

HHS Scraps Richardson Waiver, Clearing Way for Faster Rulemaking

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On March 3, 2025, the United States Department of Health and Human Services (“HHS”) issued a policy statement rescinding the [Richardson Waiver](#), a policy in place since 1971 that required notice-and-comment rulemaking for regulations on public property, loans, grants, benefits, or contracts. Under the new framework, HHS and its subagencies now have greater discretion to decide when to seek public input, and HHS has expanded its ability to bypass notice-and-comment altogether using the “good cause” exception of the Administrative Procedure Act (“APA”).

A copy of the policy statement can be found [here](#).

Key Changes Under the New Policy

One of the most immediate effects of rescinding the Richardson Waiver is that HHS may now issue regulations, including those relating to the Medicaid program, with significantly less procedural delay. HHS subagencies (including the Centers for Medicare & Medicaid Services) will now have greater flexibility to modify funding rules and compliance requirements without the time constraints of the notice-and-comment process.

Ostensibly, this change will improve efficiency, particularly for time-sensitive Medicaid funding decisions. However, eliminating mandatory public input may also create regulatory uncertainty, as stakeholders lose structured opportunities to influence policy. It may also increase the number of challenges regarding the enforceability and binding effect of certain regulations. While this shift will expedite rulemaking in many areas, most Medicare-related regulations remain unchanged, as statutory provisions continue to require notice-and-comment.

HHS has also expanded its reliance on the “good cause” exception, which permits agencies to bypass traditional rulemaking under the APA when notice-and-comment is deemed impracticable, unnecessary, or contrary to the public interest. Previously, HHS limited the use of this exception. The new policy, however, removes that restriction and provides agencies greater discretion to issue rules without public input. While this shift may allow HHS to act more swiftly, it also raises concerns about transparency and stakeholder engagement, particularly if significant policy changes occur with little or no notice. The broader application of the good cause exception may invite legal scrutiny, as stakeholders could challenge whether agencies have provided sufficient justification for bypassing procedural safeguards or sufficient notice of changes with imminent effective dates.

What's Next? More Rapid Rulemaking and Potential Legal Challenges

With fewer procedural hurdles in place, HHS rulemaking will likely move at a quicker pace, at least in the short-term, especially in areas like Medicaid and federal grants and contracts. Thus, stakeholders should be prepared for reduced opportunities for public participation, requiring a more proactive approach to tracking regulatory changes.

Ultimately, given the potential for litigation over the agency's expanded use of the “good cause” exception, affected entities and stakeholders should closely monitor new rules and assess whether they comply with APA requirements.

Proskauer's Health Care Group is monitoring these developments and is ready to advise clients on how additional developments may impact their compliance and litigation strategies.

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