

were *Mark B. Stern*, Attorney, *Robert P. Charrow*, General Counsel, U.S. Department of Health and Human Services, and *Brenna E. Jenny*, Deputy General Counsel.

Leslie Rutledge, Attorney General, Office of the Attorney General for the State of Arkansas, *Nicholas J. Bronni*, Solicitor General, *Vincent M. Wagner*, Deputy Solicitor General, and *Dylan L. Jacobs*, Assistant Solicitor General, were on the brief for appellant State of Arkansas.

Ian Heath Gershengorn argued the cause for plaintiff-appellees. With him on the brief were *Jane Perkins*, *Thomas J. Perrelli*, *Devi M. Rao*, *Natacha Y. Lam*, *Zachary S. Blau*, and *Samuel Brooke*.

Kyle Druding was on the brief for *amici curiae* American College of Physicians, et al. in support of plaintiffs-appellees.

Edward T. Waters, *Phillip A. Escoriaza*, and *Charles J. Frisina* were on the brief for *amici curiae* Deans, Chairs, and Scholars in support of plaintiffs-appellees.

Judith R. Nemsick, *Jon M. Greenbaum*, and *Sunu Chandu* were on the brief for *amici curiae* Lawyers Committee for Civil Rights Under Law, et al. in support of appellees and affirmance.

Before: PILLARD, *Circuit Judge*, and EDWARDS and SENTELLE, *Senior Circuit Judges*.

Opinion for the Court filed by *Senior Circuit Judge* SENTELLE.

SENTELLE, *Senior Circuit Judge*: Residents of Kentucky

Health and Human Services. They contend that the Secretary acted in an arbitrary and capricious manner when he approved Medicaid demonstration requests for Kentucky and Arkansas. The District Court for the District of Columbia held that the Secretary did act in an arbitrary and capricious manner because he failed to analyze whether the demonstrations would promote the primary objective of Medicaid—to furnish medical assistance. After oral argument, Kentucky terminated the challenged demonstration project and moved for voluntary dismissal. We granted the unopposed motion. The only question remaining before us is whether the Secretary's authorization of Arkansas's demonstration is lawful.

Secretary waives them so that the state can engage in “experimental, pilot, or demonstration project[s].” 42 U.S.C. § 1315(a). The section authorizes the Secretary to approve “any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives” of Medicaid. *Id.*

Arkansas applied to amend its existing waiver under § 1315 on June 30, 2017. Arkansas Administrative Record 2057 (“Ark. AR”). Arkansas gained approval for its initial Medicaid demonstration waiver in September 2013. In 2016, the state introduced its first version of the Arkansas Works program, encouraging enrollees to seek employment by offering voluntary referrals to the Arkansas Department of Workforce Services. Dissatisfied with the level of participation in that program, Arkansas’s new version of Arkansas Works introduced several new requirements and limitations. The one that received the most attention required beneficiaries aged 19 to 49 to “work or engage in specified educational, job training, or job search activities for at least 80 hours per month” and to document such activities. *Id.* at 2063. Certain categories of beneficiaries were exempted from completing the hours, including beneficiaries who show they are medically frail or pregnant, caring for a dependent child under age six, participating in a substance treatment program, or are full-time students. *Id.* at 2080–81. Nonexempt “beneficiaries who fail to meet the work requirements for any three months during a plan year will be disenrolled . . . and will not be permitted to re-enroll until the following plan year.” *Id.* at 2063.

Arkansas Works included some other new requirements in addition to the much-discussed work requirements. Typically, when someone enrolls in Medicaid, the “medical assistance under the plan . . . will be made available to him for care and

services included under the plan and furnished in or after the third month before the month in which he made application.”

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Medicaid.” *Id.* at 3. The Secretary identified three objectives that he asserted Arkansas Works would promote: “improving health outcomes; . . . address[ing] behavioral and social factors that influence health outcomes; and . . . incentiviz[ing] beneficiaries to engage in their own health care and achieve better health outcomes.” *Id.* at 4. In particular, the Secretary stated that Arkansas Works’s community engagement requirements would “encourage beneficiaries to obtain and maintain employment or undertake other community engagement activities that

the district court turned to the provision authorizing the appropriations of funds for Medicaid, 42 U.S.C. § 1396-1, and held that, based on the text of that appropriations provision, the objective of Medicaid was to “furnish . . . medical assistance” to people who cannot afford it. *Stewart I*, 313 F. Supp. 3d at 260–61.

With its previously articulated objective of Medicaid in mind, the district court then turned to the Secretary’s approval of Arkansas Works. First, the district court noted that the Secretary identified three objectives that Arkansas Works would promote: “(1) ‘whether the demonstration as amended was likely to assist in improving health outcomes’; (2) ‘whether it would address behavioral and social factors that influence health outcomes’; and (3) ‘whether it would incentivize beneficiaries to engage in their own health care and achieve better health outcomes.’” *Gresham*, 363 F. Supp. 3d at 176 (quoting Ark. AR 4). But “[t]he Secretary’s approval letter did not consider whether [Arkansas Works] would reduce Medicaid coverage. Despite acknowledging at several points that commenters had predicted coverage loss, the agency did not engage with that possibility.” *Id.* at 177. The district court also explained that the Secretary failed to consider whether Arkansas Works would promote coverage. *Id.* at 179. Instead, the Secretary considered his alternative objectives, primarily healthy outcomes, but the district court observed that “‘focus on health is no substitute for considering Medicaid’s central concern: covering health costs’ through the provision of free or low-cost health coverage.” *Id.* (quoting *Stewart I*, 313 F. Supp. 3d at 266). “In sum,” the district court held:

the Secretary’s approval of the Arkansas Works Amendments is arbitrary and capricious because it did not address—despite receiving substantial comments on the matter—whether and how the

project would implicate the “core” objective of Medicaid: the provision of medical coverage to the needy.

Id. at 181. The district court entered final judgment on April 4, 2019, and the Secretary filed a notice of appeal on April 10, 2019.

This case was originally a consolidated appeal from the district court’s judgment in both the Arkansas and Kentucky cases. The district court twice vacated the Secretary’s approval of Kentucky’s demonstration for the same failure to address whether Kentucky’s program would promote the key objective of Medicaid. *Stewart v. Azar*, 366 F. Supp. 3d 125, 156

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“experimental, pilot, or demonstration project[s],” and only insofar as they are “likely to assist in promoting the objectives” of Medicaid, 42 U.S.C. § 1315(a). Section 1315 approvals are not among the rare “categories of administrative decisions that courts traditionally have regarded as committed to agency discretion.” *Dep’t of Commerce*, 139 S. Ct. at 2568.

Additionally, the government asked that we address “the reasoning of the district court’s opinion in *Stewart* and the underlying November 2018 HHS approval of the Kentucky demonstration,” and second that we vacate the district court’s judgment against the federal defendants in the Kentucky case *Stewart II*, 66 F. Supp. 3d 125. Gov’t’s Resp. 1–2.

An agency action that “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so

Id. In addition to the appropriations provision, the statute defines “medical assistance” as “payment of part or all of the cost of the following care and services or the care and services themselves.” 42 U.S.C. § 1396d(a). Further, as the district court explained, the Affordable Care Act’s expansion of health care coverage to a larger group of Americans is consistent with Medicaid’s general purpose of furnishing health care coverage. *See Stewart I*, 313 F. Supp. 3d at 260 (citing Pub. L. No. 111-148, 124 Stat. 119, 130, 271 (2010)). The text consistently focuses on providing access to health care coverage.

Both the First and Sixth Circuits relied on Medicaid’s appropriations provision quoted above in concluding that “[t]he primary purpose of Medicaid is to enable states to provide medical services to those whose ‘income and resources are insufficient to meet the costs of necessary medical services.’” *Pharm. Research & Mfrs. of Am. v. Concannon*, 249 F.3d 66, 75 (1st Cir. 2001) (quoting 42 U.S.C. § 1396 (2000)), *aff’d*, 538 U.S. 644 (2003); *Price v. Medicaid Dir.*, 838 F.3d 739, 742 (6th Cir. 2016). Similarly, the Ninth Circuit relied on both the appropriations provision and the definition of “medical assistance” when describing Medicaid as “a federal grant program that encourages states to provide certain medical services” and identifying a key element of “medical assistance” as the spending of federally provided funds for medical coverage. *Univ. of Wash. Med. Ctr. v. Sebelius*, 634 F.3d 1029, 1031, 1034–35 (9th Cir. 2011).

Beyond relying on the text of the statute, other courts have consistently described Medicaid’s objective as primarily providing health care coverage. For example, the Third Circuit succinctly stated, “We recognize, of course, that the primary purpose of medicaid is to achieve the praiseworthy

social objective of granting health care coverage to those who cannot afford it.” *W. Va. Univ. Hosps., Inc. v. Case*

the only reference to beneficiary financial independence is in the section summarizing public comments. In response to concerns about the community engagement requirements creating barriers to coverage, the Secretary stated, “Given that employment is positively correlated with health outcomes, it furthers the purposes of the Medicaid statute to test and evaluate these requirements as a means to improve beneficiaries’ health and to promote beneficiary independence.” Ark. AR 6. But “[n]owhere in the Secretary’s approval letter does he justify his decision based . . . on a belief that the project will help Medicaid-eligible persons to gain sufficient financial resources to be able to purchase private insurance.” *Gresham*, 363 F. Supp. 3d at 180–81. We will not accept post hoc rationalizations for the Secretary’s decision. *See State Farm*, 463 U.S. at 50.

Nor could the Secretary have rested his decision on the objective of transitioning beneficiaries away from government benefits through either financial independence or commercial coverage. When Congress wants to pursue additional objectives within a social welfare program, it says so in the text. For example, the purpose section of TANF explicitly includes “end[ing] the dependence of needy parents on government benefits by promoting job preparation, work, and marriage” among the objectives of the statute. 42 U.S.C. § 601(a)(2). Also, both TANF and the Supplemental Nutrition Assistance Program (SNAP) condition eligibility for benefits upon completing a certain number of hours of work per week to support the objective of “end[ing] dependence of needy parents on government benefits.” 42 U.S.C. §§ 601(a)(2), 607(c) (TANF); 7 U.S.C. § 2015(d)(1) (SNAP). In contrast, Congress has not conditioned the receipt of Medicaid benefits

The reference to independence in the appropriations provision and the cross reference to TANF cannot support the Secretary's alternative objective either. The reference to "independence" in the appropriations provision is in the context of assisting beneficiaries in achieving functional independence through rehabilitative and other services, not financial independence from government welfare programs. 42 U.S.C. § 1396-1. Medicaid also grants states the "[o]ption" to terminate Medicaid benefits when a beneficiary who receives both Medicaid and TANF fails to comply with TANF's work requirements. *See* 42 U.S.C. § 1396u-1(b)(3)(A). The provision gives states, therefore, the ability to coordinate benefits for recipients receiving both TANF and Medicaid. It does not go so far as to incorporate TANF work requirements and additional objectives into o coori re2.[(i)-2 (nt, Tw [((oor)

Congress did not intend to incorporate work requirements into Medicaid through § 1396u-1(b)(3)(A).

In short, we agree with the district court that the alternative objectives of better health outcomes and beneficiary independence are not consistent with Medicaid. The text of the statute includes one primary purpose, which is providing health care coverage without any restriction geared to healthy outcomes, financial independence or transition to commercial coverage.

B. The Approvals Were Arbitrary and Capricious

With the objective of Medicaid defined, we turn to the Secretary's analysis and approval of Arkansas's demonstration, and we find it wanting. In order to survive arbitrary and capricious review, agencies need to address "important aspect[s] of the problem." *State Farm*, 463 U.S. at 43. In this situation, the loss of coverage for beneficiaries is an important aspect of the demonstration approval because coverage is a principal objective of Medicaid and because commenters raised concerns about the loss of coverage. *See, e.g.*, Ark. AR 1269–70, 1277–78, 1285, 1294–95.

A critical issue in this case is the Secretary's failure to account for loss of coverage, which is a matter of importance under the statute. The record shows that the Arkansas Works amendments resulted in significant coverage loss. In Arkansas, more than 18,000 people (about 25% of those subject to the work requirement) lost coverage as a result of the project in just five months. Ark. Dep't of Human Servs., Arkansas Works Program 8 (Dec. 2018), https://humanservices.arkansas.gov/images/uploads/011519_AWReport.pdf. Additionally, commenters on the Arkansas Works amendments detailed the potential for substantial

coverage loss supported by research evidence. Ark. AR 1269–70, 1277–78, 1285, 1294–95, 1297, 1307–08, 1320, 1326, 1337–38, 1341, 1364–65, 1402, 1421. The Secretary’s analysis considered only whether the demonstrations would increase healthy outcomes and promote engagement with the beneficiary’s health care. *Id.* at 3–5. The Secretary noted that some commenters were concerned that “these requirements would be burdensome on families or create barriers to coverage.” *Id.* at 6. But he explained that Arkansas would have “outreach and education on how to comply with the new community engagement requirements” and that Centers for Medicare and Medicaid Services could discontinue the program if data showed that it was no longer in the public interest. *Id.* The Secretary also concluded that the “overall health benefits to the [a]ffected population . . . outweigh the health-risks with respect to those who fail to” comply with the new requirements. *Id.* at 7. While Arkansas did not have its own estimate of potential coverage loss, the estimates and concerns raised in the comments were enough to alert the Secretary that coverage loss

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and other services to help such families and individuals attain or retain capability for independence or self-care.

42 U.S.C. § 1396-1. Importantly, the Secretary disregarded this statutory purpose in his analysis. While we have held that it is not arbitrary or capricious to prioritize one statutorily identified objective over another, it is an entirely different matter to prioritize non-statutory objectives to the exclusion of the statutory purpose.

III. CONCLUSION

Because the Secretary's approval of Arkansas Works was arbitrary and capricious, we affirm the district court's judgment vacating the Secretary's approval.