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EDITORIAL

## End Runs on Medicaid

A federal district judge has slapped down a sneaky attempt by the Bush administration to impose an onerous Medicaid regulation despite the clear intent of Congress that it be deferred. Once again, the administration has been caught in a flagrant attempt to ignore the will of Congress and unilaterally chart its own path.

In a decision issued last week, Judge James Robertson of the Federal District Court in Washington ruled that the administration had overstepped its authority last year with a maneuver “deliberately designed to outfox a clear directive of Congress.” The administration was seeking to evade the annoying fact that Congress had enacted a one-year moratorium on the administration’s efforts to alter — and in the process cut — Medicaid reimbursements to public hospitals and nursing homes.

Congress had already passed, but President Bush had not yet signed, a broad funding bill that included the moratorium when the secretary of the Department of Health and Human Services rushed through a typo-ridden rule for “emergency display” on May 25, 2007, the very day the moratorium took legal effect. The rule, which had been in preparation for some time, was officially published a few days later. That shifty maneuver was too much for Judge Robertson to swallow. He found ample reason to overturn the rushed-through rule as a violation of Congressional intent.

This year, another battle is brewing over whether to defer seven proposed Medicaid rules that would clarify and cut reimbursements to various health care providers. The proposals are complex and would have a devastating effect on some health care institutions and state budgets; they deserve vigorous debate, preferably after a new Congress and administration take office.

Fortunately, both houses of Congress have passed bills, by veto-proof margins, that would impose a one-year moratorium on the rules and pay for the delay with offsetting cuts in less-urgent health programs. The moratorium was folded into a war-funding bill that faces a possible veto from President Bush because it includes domestic spending that he opposes. Congress will need to reconcile the Senate and House versions of the bill and make it as difficult to veto as possible.

Meanwhile, the secretary of health and human services has unilaterally deferred implementation of two of the most controversial rules until Aug. 1 in an attempt to negotiate some compromises with Congress. That leaves the other five rules either in effect or vulnerable to enactment unless Congress moves quickly to impose a moratorium.