

Overview of *Stewart v. Azar*

Sarah Stanton

Division of Legislative Services

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Background

- 2014: Kentucky expands its Medicaid program
- 2016: Kentucky submits an initial Section 1115 waiver application for the Kentucky HEALTH program
- January 12, 2018: Kentucky HEALTH waiver application is approved

Kentucky HEALTH

SUD Program

Kentucky HEALTH

- Premiums and penalties for failure to pay
- Waiver of retroactive eligibility and NEMT
- Additional reporting requirements
- Deductible savings accounts
- Incentives and penalties for certain behaviors and My Rewards savings accounts
- Community engagement requirement:
 - Adult beneficiaries ages 19 to 64
 - 80 hours of qualifying “community engagement” per month
 - Acceptable activities: employment, education, job skills training, SUD treatment, and community services
 - Exclusions: former foster youth, pregnant women, primary caregivers, medically frail and beneficiaries with certain acute medical conditions, and full-time students

Stewart v. Azar: Challenge

- Plaintiffs: Current Kentucky Medicaid beneficiaries
- Defendant: Alex M. Azar, II, U.S. Secretary of Health & Human Services
- Challenge: Approval of the Kentucky HEALTH program violates the United States Constitution and the Administrative Procedure Act
- Decision: June 29, 2018

Stewart v. Azar: Preliminary Issues

- Standing: Can the plaintiffs demonstrate (1) injury in fact, (2) caused by the conduct complained of, and (3) likely to be redressed by favorable act?
- Justiciability: Does the court have the authority to review the decision?
- Scope of Review: What portion of the Secretary's decision is the court reviewing?
- Standard of Review: Was the Secretary's decision in violation of the APA? Was the decision "arbitrary and capricious"?

Stewart v. Azar: Arguments

- Plaintiffs argue:
 - Approval of Kentucky HEALTH would reduce access to Medicaid for current beneficiaries, contrary to the objectives of the Medicaid program
 - Secretary's failure to consider whether the proposal would further the objectives of Medicaid, including the impact of the proposed project on access to coverage, rendered his decision arbitrary and capricious
- Defendant counterargues:
 - Consideration of the impact of the proposed project on beneficiary health and well-being, promotion of self-sufficiency, and impact of the proposed project on state resources was sufficient

Stewart v. Azar: Decision

- Secretary's decision to approve the Kentucky HEALTH program was arbitrary and capricious, in violation of the APA
 - Section 1115 authorizes the Secretary to approve a project and provide necessary waivers if the project is likely to promote the objectives of the Medicaid program.
 - Purpose of the Medicaid program: to furnish medical assistance to eligible individuals
 - Key issue: impact of the proposed project on access to medical assistance, including potential loss of access to medical assistance
 - In reviewing the Kentucky HEALTH program, the Secretary failed to consider whether the proposed project was likely to promote the objective of furnishing medical assistance to eligible individuals, including the potential loss of access to medical assistance resulting from the project
- Secretary's decision vacated and remanded to the agency to correct the error

Stewart v. Azar: What Next?

- Appeal
- Reconsideration of approved applications
- Revision of pending applications
- Informed drafting of new applications

Questions?