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In 1946 Congress amended the Hospital Survey and Construction Act (hereinafter referred to as the Hill-Burton Act) in response to post-World War II deficiencies in the supply and distribution of health care facilities throughout the country. The Act provided supplemental federal funding for the construction of hospitals and was intended to be a joint federal-state endeavor. State participation was conditioned upon the establishment of a state plan for determining local needs for health facilities. Before a state could recommend a facility for approval for funding, the facility was required to give two assurances to the state. These assurances required the facility to deliver care to all members of the area served and to make available a reasonable volume of care to those unable to pay.

Until 1979 the burden of enforcing compliance with the assurances rested with the states. In 1974 funding under the Hill-Burton Act ceased and the National Health Planning and Resource Development Act (hereinafter referred to as NHPRD) was passed. NHPRD contains the current federal regulatory authority for the Hill-Burton program. In 1979 regulations were promulgated under NHPRD that attempt to limit the scope of the states' involvement in the enforcement

8. Memo from S. Yockey Deputy Director, Department of Health to T. Warriner Deputy Director, Legal Affairs, Sept. 29, 1974, Emergency Statement Concerning Regulations for "Uncompensated Care" (copy on file at the Pacific Law Journal) [hereinafter cited as Yockey].
of the assurances received by the states under the Hill-Burton Act.\textsuperscript{12} These regulations require the state to have an agreement with the Secretary of the Federal Department of Health and Human Services (hereinafter referred to as DHHS) authorizing the state to enforce the Hill-Burton obligations.\textsuperscript{13}

During the summer of 1981, the California Office of Statewide Health Planning and Development (hereinafter referred to as OSHPD) held public hearings concerning proposed regulations for the enforcement of the Hill-Burton assurances of health facilities in California that had received funding under the program. These proposals are more stringent than current federal regulations.\textsuperscript{14} Public comment on the proposed regulations suggests that OSHPD lacks the authority to issue regulations that have stricter compliance standards than those of the federal government.\textsuperscript{15}

This comment will show that OSHPD has the authority to regulate the enforcement of the Hill-Burton obligations by a standard stricter than that required by the federal government. First, an examination will be made of the historical background and legislative intent of the applicable federal statutes and regulations as well as California’s enabling act. The comment then will discuss the nature of the Hill-Burton program as a federal conditional appropriations program and the effect of the federal government’s promulgation of regulations after funding has ceased. The comment will demonstrate that although the federal government has the power to impair contracts through its general spending power, exercise of this power to preclude the California regulations in question is invalid under the tenth amendment. Finally, an examination will be made of the proposed California regulations. This examination will also show that the Supremacy Clause is no obstacle to the implementation of California’s program.

An historical perspective will clarify the development of the current

\textsuperscript{12} See 42 C.F.R. §§124.512-124.607 (1979); Agreement Between the State of California and the Office for Civil Rights, United States Department of Health and Human Services (Jan. 21, 1981) [hereinafter cited as Community Services Agreement] (copy on file at Pacific Law Journal); Agreement Between the Secretary of the Department of Health and Human Services and the State of California to Carry Out the Provisions of Title XVI of the Public Health Services Act (Jan. 19, 1981) [hereinafter cited as Uncompensated Care Agreement] (copy on file at Pacific Law Journal). Compare Community Services Agreement, supra (allowing California to issue decisions and corrective action concerning complaints of noncompliance, and to apply sanctions available under the state’s law) with Uncompensated Care Agreement, supra (requiring that OSHPD follow the federal protocol explicitly concerning complaints of noncompliance).

\textsuperscript{13} See 1974 U.S. CODE CONG. & AD. NEWS, supra note 2, at 7842.


federal regulatory scheme. This is necessary for the discussions of the issues involved in the determination that California can promulgate and enforce regulations containing a stricter standard for compliance with the Hill-Burton assurances.

**HISTORICAL BACKGROUND**

An analysis of the historical background of the federal and state acts and regulations will illustrate the reasons which lead to their enactments. Although the objectives underlying the federal and state acts is similar, there are differences. To clarify the distinctions, each act involved in the administration of the Hill-Burton program will be analyzed separately.

**A. The Hill-Burton Act**

The Hill-Burton Act was the first manifestation of the federal government's interest in national health care planning. The Act was an apparent response to President Truman's call for legislation that would ensure nationwide health care. Hill-Burton was intended to be the first part of an overall scheme to provide greater accessibility to a broader scope of health care.

The Act was established as a joint federal-state program aimed at inducing the states to assume the burden of the traditional state function of meeting the health needs of their residents. Hill-Burton was intended to stimulate the development of new or improved facilities for health services by assisting the states in carrying out state programs for the construction and modernization of hospitals. This was to be accomplished through partial federal funding of construction by facilities.
meeting the criteria of the Act.22

1. Requirements for State Participation

Funding for construction of new hospitals was to be in accordance with a state planning process.23 To participate in the program, a state was required to: (1) determine its needs for additional health facilities;24 (2) establish a state plan for construction based on the results of these surveys;25 and, (3) obtain uncompensated care and community services assurances from facilities applying for Hill-Burton funding.26

2. Requirements for Funding of Health Facilities

Facilities that sought funding for construction projects applied to the state.27 The state recommended applicants to the Surgeon General of the United States for approval.28 Before recommendations were made to the Surgeon General, facilities were required to give the state both uncompensated care and community services assurances.29 The uncompensated care assurance requires that a reasonable volume of free care be provided to persons unable to pay30 and its duration is twenty years.31 The community services assurance requires that the facility make its services available to "all persons residing in the area to be served by that hospital."32 The duration of this assurance is indefinite.33

23. Id. §291d.
27. See generally id.
28. See id.
29. Id.
30. Id. ("There will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefore, . . . "). See generally Corum v. Beth Israel Med. Center, 373 F. Supp. 550, 554-55 (S.D.N.Y. 1974) (the delegated federal agency, for all practical purposes, determines "reasonable volume").
32. 42 U.S.C. §291c(e)(1) (1974); 42 C.F.R. §53.62 (1947) ("The facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant").
33. The fourteenth amendment of the United States Constitution generally requires that people similarly situated be treated in a similar fashion. See J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW, 520 (1978) [hereinafter cited as NOWAK]. State action exists because the facilities received government funds. Termination of the community services assurances allows the facilities to discriminate in the delivery of the care. See Simkins v. Moses H. Cone Memorial Hosp., 323 F.2d 959, 967-69 (4th Cir. 1963). For example, a facility could refuse to accept a Medical beneficiary in contravention of the fourteenth amendment. A more detailed discussion of the due process ramifications in discriminating against health care recipients is beyond the scope of this comment.
3. **Current Status of the Contracts Created Under the Hill-Burton Act**

State participation in the federal program was predicated on the development of a state plan for the construction of necessary facilities.\(^{34}\) State approval for funding required that the applicant agree to deliver care in accordance with the assurances.\(^{35}\) In consideration for these actions the federal government allocated funds for the state to disburse to facilities whose applications were approved by the Surgeon General.\(^{36}\) Nonfulfillment of one of these conditions by the facility or the state results in state liability to the federal government.\(^{37}\)

The federal government has fully performed its duty to allocate funds to the states and to approve applications for funding.\(^{38}\) Since funding through the Hill-Burton program ended in 1974,\(^{39}\) the federal government has no on-going or executory contracts.\(^{40}\) Further, California’s duty to establish a health plan for construction of facilities is fulfilled.\(^{41}\) Health facilities that received funding under the Act fulfilled their federal statutory obligations when they gave their assurances to the state.\(^{42}\) Thus, the contract entered into by the federal government is complete. The contracts between the state and the facilities, however, remain executory because the obligations and assurances continue to run.\(^{43}\) Should there be a breach, the federal government has a right of action against the state,\(^{44}\) and the state has a legal right to enforce the promises made to it by the facilities.\(^{45}\)

The federal regulations do not affect California’s ability to seek judicial enforcement of the contracts between the state and the funded facilities.\(^{46}\) The importance of the effect of the 1979 federal regulations lies in the impact they have on California’s power to enforce the assurances so that the state’s purposes for joining the Hill-Burton program are fulfilled.

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36. Id.
37. Id. §291g.
38. See id. §§291c(a), (e), 291d; 1974 U.S. CODE CONG. & AD. NEWS, supra note 2, at 7842, 7859.
40. J. MURRAY, CONTRACTS §6, at 10 (1974) [hereinafter cited as Murray] (an executory contract is one in which the promises or a promise remains to be performed).
42. See note 26 and accompanying text supra.
43. See notes 30-33 and accompanying text supra.
45. See text accompanying note 81 infra.
46. See note 81 infra.
B. The California Hill-Burton Act

The magnitude of the effect of the 1979 federal regulations on the agreements between California and the facilities funded under the Act is revealed by an examination of California's legislative purposes in joining the Hill-Burton program. Close scrutiny of the state enabling act indicates that California intended to use the act as a vehicle for furthering the interests of the state in protecting the public health.47

In 1947, one year after the Hill-Burton program was instituted, California enacted its Hospital Survey and Construction Act.48 The act enabled the state to participate jointly in the federal program49 while simultaneously manifesting the state's agreement to abide by the federal requirements attached to the disbursement of funds under the Hill-Burton Act.50 The state act also served as a declaration of the state's police power51 to protect the public health in the manner prescribed under the state act.52

California's authority to regulate and enforce the Hill-Burton assurances is derived from the Hill-Burton Act itself;53 the legal rights the state gained from the contractual duty owed to it by the applicant facilities;54 and the reservation of the state's police power to protect the public health.55 By placing the burden of enforcing the community services and uncompensated care assurances on the state, the federal regulations issued under the Hill-Burton Act recognized the state's retained police power and its contractual right to performance of the duty owed by the facilities that received Hill-Burton funding.56

Until 1979, in accordance with the contracts created under the Hill-Burton Act, the federal government required California to enforce the assurances given by the facilities that were funded under the program.57 The federal regulations issued in 1979 require the state to obtain federal authorization to enforce these assurances. This affects the contractual agreements between the state and federal government, and,

47. Cal. Stats. 1947, c. 327, §1, at 881-82.
49. Cal. Stats. 1947, c. 327, §1, at 881-82.
50. At the time California joined the program, the federal statutory and regulatory authority in existence would have given California constructive notice of the conditions and burdens required of the state. Participation in the program indicates acceptance of these terms.
51. See Cal. Stats. 1947, c. 327, §1 at 881-82, Nowak, supra note 33, at 389. ("[T]he 'police power' encompasses the inherent right of state and local governments to enact legislation protecting the health, safety, morals or general welfare of the people within their jurisdiction").
52. Cal. Stats. 1947, c. 327, §1, at 881-82.
54. See Murray, supra note 34, at 2-3.
56. See generally Yockey, supra note 8. See text accompanying note 83 infra.
57. See Yockey, supra note 8.
consequently, the agreements between the state and the facilities funded under the Act. Additionally, it affects the ability of the state to protect the public health through the enforcement of the assurances received from applicants for funding under the Hill-Burton Act.58

C. The Federal Regulatory Scheme

The impact of the 1979 federal regulations on the authority of the state to regulate and enforce the delivery of health care under the Hill-Burton Act can be best understood by examining the change in the aim of the federal regulations since 1947. This change is clarified by an examination of the differences in the regulations themselves. A brief exploration of the federal act authorizing the issuance of the 1979 federal regulations59 is required to understand fully the differences between the federal regulations promulgated in 1979 and those previously issued under the Hill-Burton Act.

Until recently, federal regulation has been directed at enforcing state compliance with the criteria set forth as conditions to participation in the Hill-Burton program.60 From 1947 to 1972 the federal regulations prescribed the manner in which the states were to formulate plans, establish priorities, and determine compliance with the assurances that they received from funded facilities.61 In 1972 regulations were promulgated62 which were aimed at defining the nature of the original contract obligations.63 The level of free services constituting presumptive compliance with the uncompensated care obligation was clarified;64 the method for determining eligibility for these services was clearly established;65 and the requirements for compliance with the community services obligation were made uniform.66 These definitions did not change the nature of the contractual obligations. Rather, they

58. The original agreement between California and the federal government required state enforcement of the assurances. See 42 U.S.C. §291c(e) (1974). The facilities funded under Hill-Burton gave their assurances to California. See id. Applications by the facilities were made under the state and federal acts. The federal act delegated enforcement to the state. See id. The state act utilized the state's police power to protect the public health through the means afforded by the Hill-Burton program. See CAL. STATS. 1947, c. 327, §1, at 881-82. Requiring federal authorization to enforce the obligations modifies the state's enforcement duties under the contracts with the federal government and the facilities and limits California's assertion of its police power. Compare 42 C.F.R. §§124.512, 124.607 (1979) with 42 U.S.C. §291c(e) (1974) and CAL. STATS. 1947, c. 327, §1 at 881-82.
60. See Yockey, supra note 8.
63. See id. §§53.111-53.113.
64. Id. §§53.111(d).
65. Id. §§53.111(i).
66. Id. §§53.113(d)(2).
made uniform the standard of performance that constituted discharge of the contractual duty owed under the assurances.67

In 1974 the legislative authority for existing health planning expired.68 Six months later Congress passed the National Health Planning and Resources Development Act.69 Unlike the Hill-Burton Act and its progeny,70 this act is aimed at the development of a national health planning policy,71 the reduction of burgeoning health care costs,72 and the promotion of health resources development geared toward meeting the more chronic needs of a growing aging population.73 NHPRD provides the mechanism for federal funding in this area.74 The Act contains a grant of authority for enforcement of regulations concerning the Hill-Burton obligations.75 In 1979, in response to a congressional finding that the enforcement of these obligations was unsatisfactory,76 new regulations were issued.77 These regulations are aimed, in part, at assuring the delivery of health care “within the contest [sic] of sound planning . . . of health care services.”78 To meet this goal, the regulations call for federal enforcement of the facilities’ Hill-Burton assurances.79 State authority to enforce the assurances given to it by facilities that received funding under the Hill-Burton Act is predicated upon and determined by an agreement between the state and the Secretary of the Department of Health and Human Services.80 These agreements define the state’s role in the enforcement process.81

The original federal regulations regulated the state’s obligation under the Hill-Burton Act. The 1979 federal regulations purport to regulate the facilities that were funded under the Hill-Burton Act. By curtailing the state’s authority to enforce the Hill-Burton assurances,
the current federal regulations modify the original contractual agreement between the state and the federal government. This, in turn, alters the agreements between the state and the facilities funded under the Hill-Burton Act. Moreover, the federal regulations limit the state's ability to protect the public health in the manner prescribed in the state act.

In addition, the federal regulations limit the state's enforcement of the Hill-Burton assurances in other ways. The next section discusses the concepts of conditional appropriations and impairment of contracts as limitation devices.

LIMITATIONS ON CALIFORNIA REGULATION OF THE ASSURANCES

OSHPD has the authority to promulgate regulations for the enforcement of the uncompensated care and community services obligations subject to limitations imposed by the federal government and the United States Constitution. Although the protection of the public is traditionally subject to the state's police power there are two circumstances that would limit California's power to regulate in the area of public health. The state may be obligated to comply with the conditions attached to a federal appropriations program and the federal regulatory scheme may be a valid assertion of the federal government's power to impair the contract between the state and the facilities.

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82. Compare 42 C.F.R. §§124.501-124.607 with 42 U.S.C. §§291c(e)-291g and Cal. Stats. 1947, c. 327, §1 at 881-82. The original contract was embodied by California's act of joining the program. This indicated California's agreement to accept the federal statutory requirements to participate in the program. See note 49 supra, note 98 infra. One condition was state enforcement of the assurances received from facilities. 42 U.S.C. §291c(e) (1974); Yockey, supra note 8. Breach of this duty by the state gave the federal government the right to withhold funds from the state. 42 U.S.C. §291g (1974).

83. The original contract between the state and the facility required the facility to give the assurances to the state. 42 U.S.C. §291c(e) (1974). Thus, the state obtained a legal right to performance. See Murray, supra note 40, at 2-3 (The law of contracts is concerned with the fulfillment of expectations induced by the promises voluntarily agreeing to perform or refrain from an action in the future).

The state enabling act allows for the use of police power to protect the public health by the means contained in the state act. See, Cal. Stats. 1947, c. 327, §1 at 881-82. Thus, the state retained the right to use the assurances as a means of protecting the public health. The state vested its delegated agency with the power to regulate in order to meet these goals. Cal. Health & Safety Code §§431, 431.1(a)-(b). By limiting the state's enforcement power the federal regulations interfere with the performance owed under this contract and place the state's right to enforce, other than through judicial means, at the federal agency's discretion.


86. See U.S. Const. art. VI, cl. 2.

87. Cal. Stats. 1947, c. 327, §1, at 881-82; Nowak, supra note 51, at 389.

88. See notes 90-91 and accompanying text infra.

89. See notes 107-111 and accompanying text infra.
A. Hill-Burton as a Conditional Appropriations Program

Conditional appropriations or spending programs are those programs requiring the undertaking of certain acts as a condition to the receipt of allocated funds.90 "[T]he federal government may impose terms and conditions upon which its money allotments to the states shall be disbursed."91 Usually it is the state that is noncompliant with the conditions imposed by the funding criteria of conditional appropriation programs.92 Since funding is no longer available under Hill-Burton, the state no longer has to receive the initial assurances by the applicant. California remains compliant if it has a state plan that is approved by the Secretary of DHHS.93 The purpose of the current federal regulations is not to assure state compliance but to assure facility compliance.94 This was a right obtained by the state under the Hill-Burton Act and retained under the state's police power.95

Until 1979, the federal regulations recognized the right of the states to enforce the assurances that they received.96 Under the current federal regulations, however, the state's enforcement power is limited to the scope of authority granted in the agreements made with DHHS.97

This limit on the assertion of the state's police power was not a condition to funding when California joined the program. Moreover, the new condition is not being attached to funding as an inducement to the state to join, but is being added to a completed program package that does not have an opt-out clause.

States have the option of not participating in a conditional funding program if the conditions imposed are felt to be too burdensome.98 Moreover, opting out can occur at any time during the life of the pro-
gram. In the specific context of the Hill-Burton Act, this means that if the burden of the conditions were perceived by California to outweigh the benefit that could be derived from the program from the outset, California could have opted not to join the program. Presently, however, there can be no opting out of the program since the program is no longer federally funded. Normally, if the new condition is not considered too burdensome, the state merely agrees to and abides by the condition. California, however, cannot agree to this condition which limits its enforcement power, because the beneficiaries have the right to seek enforcement of the assurances. A person seeking to compel compliance first has to exhaust all administrative remedies before seeking judicial redress. To do so will require that OSHPD's jurisdiction be triggered by a complaint. If OSHPD agrees to the limitation contained in the 1979 federal regulations, the courts will not assume jurisdiction over a complaint of noncompliance because to do so will bypass the federal statutory scheme for relief. Hence, OSHPD would still be required to become involved in the enforcement process.

California's assertion of its right to enforce the Hill-Burton assurances will result in the achievement of the purposes of both the federal and state acts. Periodic assessment of facility compliance with the uncompensated care and community services assurances will lessen complaints of denial of care in violation of a facility's obligations to the state and under the Hill-Burton Act. In addition, there will be quicker resolution of complaints filed. This in turn will decrease the burden on the federal agency responsible for the enforcement of the

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101. See 373 F. Supp. at 561 ("The regulations make commencement of agency review mandatory.... [P]laintiffs and the members of their class should ab initio seek relief from the agency.... "). Id. at 562; 42 U.S.C. §291d(a) (1974) (indicating that Congress has chosen the state agencies to carry out the purposes of the Act).
103. The federal regulations require the state to have authority to enforce the assurance. 42 C.F.R. §§124.512, 124.607 (1974). The Act itself requires state enforcement of these assurances. See 42 U.S.C. §291g (1974). If OSHPD concedes to the limitation in the federal regulations, a person denied care owed by a facility under the assurances will go to court for redress for the harm suffered, and will be denied judicial relief because enforcement of the assurances was delegated to the state agency under the Act. Unless the state agency is requested to provide relief and refuses to assume jurisdiction over the complaint, the courts will not assume jurisdiction over the action because it entails by-passing the statutory scheme for relief. See Corum v. Beth Israel Med. Center, 373 F. Supp. 550, 561-62 (S.D.N.Y. 1974).
104. The right to enforce the assurances is not limited to post hoc enforcement. See 42 U.S.C. §291g (1974). Routine assessment can be part of the enforcement process. Assessments on a periodic basis will reveal noncompliance even if no complaints have been received, thereby preventing complaints of denial of care.
105. As the number of complaints decreases, the state agency will be able to deal with the ones it does receive as they are made.
Hill-Burton program by freeing up its time and energy for the purpose originally intended under the Hill-Burton Act—enforcing state compliance with the federal requirements for participation in the Hill-Burton program. Preventative enforcement through frequent routine investigations and assessments of facility compliance with the Hill-Burton assurances and quick resolution of complaints filed against Hill-Burton facilities will decrease the need for judicial redress for violations of Hill-Burton obligations. Moreover, preventative enforcement by OSHPD will promote the welfare of the beneficiaries of the Hill-Burton program by promoting their health and well-being.

To summarize, the 1979 federal regulations are not aimed at ensuring state compliance with the conditions of funding and appropriations. Rather, they are an attempt to establish criteria limiting the state's right to enforce the assurances. Because these criteria were not in existence during the funding period of the program, California should not be bound to the conditions set forth in the regulations. The state should continue to be bound only by the conditions in existence throughout the funding period. Although the present federal regulations are not a valid assertion of the federal government's right to condition the terms for receipt of money allotments under the Hill-Burton Act, the federal regulations may properly limit the state's right to enforce Hill-Burton assurances if they are a valid assertion of the federal government's power to impair contract obligations.

B. Tenth Amendment Limitations to the Impairment of California's Enforcement Power

The federal government has broad power to spend for the general welfare. Pursuant to this power, the government may impair contracts. Nevertheless, there are limitations on the assertion of this power that may invalidate the attempt of the 1979 regulations to limit the state's right to regulate the enforcement of the facilities' assurances.

Traditionally, the tenth amendment of the U.S. Constitution has been viewed as a truism. Nevertheless, since National League of Cit-
ies v. Usery, increased potential for limiting the application of federal statutes to the states exists in areas of traditional government functions. Legislation by Congress or its delegated agents that prevents the provision of certain traditional state services, "is constitutionally problematic . . . because it hinders and may even foreclose attempts by states . . . to meet their citizens' legitimate expectations of basic government services." Upholding a federal regulatory scheme that precludes the state from enforcing the assurances it received, thereby impairing the contract between the state and the facilities, would result in lost health care services to the general population and would necessitate arduous attempts by the intended beneficiaries to seek enforcement and redress through the government's administrative network. By promoting situations in which some can afford medical care while others are denied health care treatment, the federal regulations thus prevent California from providing basic government services that protect the health and well being of its residents.

To summarize, as a conditional spending program, Hill-Burton was subject to congressional determination of the limitations and terms attached to the disbursement of federal funds. The conditions to the Hill-Burton program that are contained in the 1979 federal regulations were not in existence at the time California joined the program, or during the period funding was available under the Act. California, therefore, is not bound to the limitations contained in the 1979 federal regulations. Further, the current federal regulations are an invalid mechanism under the tenth amendment for the assertion of the federal government's powers to impair contract obligations or to spend for the general welfare, because they inhibit California's ability to provide adequate health care for its citizens. Thus, the only means by which the federal government could properly limit California's power to regulate and enforce the Hill-Burton assurances under a state regulatory scheme would be federal preemption of the field of health care access.

112. L. Tribe, Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Governmental Services, 90 HARV. L. REV. 1065, 1065-76 (1977) [hereinafter cited as Unraveling National League]. Traditional government functions are those functions that serve the "legitimate claims that citizens may make on their government." Unraveling National League, supra note 1076 n.42. But see National League of Cities v. Usery, 426 U.S. 833, 852 n.17 (1976) (case was confined to the commerce clause).
113. Unraveling National League, supra note 112, at 1076.
114. See notes 82-83 and accompanying text supra.
115. See notes 88-89 and accompanying text supra.
PREEMPTION BY THE FEDERAL GOVERNMENT

The current federal regulations do not expressly preclude the state from regulating the enforcement of the Hill-Burton obligations. Nevertheless, if the regulations imply a congressional intent to preempt the field of health care access, the state would be unable to regulate the assurances. Therefore, an analysis of federal preemption under the Supremacy Clause116 is necessary to determine whether California’s enforcement of the assurances has been preempted under the Hill-Burton Act or under NHPRD.

A. The Preemption Doctrine

Traditionally, the states were preempted from regulation of an activity if it was a matter touched upon by federal regulations or statutes,117 or when a need existed for national uniformity in the field.118 An examination of the current federal regulations reveals that the federal government has regulated access to health care through the assurances by its regulatory enforcement of the Hill-Burton obligations.

Congress has not chosen to circumscribe its regulation. Hence, unless there is a need for local diversity of regulation of this area of health care, the state will be preempted by the federal government under the traditional analysis.

An argument can be made that health needs require diversity in regulation to meet the needs of individual communities. At best, a national plan for health care can only speculate about the unmet needs and shortages that any given area in the country is facing. The current federal regulations, however, leave little, if any, room for a local determination of whether health needs that could be met by delivery of care in accordance with the Hill-Burton obligations are being met. Furthermore, the ability to use these obligations as a means of meeting health needs rests almost exclusively with DHHS.119 Thus, the pervasiveness of the current federal formula conceivably could preempt the state according to the traditional doctrine.120

When, as here, a program is a joint federal-state endeavor, the regulations on the state and federal levels may overlap, resulting in frequent

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116. U.S. Const. art. VI, cl. 2.
preemption of the states by the federal government. Since this may not be the intent of Congress, a different test is used to determine whether preemption results from joint federal-state programs.  

B. Preemption Analysis in the Area of Joint Federal-State Programs

In Gibbons v. Ogden, the United States Supreme Court decided that federal statutes preempt state law when state law conflicts with federal law. When the state regulations are inextricably intertwined with federal regulations, both acting on the same subject, the federal laws are supreme. If the federal regulations are of a sufficiently comprehensive and complete nature, the states are precluded from regulating in the same subject area even in a manner that complements the federal regulations. When this standard is met preemption of state regulation of joint federal-state programs results.

To determine whether an area of joint endeavor has been preempted by a federal regulatory scheme requires an evaluation of the purposes of the federal and state statutes and regulations. Once the legislative intent for enacting the statutes is ascertained, it is necessary to determine if the laws conflict. Absent a clear conflict, there must be a manifested federal intent to preempt the field the “intent” cannot be inferred.

I. Legislative Intent

The Hill-Burton Act was aimed at increasing access to health care by partially funding the construction of new and modernized facilities, by requiring the recipients of the funds to provide a reasonable volume of care to those unable to pay for it, and by providing care to all people residing in the area to be served by the facility. The California Hospital Survey and Construction Act also was a mechanism by which the state declared its intention to protect the public health. This was to

122. 413 U.S. at 414.
123. 22 U.S. (9 Wheat.) 1, 211 (1824).
125. See id.
127. See id.
128. Schwartz v. Texas, 344 U.S. 199, 202-203 (1952) (“If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state . . . . The exercise of federal supremacy is not lightly to be presumed”).
132. CAL. STATS. 1947, c. 327 §4, at 881-82.
be accomplished by the means afforded by the assurances received from facilities applying for Hill-Burton funds.\textsuperscript{133}

The federal regulations issued under the Hill-Burton Act were aimed at enforcing the state’s compliance with the requirements of the Act.\textsuperscript{134} The federal regulations reflected congressional recognition of the state’s right to enforce the Hill-Burton assurances by placing the burden of enforcement upon the states. NHPRD was aimed at reducing health care costs and at the development of a national health planning policy.\textsuperscript{135} The federal regulations issued under NHPRD are aimed at ensuring facility compliance with NHPRD and the Hill-Burton Act.\textsuperscript{136}

2. Determining if a Conflict Exists

Lacking a definitive yardstick to determine the presence of a conflict, the courts have used various terminologies and factors.\textsuperscript{137} The conclusion that a conflict exists, however, has rested on a finding that the state scheme “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”\textsuperscript{138} State regulations that do not frustrate the full effectiveness of the federal law or the exercise of the federal power do not conflict with the federal law.\textsuperscript{139} Additionally, state regulations that are not detrimental to the purpose of the federal law, or are facilitative of the federal intent, do not conflict.\textsuperscript{140}

Therefore, the test to apply in a joint federal-state program is to first determine the purpose of the statutes, then to determine whether the laws conflict. If no conflict is found, an express congressional intent to preempt is necessary to preclude state regulation. With an understanding of the appropriate tests to apply, analysis can now be made to determine whether California is preempted from regulating the assurances of the Hill-Burton Act. To achieve this purpose, discussion will focus on preemption by the Hill-Burton Act or NHPRD, since preemption by either act will preclude California from promulgating stricter standards than those of the federal government.

\begin{itemize}
\item \textsuperscript{133} See note 51 and accompanying text supra.
\item \textsuperscript{134} See Yockey, supra note 8.
\item \textsuperscript{135} See notes 71-73 and accompanying text supra.
\item \textsuperscript{137} See, e.g., New York State Dept’ of Social Services v. Dublino, 413 U.S. 405, 414 (diversity of operational set-ups in various states); id. at 421 (interpretation of the administering agency, coordinate program); Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 445 (1960) (recognition by Congress of the purpose or goal being a local interest); id. at 444 (comprehensiveness of the federal scheme).
\item \textsuperscript{139} 402 U.S. at 652.
\item \textsuperscript{140} Id.
\end{itemize}
3. Preemption under the Hill-Burton Act

The purpose of the state statute is essentially the same as that of the Hill-Burton Act. Both the state and federal acts were aimed at increasing health facilities and by inference, accessibility to health services.

No conflict exists between the federal law or regulations promulgated thereunder and the state regulations issued in response to the grant of authority contained in the state statute. The regulations issued by the Surgeon General in 1947 were essentially a restatement of the statutory language of the Hill-Burton Act. The 1972 regulations were merely definitional in nature. Until 1979, the burden of regulating the enforcement of the obligations rested with the state. The only possible way for there to be a conflict would be if the state took action detrimental to its avowed aim of protecting the public health; this characterization is clearly inapplicable to the California enforcement scheme in question. Thus, it is necessary to determine if there is alternatively an express congressional intent to preempt. Not only is there no mention of an intent to preempt in the original Act or in the congressional reports surrounding its passage, but in actuality the Act was intended to induce the states to assume the burdens involved in providing adequate health care facilities. Therefore, if the state is preempted in the regulation of the enforcement of the assurances, this preemption must be found instead in NHPD or the regulations promulgated thereunder.

4. Preemption Under NHPD

The purposes of NHPD are to reduce health care costs and develop a national health planning policy. This purpose is different from that of the Hill-Burton Act. Since NHPD incorporates the federal

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144. See notes 64-66 and accompanying text supra.
148. 42 U.S.C. §300k(b) (1974); 1974 U.S. CODE CONG. & AD. NEWS, supra note 2, at 7842 (The intention of the Act was to "assure the development of a national health planning policy and of effective state health regulatory programs and area health planning programs").
149. See American Hosp. Ass'n v. Harris, 625 F.2d 1328, 1334-53 (7th Cir. 1980) (Pell, J., concurring and dissenting); Simkins v. Moses H. Cone Memorial Hosp., 323 F.2d 959, 968 (4th
regulatory authority for the Hill-Burton program, it is necessary to determine if there is a conflict between the proposed state regulations and the 1979 regulations issued under NHRD recalling that state regulations that are not detrimental to the purpose of federal law do not conflict.

A comparison of a few of the federal regulations with the corresponding proposed California regulations will serve to show that the proposed regulations are generally facilitative of the purposes of the present federal regulatory scheme and the intent of the Hill-Burton Act.

The Code of Federal Regulations allows an Hill-Burton facility to “make up a deficit [of care owed under the assurance] at any time during its period of obligation...” for uncompensated care. The proposed California regulations would allow the make-up of a deficit within five years although it is unclear whether this make-up would be mandatory within the five year period. Assuming that it is mandatory, this regulation will ensure that facilities make up their deficits. Furthermore, the regulation in no way interferes with or is detrimental to the federal purpose of compliance with the obligation to deliver free care at a reasonable volume for each year that the obligation exists.

Another federal regulation states that:

[a] facility failing to meet its annual compliance level must adopt and implement an affirmative action plan, unless the facility claims and reports to the Secretary of DHHS that it was unable to provide uncompensated care at the required level because of financial inability.

This regulation provides little guidance for two reasons. First, there is no guideline for a determination of the basis for the claim of financial inability. Second, it is unclear what course of action is to be taken if it is later determined that the facility was financially able to meet its annual compliance level. California’s proposed regulation requires a facility claiming that its deficit was due to financial inability to submit
an affirmative action plan if it is later determined that the facility was financially able to provide the care. California’s proposed change thus remedies the vagueness of the federal regulation.\textsuperscript{158}

As a final example, the federal regulations require triennial submission of compliance reports.\textsuperscript{159} Proposed California regulation would require annual compliance reporting.\textsuperscript{160} While this is a more stringent requirement, it neither interferes with the ability of DHHS to obtain triennial reports nor is it detrimental to the purpose of measuring compliance levels through this reporting. Instead, it will assure that deficits in compliance are remedied quickly, ensuring access to health care through the assurances given by the facilities.

As indicated earlier,\textsuperscript{161} absent a clear conflict between the state and the federal laws, there must be a manifested Congressional intent to preempt the field.\textsuperscript{162} The express intent of NHPRD was to “assure the development of a national health planning policy and of effective state health regulatory programs and area health planning programs.”\textsuperscript{163} The federal regulations promulgated in 1979 thus manifest no intention to preempt the states from enforcing the Hill-Burton assurances. Additionally, the regulations themselves “disclaim any intention to interfere with enforcement programs established by the States under the State law . . . .”\textsuperscript{164}

In sum, under the \textit{traditional} preemption doctrine California probably is preempted from regulating the Hill-Burton assurances. Alternative analysis of California’s proposed regulations as a component of a joint federal-state endeavor, however, reveals that there is no conflict between the federal and state laws or regulations and there is no clear or manifest intent by the federal government to preempt the field of access to health care. Therefore, California is not preempted from regulating the enforcement of the Hill-Burton assurances.

\textbf{CONCLUSION}

California’s proposed regulations assert its continuing right to enforce the performance of duties owed under the contracts created under the Hill-Burton Act. The regulations express the intention of the state to continue to exercise its police power for the protection of the public

\textsuperscript{158} Compare 42 C.F.R. §124.504(a) (1979) \textit{with} proposed change to 22 Calif. Admin. Code §99145(a).


\textsuperscript{160} Proposed change to 22 Calif. Admin. Code §91157(a).

\textsuperscript{161} See notes 127-129 and accompanying text \textit{supra}.

\textsuperscript{162} U.S. Code Cong. & Ad. News, \textit{supra} note 2, at 7842.

\textsuperscript{163} U.S. Code Cong. & Ad. News, \textit{supra} note 2, at 7842.

health. Conditions attached to Hill-Burton funding as contained in the current federal regulations were not part of the funding criteria under the Hill-Burton Act, and should not, therefore be used to limit California's regulatory and enforcement powers in this field.

The federal regulations issued in 1979 are a valid mechanism by which to assert the federal government's power to spend for the general welfare. Nevertheless, application of the regulations to the state is invalid under the tenth amendment to the extent that they prevent California from providing adequate health care for its residents.

Finally, the assertion of state power promulgating regulations is not in contravention of the Supremacy Clause. The proposed regulations will enable the state to use the Hill-Burton assurances as a means of ensuring greater health care access and delivery to residents of the state. Resolution of complaints will be faster and ultimately the number of complaints will decrease. This would have the important effect of preventing harm from the denial of health care services. Accordingly, no conflict of state and federal regulations of this area is indicated, negating any implications of federal preemption of California's legislation in this field.

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