No. 20-37

In The
Supreme Court of the United States

ALEX M. AZAR, II, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,

Petitioners,

v.

CHARLES GRESHAM, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF IN SUPPORT FOR THE NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES

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QUESTION PRESENTED

Whether the court of appeals erred in concluding that the Secretary may not authorize demonstration projects to test requirements that are designed to promote the provision of health-care coverage by means of facilitating the transition of Medicaid beneficiaries to commercial coverage and improving their health.

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The opinion of the United States Court of Appeals for the District of Columbia in *Gresham* v. *Azar*, Nos. 19-5094 and 19-5096 (*Gresham* Pet. App. 1a-19a) is reported at 950 F.3d 93. The opinion of the United States District Court for the District of Columbia (*Gresham* Pet. App. 22a-63a) is reported at 363 F. Supp. 3d 165.

The order of the United States Court of Appeals for the District of Columbia in *Philbrick* v. *Azar*, Nos. 19-5293 and 19-5295 (*Gresham* Pet. App. 20a-21a) is not published in the Federal Reporter but is available at 2020 WL 2621222. The opinion of the United States District Court for the District of Columbia (*Gresham* Pet. App. 64a-106a) is reported at 397 F. Supp. 3d 11.

JURISDICTION

The court of appeals entered judgment in *Gresham* on February 14, 2020.

The court of appeals entered judgment in *Philbrick* on May 20, 2020.

On March 19, 2020, the Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment, order denying discretionary review, or order denying a timely petition for rehearing. That order extended the deadline for filing the petition for a writ certiorari in *Gresham* to July 13, 2020,

and extended the deadline in *Philbrick* to October 17, 2020.

Petitioners Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services; Seema Verma, in her official capacity as Administrator of the Centers for Medicare & Medicaid Services; the United States Department of Health and Human Services (US DHHS); and the Centers for Medicare & Medicaid (CMS) timely filed a petition for a writ of certiorari in *Gresham* and *Philbrick* on July 13, 2020. This Court granted the petition on December 4, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Pertinent federal statutory provisions appear in the appendix to the petition for a writ of certiorari. *Gresham* Pet. App. 107a-128a.

STATEMENT

A. Legal Background

1. In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119, which required the States to expand their Medicaid programs to cover all individuals under the age of 65 who had incomes up to 133% of the

federal poverty level. *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 542 (2012) (*NFIB*). In *NFIB*, this Court held that Congress could not condition a State's traditional Medicaid funding on its compliance with that new adult-eligibility expansion requirement. See 567 U.S. at 575-585 (Roberts, C.J.); *id.* at 671-689 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting). This holding resulted in coverage of the expansion population being optional under the ACA.

2. In 2014, New Hampshire chose to provide coverage to the expansion population through the New Hampshire Health Protection Program (NH HPP). N.H. Laws 2014, Chapter 3 (SB 413).[1] The NH HPP required New Hampshire to "provide a coordinated strategy to access private insurance coverage for uninsured, low-income citizens with income up to 133% of the federal poverty level (FPL) using available, cost-effective health care coverage options for Medicaid newly eligible individuals at the earliest practicable date." *Id.*, § 3:1. The NH HPP sought to "promote the improvement of overall health through access to private insurance coverage options and draw appropriate levels of federal funding available through a Medicaid Section 1115 demonstration waiver." *Id.* And, by "[i]ncreasing access to private health insurance" the NH HPP intended to "increase provider reimbursement rates and reduce the burden of uncompensated care in New Hampshire." *Id.*

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[1] The final version of this law is available at: http://www.gencourt.state.nh.us/legislation/2014/SB0413.pdf (last visited: Jan. 12, 2021).

3. The NH HPP required the Commissioner of the NH DHHS to submit a Section 1115 waiver to CMS on or before December 1, 2014. N.H. Laws 2014, Chapter 3 (SB 413), § 3:2, ¶ XXV(b). This waiver authorization required the Commissioner to ensure "[t]o the greatest extent practicable" that the waiver "incorporate measures to promote continuity of health insurance coverage and personal responsibility, including but not limited to: co-pays, deductibles, disincentives for inappropriate emergency room use, and mandatory wellness programs." *Id.* The NH HPP required legislative reauthorization to be extended beyond December 31, 2016. *Id.*, ¶¶ XXV(a), (c).

4. The Secretary granted a Section 1115 waiver for the NH HPP in March 2015. Letter from Andrew M. Slavitt, Acting Administrator of CMS, to Nicholas Toumpas, Commissioner of the NH DHHS (March 4, 2015), available at https://www.dhhs.nh.gov/pap-1115-waiver/documents/pa_approvalletter.pdf (last visited: Jan. 10, 2021).

5. In 2016, New Hampshire extended the NH HPP through December 31, 2018. N.H. Laws 2016, Chapter 13 (HB 1696), § 13:3.[2]

6. In 2018, New Hampshire enacted, and the governor signed into law, N.H. Laws 2018, Chapter 342

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[2] The final version of this law is available at: http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2016&id=795&txtFormat=pdf&v=current (last visited: Jan. 12, 2021).

(SB 313).[3] SB 313 created N.H. Rev. Stat. § 126-AA *et seq*., which: "replace[d] the current [NH HPP]" with the New Hampshire Granite Advantage Health Care Program ("Granite Advantage"); "[e]stablish[ed] the granite workforce pilot program"; and increased the amount of liquor revenues transferred to the Granite Advantage trust fund for substance abuse disorder prevention, treatment, and recovery.

7. The statute provided that health-care coverage for the expansion population would be provided in a cost-effective manner by managed care organizations (MCOs) that, in the past, had only provided coverage to traditional Medicaid recipients. N.H. Rev. Stat. § 126-AA:2, I. The statute also made certain changes to the funding for New Hampshire's share of Medicaid expansion, N.H. Rev. Stat. § 126-AA:3, I, and established a community engagement requirement for certain adults in the expansion population, N.H. Rev. Stat. § 126-AA:2, III(a).

8. The community engagement requirement applies to "[n]ewly eligible adults who are unemployed . . . if the commissioner finds that the individual is engaging in at least 100 hours per month based on an average of 24 hours per week" in one or more work or other community engagement activities. N.H. Rev. Stat. § 126-AA:2, III(a). Those work or community engagement activities include: unsubsidized and subsidized

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[3] The final version of this law is available at: http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2018&id=1972&txtFormat=pdf&v=current (last visited: Jan. 12, 2021).

private and public sector employment; job skills training; job search and job readiness assistance; vocational educational training not to exceed 12 months; education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; community service or public service; and participation in substance use disorder treatment. N.H. Rev. Stat. § 126-AA:2, III(a).

9. SB 313 provides good-cause-based exemption from the community engagement requirements. Good cause includes but is not limited to the following verified circumstances: (1) the beneficiary experiences the birth or death of a family member living with the beneficiary; (2) the beneficiary experiences severe inclement weather, including a natural disaster, and therefore was unable to meet the requirement; (3) the beneficiary has a family emergency or other life-changing event such as a divorce; (4) the beneficiary is a victim of domestic violence, dating violence, sexual assault, or stalking consistent with definitions and documentation required under the Violence Against Women Reauthorization Act of 2013 under 24 C.F.R. § 5.2005 and 24 C.F.R. § 5.2009, as determined by the commissioner pursuant to rulemaking under N.H. Rev. Stat. Ch. 541-A; and (5) the beneficiary is a custodial parent or caretaker of a child 6 to 12 years of age who, as determined by the commissioner on a monthly basis, is

unable to secure child care in order to participate in qualifying work and other community engagement either due to a lack of child care scholarship or the inability to obtain a child care provider due to capacity, distance, or another related factor. N.H. Rev. Stat. § 126-AA:2, III(b).

10. The community engagement requirement is inapplicable to the following categories of persons:

(1) A person who is unable to participate in the requirements under subparagraph (a) due to illness, incapacity, or treatment, including inpatient treatment, as certified by a licensed physician, an advanced practice registered nurse (APRN), a licensed behavioral health professional, a licensed physician assistant, a licensed alcohol and drug counselor (LADC), or a board-certified psychologist. The physician, APRN, licensed behavioral health professional, licensed physician assistant, LADC, or psychologist shall certify, on a form provided by the department, the duration and limitations of the disability.

(2) A person participating in state-certified drug court program, as certified by the administrative office of the superior court.

(3) A parent or caretaker as identified in RSA 167:82, II(g) where the required care is considered necessary by a licensed physician, APRN, board certified

psychologist, physician assistant, or licensed behavioral health professional who shall certify the duration that such care is required.

(4) A custodial parent or caretaker of a dependent child under 6 years of age or a child with developmental disabilities who is residing with the parent or caretaker; provided that the exemption shall only apply to one parent or caretaker in the case of a 2-parent household.

(5) Pregnant women.

(6) A beneficiary who has a disability as defined by the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or section 1557 of the Patient Protection and Affordable Care Act and is unable to meet the requirement for reasons related to that disability; or who has an immediate family member in the home with a disability under federal disability rights laws and who is unable to meet the requirement for reasons related to the disability of that family member, or the beneficiary or an immediate family member who is living in the home or the beneficiary experiences a hospitalization or serious illness.

(7) Beneficiaries who are identified as medically frail, under 42 C.F.R. section 440.315(f), and as defined in the alternative benefit plan and in the state plan and who are certified by a licensed physician or other

> medical professional to be unable to comply with the work and community engagement requirement as a result of their condition as medically frail. The department shall require proof of such limitation annually, including the duration of such disability, on a form approved by the department.
>
> (8) Any beneficiary who is in compliance with the requirement of the Supplemental Nutritional Assistance Program (SNAP) and/or Temporary Assistance to Needy Families (TANF) employment initiatives.

N.H. Rev. Stat. § 126-AA:2, III(d)(1-8).

11. The Department applied to CMS for a new Section 1115 waiver in order to implement Granite Advantage.

12. On November 30, 2018, CMS notified DHHS that it had granted its waiver request. *Gresham* Pet. App. 144a-171a.

13. The waiver identifies the objectives of the Medicaid Act that Granite Advantage helps achieve. The waiver specifies that the Medicaid Act's purposes include enabling "each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, and disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and

individuals attain or retain capability for independence or self-care." *Gresham* Pet. App. 145a.

14. The waiver explains that Section 1115 demonstration projects like Granite Advantage "provide an opportunity for states to test policies that ensure the fiscal sustainability of the Medicaid program, better 'enabling each [s]tate, as far as practicable under the conditions in such [s]tate' to furnish medical assistance, . . . while making it more practicable for states to furnish medical assistance to a broader range of persons in need." *Gresham* Pet. App. 146a.

15. The waiver further states that "measures that have the effect of helping individuals secure employer-sponsored or other commercial coverage or otherwise transition from Medicaid eligibility may decrease the number of individuals who need financial assistance, including medical assistance, from the state." *Id.* "Such measures may enable states to stretch their resources further and enhance their ability to provide medical assistance to a broader range of persons in need, including by expanding the services and populations they cover." *Id.* 146a-147a. "By the same token, such measures may also preserve states' ability to continue to provide the optional services and coverage they already have in place." *Id.* 147a.

16. In reviewing and approving the Granite Advantage program, the Secretary found that the program's community engagement requirements "are designed to encourage beneficiaries to obtain employment and/or undertake other community engagement

activities that may lead to improved health and wellness and increased financial independence for beneficiaries." *Id.* 151a. The Secretary found that this "demonstration will . . . help the state and CMS evaluate whether the community engagement requirement helps adults in this population transition from Medicaid to financial independence and commercial insurance, including the federally subsidized coverage that is available through the Exchanges." *Id.*

17. While the waiver acknowledged that persons who fail to meet the community engagement requirements could have their Medicaid enrollment terminated or suspended, the Secretary also considered the many different ways in which a beneficiary could meet the program's requirements, as well as the numerous exemptions built into the Granite Advantage program (see N.H. Rev. Stat. § 126-AA:2, III(b, d)) to make compliance with the program's community engagement requirements achievable for the able-bodied expansion population whom the program affects. *Gresham* Pet. App. 152a-154a.

18. In his waiver approval, the Secretary found that "New Hampshire's stated goals for the extension of the Granite Advantage demonstration program align with the goals of the Medicaid program," including "improv[ing] beneficiary health and wellness" and "increas[ing] financial independence." *Gresham* Pet. App. 155a. The Secretary further explained that "to the extent . . . the community engagement requirements help individuals achieve financial independence and transition into commercial coverage, the demonstration

may reduce dependency on public assistance while still promoting Medicaid's purpose of helping states furnish medical assistance by allowing New Hampshire to stretch its limited Medicaid resources." *Id.* "Helping the state stretch its limited Medicaid resources will assist in ensuring the long-term fiscal sustainability of the program and preserving the health care safety net for those New Hampshire residents who need it most." *Id.* 155a-156a.

19. The Secretary found that, while the community engagement requirement may result in an impact on eligibility, "the demonstration as a whole is expected to provide greater access to coverage for low-income individuals than would be available absent the demonstration." *Gresham* Pet. App. 157a, 166a.

20. The Secretary further found that "[i]t furthers the Medicaid program's objectives to allow states to experiment with innovative means of deploying their limited state resources in ways that may allow them to provide services beyond the legal minimum." *Gresham* Pet. App. 156a. As the Secretary explained, "[e]nhancing fiscal sustainability allows the state to provide services to Medicaid beneficiaries that it could not otherwise provide." *Id.*

21. In 2019, while this case was pending before the district court and not yet decided, New Hampshire enacted, and the governor signed into law, N.H. Laws

2019, Chapter 159 (SB 290),[4] a bill amending the existing community engagement requirements.

22. Among other things, SB 290 made non-compliance with the community engagement requirement result in suspension of benefits only, not termination of them. N.H. Rev. Stat. § 126-AA:2, III(b). It expanded the community engagement requirement to include self-employment, N.H. Rev. Stat. § 126-AA:2, III(a), and participation in substance use disorder treatment or "recovery activities and/or mental health treatment," N.H. Rev. Stat. § 126-AA:2, III(a)(12). It also expanded the exemptions to include custodial parents of a dependent child "through 12 years of age" and to include two parents or caretakers where the responsibility for the child "is shared by the 2 parents or caretakers." N.H. Rev. Stat. § 126-AA:2, III(d)(4). Similarly, SB 290 added a new exemption for any beneficiary "who is homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11301 *et seq*." N.H. Rev. Stat. § 126-AA:2, III(d)(9).

B. Proceedings Below in *Philbrick*

23. In March 2019, the plaintiffs in *Philbrick* (who are respondents in this Court)—four New Hampshire Medicaid beneficiaries—brought suit challenging the Secretary's approval of New Hampshire's

[4] The final version of this law is available at: http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=895&txtFormat=pdf&v=current (last visited: Jan. 12, 2021)

demonstration project. *Gresham* Pet. App. 75a. The plaintiffs asserted that the Secretary's waiver decision with respect to the Granite Advantage program violated the Administrative Procedure Act and the Constitution. *Id.*

24. The NH DHHS timely intervened to defend the project. *Philbrick* D. Ct. Docket Entry 15 & Minute Order (Apr. 25, 2019). Among other things, the NH DHHS resisted the plaintiffs' assertions that the Granite Advantage program would lead to coverage gaps for them and coverage loss for others due to beneficiaries being unable to meet its requirements. Philbrick D. Ct. Docket Entry 37 (June 28, 2019). The NH DHHS pointed out that no New Hampshire-specific evidence, including no New Hampshire-specific evidence-based studies regarding the actual requirements of the Granite Advantage program, existed in the administrative record to support that assertion. *Id.* The NH DHHS also pointed out that three of the four plaintiffs (Mr. Philbrick, Ms. VLK, and Mr. VLK) were already either meeting the community engagement requirements or had obtained an exemption from the program requirements. Philbrick D. Ct. Docket Entry 37 at 11-13 & Attachment #2 (Decl. of Henry Lipman) (June 28, 2019). Specifically, Mr. Philbrick was meeting the community engagement requirements and had reported past employment of 125.5 hours per month based on verified pay stubs. *Id.* Mr. VLK had obtained an exemption because he participates in the Supplemental Nutrition Assistance Program (SNAP). *Id.* Ms. VLK had also

obtained an exemption by verifying her medical frailty. *Id.*

25. The only plaintiff who had not reported hours or documented entitlement to an exemption from the program was Mr. Ludders. Mr. Ludders has "chosen to live a subsistence lifestyle that prioritizes meeting many of [his] basic needs by living off the land." Philbrick D. Ct. Docket Entry 19, Attachment #3, Decl. of Ian Ludders ¶ 3. While he works many different time-limited, seasonal jobs, *id.* ¶¶ 4-7, his "time off in between paid jobs is important . . . because it allows [him] to focus on subsistence activities." *Id.* ¶ 8. In other words, Mr. Ludders does not lack the ability to meet the community engagement requirements of the Granite Advantage program; he simply chooses not to in order to live a preferred lifestyle.

26. On July 29, 2019, the district court granted the plaintiff's motion for summary judgment, vacated the Secretary's approval of the Granite Advantage program, and remanded the case to CMS. *Gresham* Pet. App. 64a-106a. The district court concluded that the Secretary had "failed to adequately consider" the "core objective of the Medicaid Act" of "furnish[ing] healthcare coverage to the needy." *Id.* at 80a. The district court rejected the government's contention that work and skill-building requirements advanced that objective by enhancing the fiscal sustainability of a State's Medicaid program and by facilitating the transition of Medicaid recipients to other coverage. See *id.* at 90a-97a.

27. The federal government and the NH DHHS appealed. These appeals were held in abeyance pending the court of appeals' decision in *Gresham*. After the *Gresham* decision issued, the federal government moved unopposed for summary affirmance in *Philbrick*, without prejudice to seeking further appellate review. *Gresham* Pet. App. 20a-21a. A panel of the court of appeals granted the motion. *Id.*

28. On July 13, 2020, the federal government filed a Petition for a Writ of Certiorari with this Court in the *Gresham* and *Philbrick* cases. On August 14, 2020, the NH DHHS filed a brief in support of the federal government's petition. On December 4, 2020, this Court granted the federal government's petition.

SUMMARY OF THE ARGUMENT

The court of appeals erred in concluding that the sole objective of the Medicaid Act is simply providing access to health-care coverage. The Medicaid Act is a complex piece of Spending Clause legislation. Its predominant objective, by its text, is to *enable the States* to furnish medical assistance to eligible populations in a fiscally responsible and sustainable way. 42 U.S.C. § 1396-1. Contrary to the court of appeals' reasoning, the Medicaid Act contains provisions related to providing medical assistance, see, e.g., 42 U.S.C. § 1396a(a)(19), and provisions designed to help the States contain costs. See, e.g., 42 U.S.C. § 1396a(a)(14), (17), & (30)(A); 42 U.S.C. § 1396o. In this way, the

Medicaid Act seeks to enable the States to provide access to medical assistance in a fiscally responsible and sustainable way; its "principal" objective is not simply the provision of medical assistance.

The Granite Advantage program will provide medical assistance to the optional expansion population in a fiscally responsible and sustainable way. It will test whether work and skill-building requirements help low-income, able-bodied persons in the optional expansion population attain financial independence or otherwise transition to commercial insurance. Such a result will help ensure the long-term viability of the Medicaid safety net for the optional expansion population, is a "reasonable standard for determining . . . the extent of medical assistance under the [state] plan," 42 U.S.C. § 1396a(a)(17), and helps guard the State Medicaid program against the unnecessary utilization of care and services, 42 U.S.C. § 1396a(a)(30)(A).

But even if the *exclusive* objective of the Medicaid Act was simply providing health-care coverage, as the court of appeals characterized it, the Secretary appropriately determined that testing work- and skill-based programs designed to help States expand, maintain, and ensure Medicaid coverage for eligible persons is "likely to assist in promoting" the objective of providing health-care coverage under the Act. 42 U.S.C. § 1315(a)(1). Encouraging able-bodied persons in the expansion population to attain financial independence or commercial insurance and move off of Medicaid helps ensure the long-term stability and viability of the safety net, may lead to healthier outcomes for those

persons, frees up scarce Medicaid resources that can be used to provide other Medicaid benefits or services, and ensures that an ever-growing expansion population does not require the State either to curtail optional benefits or services, reduce service rates, or end the expansion. The court of appeals fundamentally misconstrued the Secretary's broad authority under 42 U.S.C. § 1315 and its decision should therefore be reversed.

ARGUMENT

I. The court of appeals erred in concluding that the "principal" objective of the Medicaid Act is simply to provide health-care coverage.

"Medicaid is a cooperative federal-state program that provides medical care to needy individuals." *Douglas* v. *Independent Living Center of Southern Cal., Inc.*, 565 U.S. 606, 610 (2012). It "offers the States a bargain: Congress provides federal funds in exchange for the States' agreement to spend them in accordance with congressionally imposed conditions." *Armstrong* v. *Exception Child Center, Inc.*, 575 U.S. 320, 323 (2015). "To qualify for federal funds, States must submit" to CMS "a state Medicaid plan that details the nature and scope of the State's Medicaid program." *Douglas*, 565 at 610. CMS reviews the State's plan to determine whether it "compl[ies] with the statutory and regulatory requirements governing the Medicaid program" and decides whether to approve it. *Id.*

This Court (and others) have observed that the Medicaid Act possesses a "Byzantine construction" that makes it "'almost unintelligible to the uninitiated.'" *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 43 (1981) (quoting *Friedman* v. *Berger*, 547 F.2d 724, 727 n.7 (CA2 1976)). It contains various conditions and requirements, some of which are more definite than others, and some of which exist in tension with one another. 42 U.S.C. § 1396a(a). At bottom, however, the Medicaid Act "represents a delicate balance between competing interests—care and cost, mandates and flexibility, oversight and discretion." *Pharmaceutical Research & Manufacturers of America* v. *Walsh*, 538 U.S. 644, 676 (2003) (Thomas, J., concurring in judgment).

Congress has authorized the Secretary to waive the Medicaid Act's requirements temporarily to allow a State to test variations from them. 42 U.S.C. § 1315(a). Specifically, 42 U.S.C. § 1315(a)(1) provides, in pertinent part, that "[i]n the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is *likely to assist in promoting the objectives of*" the Medicaid Act "in a State or States . . . the Secretary may waive compliance with any of the requirements of . . . section 1396a of [Title 42] . . . to the extent and for the period he finds necessary to enable such State or States to carry out such project. . . ." (emphasis added).

The Medicaid Act does not contain a single provision identifying all of its objectives. In order to determine the "objectives" of the Medicaid Act, therefore,

this Court must interpret the Act, an exercise that begins (and in this case ends) with the language of the statute. See, e.g., *Leocal* v. *Ashcroft*, 543 U.S. 1, 8 (2004); *Duncan* v. *Walker*, 533 U.S. 167, 172 (2001).

42 U.S.C. § 1396-1 of the Medicaid Act makes federal appropriations available "[*f*]*or the purpose of enabling each State*, *as far as practicable under the conditions in such State*, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care. . . ." (emphases added). These appropriations must be "used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance." *Id.*

The Act acknowledges "the delicate balance between [the] competing interests—care and cost. . . ." *Walsh*, 538 U.S. at 676 (Thomas, J., concurring in judgment). The plain and ordinary language of 42 U.S.C. § 1396-1 reveals that the overall purpose of the Medicaid Act is to "enabl[e] each State" to furnish medical assistance to eligible populations in a fiscally responsible and sustainable way—*i.e.*, as far as practicable under the conditions in such State. The court of appeals ignored this introductory language and, in doing so, misconstrued the overall objective of the Act.

The provisions of the Medicaid Act governing the contents of Medicaid state plans, 42 U.S.C. § 1396a, conform to the overall objective stated in 42 U.S.C. § 1396-1 to enable each State to furnish medical assistance to eligible populations in a fiscally responsible and sustainable way:

- 42 U.S.C. § 1396a(a)(14) permits States to "provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed" consistent with 42 U.S.C. § 1396o.
- 42 U.S.C. § 1396a(a)(17) requires that "[a] State plan for medical assistance must . . . include reasonable standards . . . for determining eligibility for *and the extent of* medical assistance under the plan which . . . are consistent with the objectives of this subchapter. . . ." 42 U.S.C. § 1396a(a)(17) (emphasis added). "This language confers broad discretion on the States to adopt standards for determining the extent of medical assistance, requiring only that such standards be 'reasonable' and 'consistent with the objectives' of the Act." *Beal* v. *Doe*, 432 U.S. 438, 444 (1977). "On the face of (a)17, the direct beneficiaries of this statute are Medicaid recipients and . . . the general public and public fisc." *Prestera Center for Mental Health Servs., Inc.* v. *Lawton*, 111 F. Supp. 2d 768, 777 (S.D. W. Va. 2000).
- 42 U.S.C. § 1396a(a)(30)(A) requires a State plan to provide "such methods and procedures relating to the utilization of, and the payment

> for, care and services available under the plan . . . as may be necessary *to safeguard against unnecessary utilization of such care and services*. . . ." (emphasis added). The "unnecessary utilization" provision of Section 30(A) "is intended, as appears on its face, to contain costs and guard against fraud." *Prestera Center for Mental Health Servs., Inc.*, 111 F. Supp. 2d at 776.

All of these statutory provisions permit (and in the case of 42 U.S.C. § 1396a(a)(30)(A) require) States to operate their Medicaid programs in a fiscally responsible and sustainable way. Congress's intent, reflected in the plain language it adopted, "is clear" and the Secretary is permitted to "give effect to [that] unambiguously expressed intent" by approving waivers for demonstration programs designed to maintain, expand, and ensure the long-term viability of the Medicaid safety net. *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

The Granite Advantage program expands Medicaid coverage to an optional population in New Hampshire in a fiscally responsible and sustainable way. It provides medical assistance to low-income, able-bodied adults who may be capable of achieving financial independence or transitioning to commercial insurance so they may someday no longer require the Medicaid safety net. The program is a "reasonable standard for determining . . . the extent of medical assistance under the plan which . . . [is] consistent with the objectives of [the Medicaid Act]." 42 U.S.C. § 1396a(a)(17). And

the program helps safeguard against the unnecessary utilization of Medicaid care and services by persons who are capable of achieving financial independence or commercial insurance and who are not in fact needy. 42 U.S.C. § 1396a(a)(30)(A).

Permitting persons who are not needy and are capable of achieving financial independence or transitioning to commercial insurance to utilize the Medicaid program in perpetuity would not adequately and reasonably safeguard the State's Medicaid program against the unnecessary utilization of care and services. See 42 U.S.C. § 1396a(a)(30)(A). To the contrary, it would incentivize perpetual subsistence on scarce Medicaid resources by persons who do not require them. This situation may, in turn, prevent the States from extending additional optional Medicaid benefits or services to eligible, needy persons or may result in a State reducing other optional Medicaid benefits to support the ever-growing expansion population. And it may in the long term result in Medicaid expansion becoming financially unsustainable, as the ranks over time continue to swell.

Respondent Ludders illustrates this point. He is a middle-aged man who lives in a small cabin on a land trust. He qualifies for expansion benefits by his own choice: he has chosen to live a subsistence lifestyle that prioritizes meeting many of his basic needs by living off the land. He works different time-limited seasonal jobs so he can have sufficient time off to focus on subsistence activities. He is a current Medicaid beneficiary within the expansion population of able-bodied adults,

yet he is not a "needy" person as that term appears to be used in the Medicaid context. See Webster's New International Dictionary of the English Language, Second Edition Unabridged, at 1637 (G & C Merriam Company Publishers 1941) (defining "needy" to mean "[d]istressed by want of means of living; poverty-stricken"). He, instead, prioritizes a particular lifestyle over an income and desires Medicaid benefits, presumably, indefinitely.

The Medicaid Act was not designed to facilitate lifestyle choices that, by design, keep an individual perpetually enrolled. Indeed, it is manifestly not one of the objectives of the Medicaid Act to enable non-disabled, able-bodied adults to live subsistence lifestyles. The primary objective of the Medicaid Act is, however, to furnish medical assistance to certain needy populations in a fiscally sustainable and responsible way; this includes in a way that prevents the unnecessary utilization of services, such as preventing the use of the Medicaid safety net by persons who, despite being capable of achieving financial independence or moving onto commercial insurance, would prefer to utilize the safety net in perpetuity to pursue a chosen lifestyle.

Ultimately, the court of appeals erred in concluding that the principal objective of the Medicaid Act is simply the provision of health-care coverage. The Medicaid Act is more complex than that. Its predominant objective is to enable the States to furnish medical assistance to eligible persons in a fiscally responsible and sustainable way. As the Secretary's waiver decision reveals, the Granite Advantage program seeks to do just

that and is therefore "likely to assist in promoting" the objectives of Medicaid.

II. Even if the principal, overriding objective of the Medicaid Act is simply providing access to medical coverage, the Secretary still appropriately concluded that the Granite Advantage program was "likely to assist" in furthering that objective.

42 U.S.C. § 1315(a) authorizes "any . . . demonstration project which, in the judgment of the Secretary, is *likely to assist in promoting* the objectives of" the Medicaid Act. This language is broad and encompasses means-based programs designed to assist the States in the provision of Medicaid coverage. The nature of Section 1115 (42 U.S.C. § 1315) supports this reading. It authorizes experiments to test whether particular adjustments to the Medicaid Act's requirements may advance the Act's objectives. In doing so, it recognizes that the a State's provision of Medicaid coverage to various populations implicates complex and dynamic public policy issues that the Medicaid Act's default requirements may not adequately accommodate. Section 1115 permits States to identify those issues and advance experimental solutions, consistent with the objectives of the Medicaid Act, to attempt to fashion a better Medicaid program.

This Court has recognized that programs that enable States to expand, maintain, and stretch limited Medicaid resources promote the objectives of

providing Medicaid coverage under the Act. See, e.g., *Pharmaceutical Research & Manufacturers of America* v. *Walsh*, 538 U.S. 644, 663 (2003) (Stevens, J.) (plurality opinion) (upholding drug-rebate and prior-authorization requirements designed to keep borderline populations out of Medicaid and thereby conserve scarce state resources); *id.* at 657-76; *id.* at 686-87 (O'Connor, J., and Rehnquist, C.J., and Kennedy J., concurring in part and dissenting in part) (recognizing "stretching Medicaid resources to the greatest effect" as a "Medicaid goal"). Stretching and conserving Medicaid resources so that greater numbers of persons may benefit from Medicaid coverage is in the best interests of Medicaid beneficiaries. See 42 U.S.C. § 1396a(a)(19) (requiring a state Medicaid plan to "provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with . . . the best interests of the recipients").

The Secretary acted within his discretion under Section 1115 in determining that the Granite Advantage program is likely to assist in promoting Medicaid's objectives. The Granite Advantage program tests whether its requirements can help New Hampshire stretch its limited Medicaid resources further. It seeks to test whether New Hampshire can cover the optional expansion population in a fiscally responsible and sustainable way. And the Secretary found that "[i]t furthers the Medicaid program's objectives to allow [S]tates to experiment with innovative means of

deploying their limited state resources in ways that may allow them to provide services beyond the legal minimum." *Gresham* Pet. App. at 156a. Accordingly, even if the "principal" objective of the Medicaid Act is the provision of health-care coverage, the Granite Advantage program is "likely to assist in promoting" that objective. The court of appeals erred in concluding otherwise with respect to such programs.

CONCLUSION

The judgment of the court of appeals should be reversed and remanded in both *Gresham* and *Philbrick*.

Respectfully submitted,

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