

## Congress Prohibits DHHS From Implementing Controversial Medicaid Regulations Until April 1, 2009

On June 30, 2008, the President signed into law the fiscal year (FY) 2008 Iraq war supplemental appropriations bill (H.R. 2642), which among its domestic provisions adopts or extends moratoria through April 1, 2009 on six controversial Medicaid regulations. These regulations, issued by the Department of Health and Human Services (DHHS), would cut billions of dollars from the Medicaid program. The House passed the domestic amendment on June 19 by a vote of 416 to 12, and the Senate on June 26 by a vote of 92 to 6—a sign of the overwhelming, bipartisan opposition to the regulations.

Among the six regulations Congress has prevented the Administration from implementing is a rule proposed in January 2007 that would impose restrictive new limits on Medicaid payments to public providers and limit the types of providers eligible to contribute to the financing of state Medicaid programs. The bill extends a prior moratorium on this rule that was included in the 2007 Iraq supplemental appropriations bill. In March, Ropes & Gray [filed suit](#) on behalf of a coalition of hospitals, the National Association of Public Hospitals (NAPH) and other hospital associations against this rule, which DHHS attempted to finalize before the first moratorium took effect in May of 2007. Ropes & Gray also assisted a large coalition of affected associations, including NAPH, and providers in convincing the Congress to include the moratoria in the Iraq funding bill. As acknowledged in the language of the supplemental appropriations bill, on May 23, 2008 the U.S. District Court for the District of Columbia ruled that the Administration finalized the regulation in violation of the initial moratorium and vacated the final rule. The extension of the moratorium means that no steps can be taken to reissue a final rule until after April 1, 2009. This moratorium similarly prohibits DHHS from finalizing a proposed rule that would eliminate Medicaid payments for graduate medical education, which is of particular concern to the country's teaching hospitals.

The 2008 supplemental appropriations bill additionally extends moratoria expiring June 30, 2008 on a rule prohibiting federal Medicaid matching payments for school-based administrative activities and transportation of students between home and school, and a rule that would significantly limit Medicaid coverage for rehabilitation services.

Finally, the bill newly establishes moratoria on a regulation limiting states' use of provider taxes to raise federal Medicaid matching funds and a regulation restricting federal Medicaid funding for case management services. A moratorium on a regulation restricting the definition of outpatient hospital services had been included in earlier versions of the bill, but was dropped after negotiations with the Administration.

### Contact Information

If you have any questions about these legislative efforts or ongoing efforts related to rules not included in the supplemental appropriations bill, please do not hesitate to contact one of our attorneys below or your regular Ropes & Gray contact.

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