



ASLME NEW HAMPSHIRE'S WORK AND COMMUNITY ENGAGEMENT REQUIREMENT

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LEGAL, ETHICAL AND PRACTICAL IMPLICATIONS FOR COMMUNITY PROVIDERS

By Lucy C. Hodder

Lucy.hodder@unh.edu

Professor of Law, UNH School of Law
Institute for Health Policy and Practice

Work And Community Engagement – An Community Implementation Story

- I. National Developments
- II. New Hampshire's Dashboard
- III. Procedural History of NH's Work and Community Engagement Requirement (WACER)
- IV. The WACER Requirements in Detail
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- VI. Community Impact – The Experience of Community Health and Service Organizations

Approved Work Requirement Waivers – Covered Populations and Age Exemptions as of May 24, 2019¹

	AR³ Enjoined	IN Implementing	KY⁴ Enjoined	AZ*	MI*	NH Implementing	OH*	UT*	WI*
Expansion Adults	X	X	X	X	X	X	X		
Traditional Adults²		X	X					X (parents 60-100% FPL and childless adults 0-100% FPL)	X (childless adults 0-100% FPL)
Age Exemptions	50+	60+	65+	50+	63+	65+	50+	60+	50+
Hours Required	80/ mth	Ramps up to 20/wk	80/ mth	80/ mth	80/ mth	100/ mth	80/ mth	Training/ job search required unless working 30/ wk	80/ mth

1. Data compiled by The Henry J. Kaiser Family Foundation; Populations, exemptions, penalties or consequences, and other details vary significantly by waiver.

2. Groups such as Transitional Medical Assistance, family planning only, or former foster care youth, may be included in some states.

3. On March 27, 2019, the U.S. Dist. Ct. for DC set aside the Arkansas Works waiver amendment.

4. On March 27, 2019, the U.S. Dist. Ct. for DC set aside the reapproved Kentucky HEALTH waiver.

* Denotes a state where the work requirement waiver has been approved, but it is not implemented.

Pending Work Requirement Waivers – Covered Populations and Age Exemptions as of April 1, 2019¹

	AL	MS ³	OK	SD ⁴	TN	VI
Expansion Adults						X
Traditional Adults²	X (parents 0-18% FPL)	X (parents 0-27% FPL)	X (parents 0-45% FPL)	X (parents 0-50% in 2 counties)	X (parents 0-98% FPL)	X
Age Exemptions	60+	65+	>50	60+	65+	65+
Hours Required	35/wk (or 20/wk for parents & caretakers w/ a child under 6)	20/wk	Ramps up to 20/wk	80/mth or monthly milestones in individual plan	20/wk avg.	Ramps up to 80/mth

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THE HISTORY OF NH'S WORK AND COMMUNITY ENGAGEMENT REQUIREMENT

Procedural History of Medicaid Expansion and the WACER

How Do New Hampshire Residents Access Insurance Coverage?

There are 1,325,000 residents in New Hampshire

- 1,248,000/94% have health insurance
- 742,000/56% have employer sponsored insurance (ESI) coverage
- 43,011 enrolled in QHPs (2/19)

There are 178,250 individuals in the Medicaid program

- 90,000 of them are children
- Between 49,000 – 52,000 in Med Ex

America's Health Rankings, 2018: New Hampshire – overall 6th best

Category	Ranking
Total ESI Spending Per Enrollee- \$5,487	6 th highest
Infant Mortality	1 st best
Immunizations	4 th best
Adult Obesity (28%)	13 th best
Excessive Drinking	10 th worst
Death rate from Drugs, Alcohol, Suicide	2 nd worst

Statistics for NH Med Ex

June 2018

53,000 provided coverage through NHHPP

- 44,000 in NHHPP Premium Assistance Program (QHPs)
 - Three commercial insurance carriers offering QHP coverage in New Hampshire's federally facilitated Marketplace
 - 9,000 beneficiaries are medically frail or have opted out of PAP served by the State's two Medicaid MCOs
 - 49% of beneficiaries under 35 years of age and 68% under 45 years of age.
 - 52% of NHHPP beneficiaries are female and 48% are male.

March 2019

50,400 covered by Granite Advantage Program

- 2 MCOs (Centene and Wellsense)
- AmeriHealth to begin coverage September 1, 2019



New Hampshire's Med Ex and Work Requirement History

- **March 27, 2014:** SB 413 expands Medicaid through the New Hampshire Health Protection Program. The legislation requires a Premium Assistance Program waiver.
- **August 15, 2014:** Coverage becomes effective for the newly eligible adult group ages 19-64 (new adult group), with incomes between 0-138% of the Federal Poverty Limit, enrolling in the managed care "bridge" Alternative Benefit Plans offered by 4 MCOs.
- **March 4, 2015:** CMS approves NH's mandatory individual Premium Assistance Program requiring the new adult group to enroll in Qualified Health Plans through New Hampshire's Marketplace Exchange, with contingent approval granted through December 31, 2018. (1115(a) Demonstration Approval Letter: https://www.dhhs.nh.gov/pap-1115-waiver/documents/pa_approvalletter.pdf; NHHPP Special Terms and Conditions: https://www.dhhs.nh.gov/pap-1115-waiver/documents/pa_termsandconditions.pdf)
- **January 1, 2016:** The new adult group transitions to the NHHPP PAP
- **April 5, 2016:** The NH legislature reauthorizes the NHHPP through December 2018 (HB 1696) with a work/community engagement requirement. CMS does not approve requirement.
- **June 28, 2017:** The Governor signs HB517 into law as the trailer bill to the biennial budget for SFY 19-SFY20. HB 517 includes a provision that requires NH DHHS to seek a waiver or state plan amendment from CMS in order to establish certain work/community engagement requirements as conditions of eligibility in the NHHPP.
- **October 24, 2017:** NH submits an application to CMS to amend the NHHPP demonstration in order to promote work/community engagement opportunities for PAP participants.
- **January 11, 2018:** In a letter to state Medicaid Directors CMS announces a new policy that supports 1115(a) demonstration projects where participation in work/community engagement is a requirement for continued Medicaid eligibility or coverage for certain adult Medicaid beneficiaries.
- **May 7, 2018:** CMS approves the work/community engagement requirement with implementation no sooner than January 1, 2019.
- **May 8, 2018:** NH DHHS issues a notice to amend its waiver in order to discontinue the NHHPP and implement Granite Advantage, providing Medicaid coverage to the expansion population through managed care with a work/community engagement requirement. (Public Notice, <https://www.dhhs.nh.gov/ombp/medicaid/documents/ga-public-notice-2-05042018.pdf>)
- **May 10, 2018:** The Senate concurs with house amendments to SB 313, extending coverage for the new adult group through Granite Advantage, terminating the NHHPP and creating the Granite Advantage Program.

Implementation in NH

- **July 23, 2018**, Granite Advantage 1115 Waiver Amendment and Extension Application
 - <https://www.dhhs.nh.gov/ombp/medicaid/documents/ga-waiver-app-072318.pdf>
- **November 30, 2018**, CMS Approval Letter
 - <https://www.dhhs.nh.gov/ombp/medicaid/documents/ga-approval-letter-11302018.pdf>
- **November 30, 2018** CMS Special Terms and Conditions
 - <https://www.dhhs.nh.gov/ombp/medicaid/documents/ga-stc-11292018.pdf>
- **December 6, 2018**: NH accepts the Special Terms and Conditions for the Granite Advantage Health Care Program 1115 Demonstration Waiver. (<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nh/health-protection-program/nh-health-protection-program-state-accptnc-ltr-20181206.pdf>)
- **January 1, 2019**: Granite Advantage Program begins
- **March 1, 2019**: WACER effective

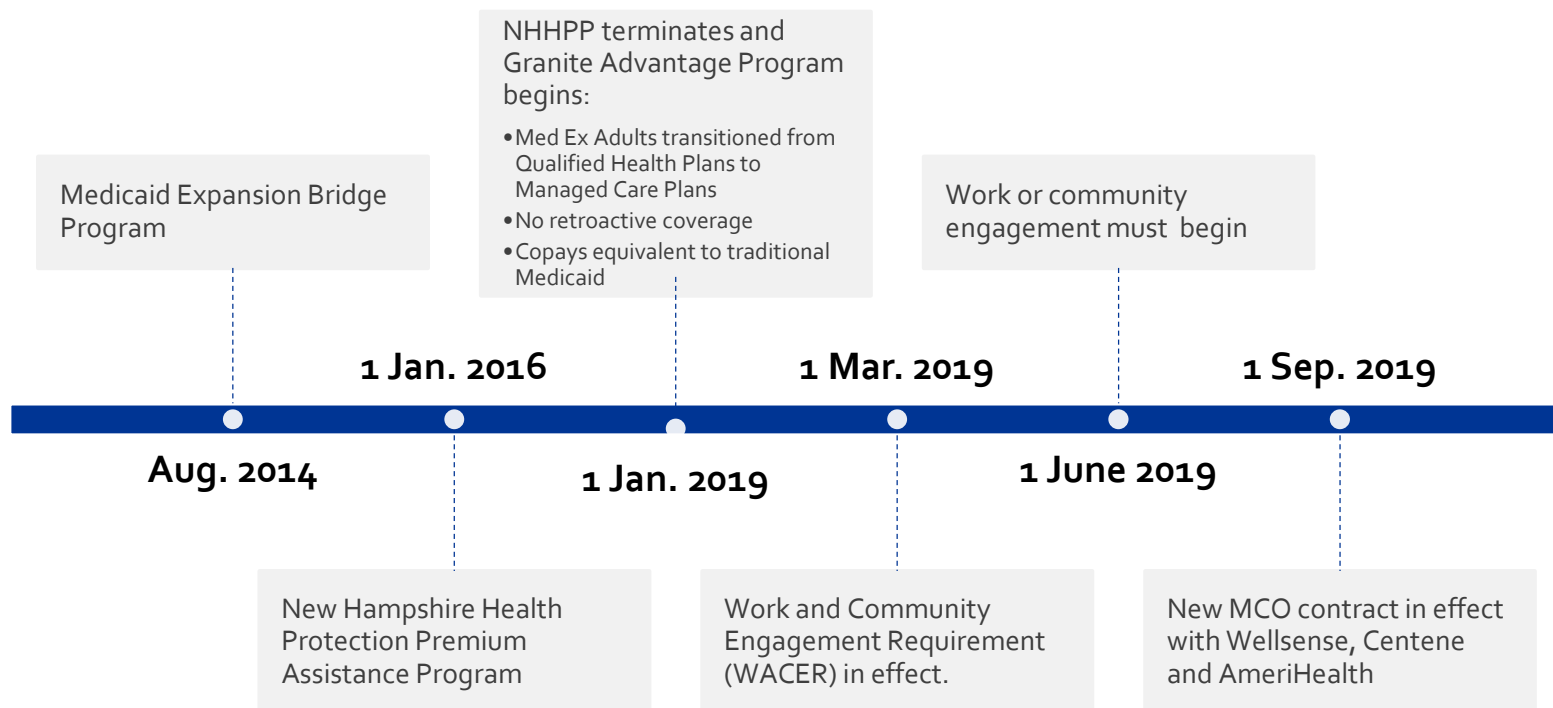
Granite Advantage Health Care Program Statute, RSA 126-AA (SB 313)

- <http://www.gencourt.state.nh.us/rsa/html/x/126-aa/126-aa-mrg.htm>

Rules

- NH Granite Advantage Health Care Program
 - <https://www.dhhs.nh.gov/oos/aru/documents/he-w-837-ir.pdf>
- Granite Workforce Pilot Program, He-W 639
 - <https://www.dhhs.nh.gov/oos/aru/documents/he-w-639-ir.pdf>

The Context: Changes For NH Medicaid Expansion



The Granite Advantage Program: 1115 Waiver Application

- ❖ 5 years of coverage for adults age 19-64
- ❖ **Work and Community Engagement Requirement: 100 hours a month unless exempt**
- ❖ **Retroactive Coverage:** New Hampshire will not provide coverage to expansion adults prior to the date of application.
- ❖ **Presumptive Eligibility Authority for Corrections:** Allow State and county correctional facilities to conduct presumptive eligibility determinations for inmates.
- ❖ *Citizenship and Residency Documentation: The State requested (and has not received) authority to make eligibility for Granite Advantage contingent upon applicants verifying United States citizenship with two forms of paper identification, and New Hampshire residency with either a New Hampshire driver's license or a non-driver's picture identification card.*
- ❖ *Asset Test: The State requested but did not receive authority, to consider applicant or beneficiary assets in determining eligibility for the Granite Advantage program such that individuals with countable assets in excess of \$25,000 would not be eligible for the program.*
- ❖ **Other Eligibility Policy Changes:** The State will require beneficiaries to provide all necessary information regarding eligibility, in compliance with DHHS rules; inform the department of any changes within 10 days of such change; and at the time of enrollment, acknowledge that the program is subject to cancellation upon notice.

THE IMPLEMENTATION DETAILS

Procedural History of Medicaid Expansion and the WACER

2019

- Beneficiaries transitioned from Premium Assistance Program to managed care on January 1
- **Elimination of retroactive eligibility** for those eligible for the Granite Advantage Program, *except*
 - Pregnant women
 - Infants and children under 19
 - Parents and other caretaker relatives
 - ABD eligibility including those requesting long term care
- **Work Requirement:** Effective March 1, at least 75 days after enrollment, all beneficiaries enrolled in the Granite Advantage Program must meet the 100 hours of work or other community engagement activities each calendar month, be exempt, or show good cause exception for the month.

Exemptions!

- Disabled
- Pregnant
- Medically frail (as certified by a licensed medical professional)
- A parent of a dependent under age 6 or a caretaker. Note that the exemption applies to only one parent in a two parent household.
- Temporarily sick, incapacitated, or getting treatment in the hospital, including residential or outpatient substance use disorder treatment for more than 9 hours per week
- Participating in a state-certified drug court program, as certified by the Administrative Office of the Superior Court
- Exempt from another work requirement, including NHEP and SNAP
- Enrolled in the Health Insurance Premium Payment (HIPP) Program

Work and Community Engagement Requirement (WACER): Qualifying Activities

At least 75 days after enrollment to prepare to meet the 100 hours of work or other community engagement activities each calendar month	Employment	Training
Education	Job searching	Community service or public service
Caregiving services	Participation in substance use disorder treatment	Participation in another work requirement, including <u>NHEP</u> , <u>SNAP</u> , or <u>Refugee Resettlement Program</u> .

New Hampshire – Letters and Phone Calls

<https://www.dhhs.nh.gov/medicaid/granite/>

February 5, 2019

Notice to Granite Advantage
Health Care Program
members about Work and
Community Engagement
Requirement (WACER)

February 26, 2019

Notice sent indicating
member's Community
Engagement status

April 2, 2019

Reminder letters sent to
Medically Frail Granite
Advantage members who
have not yet submitted their
Medical Frailty Form

May 14, 2019

Letters to GA members who
are not exempt from the
WACER reminding them
that the requirement begins
June 1st.

February 26 Letters: Details

Mandatory to Participate

- “Your community engagement status is mandatory”

Mandatory to Participate and Previously Reported as Medically Frail

- “You have told us previously that you are Medically Frail”
- “You need to provide documentation from a licensed medical professional of your frailty”

Mandatory to Participate and Subject to Another Work Requirement

- “Your community engagement status is mandatory”
- “Currently due to your enrollment in SNAP you are considered compliant with the Community engagement requirements while you remain active in SNAP”

Exempt from Participating

- Your Community Engagement Status is “exempt”
- The Exemption reason is “disabled”

Sample Letter from DHHS ~50,000 beneficiaries (Notification of suspensions will go out mid-July)



“You got this letter because you or someone in your household gets medical coverage from the Granite Advantage Health Care Program (GA). There is a change in the Community Engagement start date. Community Engagement was planned to start in January 2019.”



“The Community Engagement requirement now starts in March 2019.”



“This notice is about what you might need to do to maintain continued Medicaid eligibility. If you are required to participate, the first day you will need to start complying with the Community Engagement requirement is June 1, 2019.”



“Some members will be exempt from this requirement. You will get a notice in a few weeks that will say if you are exempt or must do qualifying activities based on the information we have. Please let us know if there is other information we should consider.”

MCAC March 2019: According to DHHS, just over 22,000 will have to comply or seek an exemption.

Good Cause Requests

- We understand that things out of your control happen. If something out of your control stops you from doing your hours you can submit a good cause request that may cover your missed hours. Some **good causes** are family emergencies, car break downs, or you or someone in your household having a serious illness. For more information about good cause, please visit:
<https://nheasy.nh.gov/#/granite-advantage/participation/cure>

E.g., Exemption Confusion: “Self-Employed”? SUD Treatment?

- “Your employment hours will be automatically credited for community engagement based on the job(s) you have reported to your eligibility worker.”
- **Self-employed now included** : “If you work for yourself, the net profit that you reported to your eligibility worker is used to calculate your monthly income. That monthly net profit, before depreciation, is then divided by the Federal Minimum Wage (currently \$7.25) to calculate your employment hours. You can self attest to additional hours if or when your hours are more than what is calculated based on your net profit. For example, this may be the case for someone who is starting a new business. If your employment information is different than what is reported, you have to report a change either through NH EASY, by mail, or by calling 1-844-ASK-DHHS.”

Substance Use Disorder Treatment

- **What level of treatment allows for exemption?**
- **Receiving outpatient substance use disorder treatment less than 9 hours per week counts as an activity.** You will be credited for the total number of hours that you receive treatment in the calendar month. You must report your hours.

Complicating Factors For Beneficiaries

- Returned letters and missed phone calls: where are the 22,000 who are not exempt? How do you find them?
- How to Inform beneficiaries?
 - Double sided letters?
 - Language?
 - Exemption v. qualifying activities v. good cause confusion
 - Rumors
- MCO involvement - delay
- Compliance
 - Form confusion
 - Access to internet
 - Work capacity and supports
 - Seasonal activities
 - Education hours
 - Questions

Complicating Factors for Health and Community Providers

- Notification and training
- Identifying Granite Advantage enrollees?
- Workforce needs
- Forms, exemptions and ethical considerations
- Reimbursement during suspensions (unique to NH)
- Need for 24/7 access to enrollment information due to elimination of retroactive coverage
- Navigators or assistors?
- Investment in assistance v. Medicaid revenue
- Source of information
- Stigma and risk

Waiver Challenges

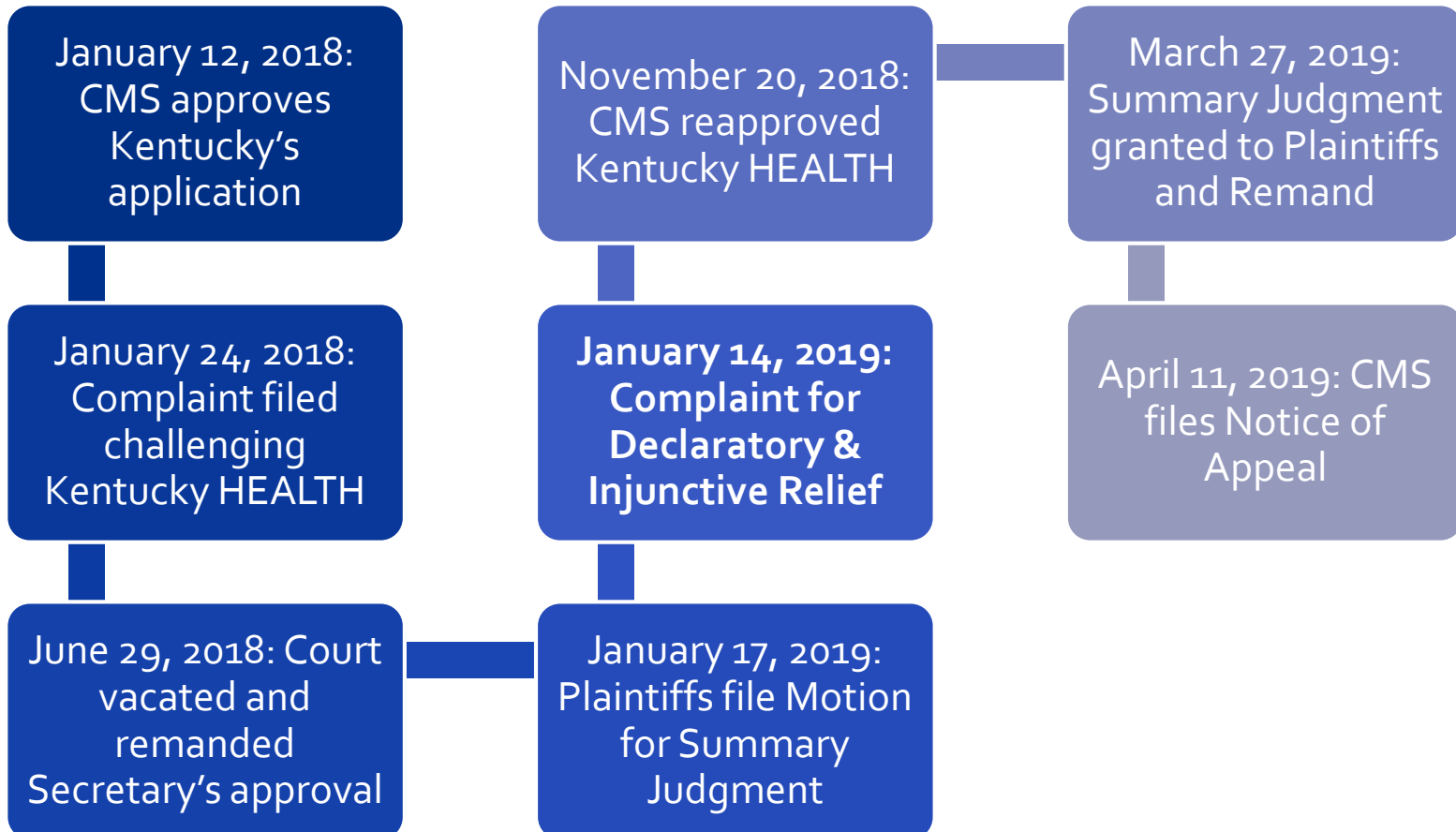
Stewart v. Azar - Highlights

- **June 29, 2018**, the DC federal district court issued a decision in case brought by 16 Kentucky Medicaid enrollees challenging the Secretary of Health and Human Services' (HHS) approval of the Kentucky HEALTH Section 1115 waiver program.

"...[T]he Secretary never adequately considered whether Kentucky HEALTH would in fact help the state furnish medical assistance to its citizens, a central objective of Medicaid. This signal omission renders his determination arbitrary and capricious. The Court, consequently, will vacate the approval of Kentucky's project and remand the matter to HHS for further review." (Stewart at. 3)

- **April 19th, 2019**, the United States Court of Appeals for the District of Columbia granted the Trump administration's request for an expedited appeal in *Gresham v Azar* and *Stewart v Azar*.

Kentucky





Arkansas



**June 1, 2018: work requirements took effect for
ages 30-49**

**August 14, 2018: Complaint for Declaratory &
Injunctive Relief filed**

**November 6, 2018: Plaintiffs file Motion for
Summary Judgment**

**January 2019: requirements took effect for ages
19-29**

**March 27, 2019: Plaintiff's Motion for Summary
Judgment Granted; Remanded to HHS**

**April 11, 2019: Notice of Appeal filed by CMS
and Arkansas**

New Hampshire: Philbrick v. Azar: 2019

March: Complaint for Declaratory and Injunctive Relief ,
Filed in the United States District Court for the District of
Columbia – Judge Boasberg

April: NH AG intervened

June 28: All briefs due



CMS's Reasoning the Same

- CMS explained to NH that the Secretary may approve Granite Advantage “if, in his judgment, the project is likely to assist in promoting the objectives of title XIX.”
- CMS identified those objectives as furnishing 1) medical assistance, and 2) rehabilitation and other services to assist families and individuals attain or retain capability for self-care.
- CMS then noted “there is little intrinsic value in paying for services if those services are not advancing the health and wellness of the individual receiving them, or otherwise helping the individual attain independence.”
- Based on this reasoning, CMS identified advancing the health and wellness needs of its beneficiaries as an additional Medicaid objective, and asserted that it is appropriate for the state to structure its demonstration program in a manner that prioritizes this objective.
- CMS also recognized that improving beneficiary health and financial independence improves the well-being of Medicaid beneficiaries “and, at the same time, allow[s] states to maintain the long-term fiscal sustainability of their Medicaid programs and to provide coverage for more medical services to more Medicaid beneficiaries,” which advances the objectives of the Medicaid program.

What Are the Objectives of the Medicaid Program?

- CMS identified two main ways that Granite Advantage promotes the objectives of the Medicaid program:
 - 1) promoting beneficiary health and financial independence, and
 - 2) furnishing medical assistance in a manner that improves the sustainability of the safety net.
- CMS reasoned that because NH's authorizing statute requires a work and community engagement requirement, allowing a waiver for such a requirement must advance the objectives of Medicaid. Otherwise expansion population would have no coverage.

What Next?

