U.S. officials ignore disabled babies’ plight

First in a series

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Dozens of so-called “Baby Doe” cases are being ignored by top officials at the Justice Department and Department of Health and Human Services, who appear to have adopted a hands-off policy on prosecutions and even investigations into the questionable deaths of handicapped newborns, The Washington Times has learned.

Despite an April 1982 presidential order to “vigorously enforce” federal laws that prohibit discrimination against children born with physical or mental handicaps, the civil rights offices of HHS and the Justice Department — the agencies responsible for enforcing federal “Baby Doe” regulations — have all but declared a moratorium on any prosecutions, failing in recent months even to investigate complaints of suspicious multiple infant deaths.

Internal HHS records obtained by The Washington Times and interviews with officials at HHS, the Justice Department and the White House confirm that, since February alone, federal officials have been formally notified of at least 38 infant deaths relating to decisions to withhold all medical care. To date, however, neither agency has authorized any investigations into those deaths.

Those same records show that high-ranking HHS officials, aware of their own civil rights division’s unwillingness to deal with “Baby Doe” complaints, pressed for the creation of an “autonomous” special enforcement unit to handle future investigations. HHS Secretary Margaret Heckler authorized the establishment of that special office in February, but has not appointed any personnel to the unit.

In the two years HHS has been keeping files on reported mistreatment of handicapped infants, at least 200 cases have been referred to the federal government for action, complaints filed in many cases by hospital personnel themselves. More than half of those reported incidents — some two years old and involving reports of starvation and injection deaths — continue to be listed by HHS as under investigation. So far, no doctor or hospital has been prosecuted by the federal government for depriving a handicapped child of medical care.

Past and current administration officials attribute the lack of enforcement to sharp interdepartmental disagreements with administration policy and a too

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Close relationship between HHS officials and the medical institutions they're supposed to be policing.

The reluctance of federal law enforcement officials to act on "Baby Doe" cases comes at a time when an increasing number of doctors are publicly endorsing or admitting to the practice of withholding routine medical treatment from infants with birth defects.

In fact, several of the more recent complaints filed with HHS and the Justice Department this year are based on articles published in medical journals — authored by the physicians themselves — detailing the process by which certain children are selected for non-treatment and death.

In the October edition of the medical journal Pediatrics, for example, a team of Oklahoma physicians said they were influenced by a mathematical formula based on financial, social and quality of life components in deciding which children would receive medical care.

"The untreated survivor has not been a significant problem in our experience," the doctors wrote.

A similar article, authored by a group of Detroit Children's Hospital physicians and published in the prestigious European medical magazine Kinderchir, described a program that initially targeted 31 handicapped newborns for non-treatment. But, the doctors reported, that program ran into trouble when the "selection process became known in the community" and other hospital personnel began treating the babies.

"Consequently, the physicians reported, the "mortality rate was unexpectedly low."

Although formal requests for federal probes into the Oklahoma and Detroit medical programs were filed with HHS and the Justice Department months ago, neither agency has begun any investigations — or even acknowledged the complaints.

While Reagan administration officials are apparently backing away from the "Baby Doe" issue — once considered the exclusive province of conservative and so-called "pro-life" groups — the subject is gaining wider attention and new-found support among civil rights activists and leading liberal members of Congress.

Late last month, for example, a rare coalition of six liberal and conservative legislators, headed by Sen. Orrin Hatch, R-Utah, and Sen. Edward Kennedy, D-Mass., co-sponsored an amendment to the 1974 Children Abuse Prevention and Treatment Act that would make it a federal offense to withhold "medically indicated treatment from disabled infants with life threatening conditions."

Virtually all the most influential civil rights disabilities organizations, including the Association for Retarded Citizens, the National Down's Syndrome Congress and the National Spina Bifida Association, have assumed a leadership position on the issue, calling for our nation's commitment to equal protection of the law will have little meaning if we deny such pro-
The president has some people working for him who are basically in disagreement and who have done a variety of things to attempt to erode the policy.

— Former HHS civil rights chief Martin Gerry.