

## Fund Cutoff Possible If Care Withheld

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# Hospitals Warned on Handicapped Babies

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The Reagan administration yesterday warned the nation's hospitals that they could lose government funds if they deny food or treatment to newborn infants with birth defects.

The warning from the Health and Human Services Department—considered a novel application of a federal law prohibiting discrimination against the handicapped—followed complaints by "right-to-life" groups and a recent directive from President Reagan.

The department, in a notice to nearly 7,000 hospitals, cited "heightened public concern about the adequacy of medical treatment of newborn infants with birth defects."

HHS Secretary Richard S. Schweiker noted the recent national publicity surrounding the death of a baby born with Down's syndrome in Bloomington, Ind. The parents of "Baby Doe" asked that food be withheld and refused to authorize treatment to correct a life-threatening defect associated with the disorder, which causes mental retardation.

In addition, an HHS spokesman said that the department this week sent an investigator to Crawford Memorial Hospital in Robinson, Ill., to check a complaint by national and local "right-to-life" groups that surgical treatment is being withheld from a baby born with a serious birth defect known as spinal bifida.

The breadth of yesterday's warning surprised hospitals and medical groups, whose spokesmen expressed concern about potential interference in the practice of medicine and the legality of using laws to protect the handicapped for this purpose.

Groups representing the handicapped welcomed the administration's interest, but said it didn't jibe with Reagan's plans to cut federal financial aid to the handicapped and to weaken the regulations that already protect them.

In its two-page letter to hospitals that receive Medicaid or Medicare funds, HHS' Office for Civil Rights said that the government will apply Section 504 of the Rehabilitation Act of 1973 to cases involving the medical care of infants with birth defects and will consider "termination of federal assistance" to institutions that do not comply.

It said that it is "unlawful" for hospitals to withhold from handicapped infants food or medical or surgical treatment required to correct a life-threatening condition, if the handicap "does not render the treatment or nutritional sustenance medically contraindicated."

The notice also warned that hospitals "should



Richard S. Schweiker noted recent case of "Baby Doe."

not aid a decision by the infant's parents . . . to withhold treatment or nourishment discriminatorily by allowing the infant to remain in the institution" and said that hospitals will also be held responsible for the "conduct of physicians."

Betty Lou Dotson, director of HHS' Office for Civil Rights, acknowledged yesterday that although the rehabilitation law has been on the books since 1973, this apparently is the first time it has been applied to the medical treatment of handicapped children.

"To the best of our knowledge, it has not been used in this manner," she said.

Justice Department spokesman John Wilson said civil rights lawyers there "are researching the

law" but have not yet concluded what legal actions can be taken. "We've never been confronted with this before. This is novel."

Michael Bromberg, of the Federation of American Hospitals, questioned the legality of the new HHS effort, saying he had never heard of applying the "504" regulations to "patient care or medical treatment." He said that the breadth of the HHS letter could "force a flood of court cases" because of "tremendous legal conflict between what this notice is trying to do and parental and physician authority."

A statement by the American Hospital Association called the HHS letter a "simplistic solution to complex situations involved in health care delivery" and charged that it could "create an adversarial relationship between hospitals and parents who elect not to have complicated surgery performed on these children."

Paul Marchand, director of governmental affairs for the Association for Retarded Citizens, said yesterday that groups representing the disabled have been meeting regularly to try to develop a practical solution for treating handicapped infants. But he said he viewed the government's action yesterday with some skepticism. "There is irony here and we're trying to use the president's memo as a positive signal they're calling off the dogs on 504."

Marchand noted that the president's action "is the first and only positive action [Reagan has taken] for the disabled since he has set foot in the White House." He cited what he termed "astronomical" budget cuts for programs for the handicapped, and efforts by Justice and the Office and Management and Budget to rewrite the Section 504 regulations.

The extent to which HHS plans to enforce its warning is not yet clear. Dotson said that the letter was intended as a "reminder" to hospitals and that the department will follow up on specific complaints, such as the Illinois case.

Gary Curran, a consultant to the American Life Lobby, emphasized that "notification is not enough to make sure these babies' lives are saved. There is going to have to be thorough surveillance for compliance with these laws and vigorous prosecution if they are violated."

But one outside medical source suggested that the notice to hospitals was apparently regarded within HHS as "more a public relations move than anything else."

In the Illinois case, Carlton King, administrator of Crawford Memorial Hospital, said he couldn't comment on the specifics. But he added, "Every infant is getting maximum care. We would never deny treatment to any patient."