe that the pro-abortion Obama Administration would have greater success in applying anti-abortion restrictions to domestic program funds where Congress has failed to do so. Thus, the new HHS memorandum should be recognized as part of an effort to whitewash the abortion policy problems with the Senate health bill, not as a predictor of what will happen with the CHCs if the bill is enacted.

Mr. Gibson goes even further afield in asserting, "None of the money can go to Planned Parenthood or any organization that provides abortions." This is, frankly, nonsense, even under existing law, and still more so under the pending bill. The Planned Parenthood Federation of America (PPFA) is the nation's largest abortion provider, performing around 300,000 abortions a year. Yet, PPFA affiliates -- including the affiliates that run abortion clinics -- also receive many millions of dollars annually in funds that flow through the annual appropriations bill for the Department of Health and Human Services (DHHS), under the Title X family planning program, Medicaid, and other programs. While the Hyde Amendment has prevented the previously appropriated funds from being spent directly on abortions, the fact that a given PPFA affiliate performs abortions certainly has not disqualified it from being a major recipient of Hyde-controlled DHHS funds for other purposes, regrettably. The assertions by Mr. Gibson and his sources that the mere receipt of Hyde-controlled federal funds altogether disqualifies an organization from performing abortions is so obviously wrong that it should make the discerning reader skeptical of his entire thesis.

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