

Nevertheless, it is possible to describe a general framework under which a legal analysis would likely follow once all the facts had been established. A central aspect of this framework is the Secretary's determination concerning whether a proposed demonstration project promotes the objectives of Medicaid.⁷⁰ As discussed above, courts evaluating whether the Secretary properly approved a Section 1115 waiver have focused on the Secretary's consideration of a waiver. In particular, courts have looked at whether the Secretary evaluated factors such as the waiver's research or experimental goals, the potential impact on program beneficiaries, and objections raised concerning the proposal.⁷¹

Thus, a reviewing court would likely evaluate a hypothetical Section 1115 waiver related to work requirements similarly, basing its analysis on the Secretary's determination that the waiver promotes the objectives of the Medicaid program (e.g., the provision of medical care for low-income individuals), and the sufficiency of the evidence in the administrative record supporting such a determination. If the Secretary's approval of a Section 1115 waiver is later subject to a legal challenge, a reviewing court would likely examine whether his determination was arbitrary or capricious in light of the administrative record, and the Secretary's decision will likely be afforded deference, to the extent it is not a clear error of judgment.⁷²

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⁷⁰ It was stated by the dissenting justices in *NFIB v. Sebelius* that “[t]he purpose of Medicaid is to enable States to furnish ... medical assistance on behalf of [certain persons] whose income and resources are insufficient to meet the costs of necessary medical services ... By bringing health care within the reach of a larger population of Americans unable to afford it, the Medicaid expansion is an extension of that basic aim.” 132 S. Ct. 2566, 2635 (2010) (Ginsburg, J., concurring in part, concurring in the judgment in part, and dissenting in part) (citations and internal quotation marks omitted).

⁷¹ It may be noted that § 10201(i) of ACA amended § 1115 of the SSA to require the Secretary to issue regulations that are generally intended to ensure that interested parties have opportunity to provide input into the development of state demonstration projects, as well as to provide transparency in the review and approval of state demonstration applications and renewals. *See* 42 U.S.C. § 1315(d). The Secretary issued a final rule regarding § 1115 waivers in 2012. *See* 77 Fed. Reg. 11678 (Feb. 27, 2012); 42 C.F.R. §§ 431.400 *et seq.* It would seem that information provided pursuant to the regulations would be considered by a reviewing court as part of the administrative record. A CRS search of the LEXIS database for instances in which these regulations were addressed in a case involving a § 1115 waiver yielded no results.

⁷² *See, e.g.,* *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971).