

## Court Prohibits End-Run by HHS in Medicaid Cutback Case

On May 23, 2008, a federal judge vacated a Medicaid rule that would have imposed restrictive new limits on Medicaid payments to public providers and dramatically limited the types of providers eligible to contribute to the financing of Medicaid programs. If allowed to take effect, the rule would have imposed Medicaid cuts totaling billions of dollars on the lead plaintiff, Alameda County Medical Center, and member hospitals of the plaintiff associations, the National Association of Public Hospitals and Health Systems, the American Hospital Association, and the Association of American Medical Colleges.

In March of this year, Ropes & Gray filed suit on behalf of a coalition of hospitals and hospital associations in *Alameda County Medical Center et al. v. Leavitt*. The ruling was issued by U.S. District Judge James Robertson of the U.S. District Court for the District of Columbia. The ruling – and its 11th-hour timing – have provided crucial relief to our clients.

The suit challenged the issuance of a [rule](#) by the Department of Health and Human Services (DHHS) in May of last year. One of the claims in the suit relates to a Congressional moratorium on the rule that was enacted into law on May 25 of last year as part of the 2007 supplemental Iraq appropriations bill. The moratorium was due to expire after May 24, 2008 – a matter of days after the Court's ruling. Once Congress passed the Iraq funding bill (along with the moratorium), DHHS rushed to issue the final rule on the same day that the President signed the bill into law.

In a strongly worded [order](#) and [supporting memorandum](#), Judge Robertson granted summary judgment for the plaintiffs. Holding that DHHS's emergency publication was unlawful, he vacated the final rule and remanded the matter to the agency. "In this case, the Court is asked to decide whether a maneuver by the Executive Branch deliberately designed to outfox a clear directive of Congress was successful," Judge Robertson wrote. "The answer is no." As the Court described it, "the Executive Branch thought it could have its war appropriation and its Medicaid rule too."

The plaintiffs also challenged several provisions of the rule as inconsistent with the Medicaid statute. Having found the rule invalid, the Court declined to rule on these challenges. The Court stated that "it would be improvident to reach the merits of the second complaint, which presents a close case of statutory interpretation."

Both chambers of Congress have passed legislation to extend the moratorium until next year, as part of the 2008 supplemental Iraq funding bill, but that legislation has not yet gone to the President. Without the District Court's ruling, the regulation was scheduled to take effect on May 25. To achieve the same result, DHHS would now be forced to initiate the rulemaking process again and issue a new final rule at least 60 days before its provisions could take effect.

### Contact Information

If you have any questions about this decision or ongoing legislative efforts, please do not hesitate to contact one of our attorneys below or your regular Ropes & Gray contact.

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