# SUPREME COURT OF THE UNITED STATES

No. 96–1375

REGIONS HOSPITAL, PETITIONER *v.* DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February 24, 1998]

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, dissenting.

The Medicare Act requires the Secretary to reimburse teaching hospitals for the Graduate Medical Education (GME) costs attributable to Medicare Services. See 42 U. S. C. §1395 *et seq.* For fiscal years 1965 through 1984, hospitals were entitled to be reimbursed for the actual "reasonable costs" incurred each year. See 42 U. S. C. §§1395f(b)(1), x(v)(1)(A). In 1986, however, Congress directed that thereafter reimbursement rates per full-time-equivalent resident would be indexed to each hospital's 1984 GME costs "recognized as reasonable under this subchapter," divided by the number of full-time-equivalent residents that year. See 42 U. S. C. §1395ww(h)(2)(A).[1] The Court today determines that the phrase "recognized as reasonable under this subchapter" can reasonably be construed as an authorization for the Secretary to redetermine a hospital's composite 1984 GME costs, rather than

[1] 42 U. S. C. §1395ww(h)(2)(A) provides that "[t]he Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident."

as a reference to a previously made determination; and thus concludes, pursuant to *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984), that the Secretary's reaudit regulation is lawful, see 42 CFR §413.86(e)(1)(iii) (1996).[2] See, *ante*, at 1-2. Because I believe that the 1984 GME costs "recognized as reasonable" in 42 U. S. C. §1395ww(h)(2)(A) must be the "reasonable costs" for which the Secretary actually reimbursed the hospitals in 1984, I respectfully dissent.

On April 7, 1986, the enactment date of the provision tying future GME reimbursements to 1984 GME costs, the Secretary had in place a longstanding procedure for determining a hospital's reasonable GME costs. Under that procedure, the three-year window during which the Secretary could revise the 1984 determinations had not yet closed for any hospital entitled to reimbursement, see 42 CFR §405.1885(a) (1985). Indeed, for many hospitals, like Regions, the three-year period had not yet, or had barely, begun to run, since the 1984 costs had not yet, or had only recently, been determined. On February 28, 1986, Regions' fiscal intermediary, see 42 U. S. C. §1395h, determined that Regions had incurred reasonable 1984 GME costs of $9,892,644 (Regions was later reimbursed for that amount); that decision became final under the Secretary's regulations on March 1, 1989. Nonetheless, in 1991, pursuant to the 1989 regulation now before the Court, Regions' fiscal intermediary reopened the prior determination of reasonable 1984 GME costs (albeit for the limited purpose of calculating future reimbursement rates), reducing them to $5,916,868.

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[2] 42 CFR §413.86(e)(1)(iii) (1996) provides that "[i]f the hospital's cost report for its GME base period is no longer subject to reopening under §405.1885 of this chapter, the intermediary may modify the hospital's base-period costs solely for purposes of computing the per resident amount."

In light of the procedures already in place for determining a hospital's reasonable 1984 GME costs when §1395ww(h) was enacted, that provision's reference to a hospital's 1984 GME costs "recognized as reasonable under this subchapter" cannot reasonably be interpreted to authorize the Secretary to determine a hospital's 1984 GME costs anew. It is true, as the Court points out, that in isolation the phrase "recognized as reasonable" is ambiguous: it "might mean costs the Secretary (1) *has* recognized as reasonable for 1984 GME cost reimbursement purposes, or (2) *will* recognize as reasonable as a base for future GME calculations." *Ante*, at 8. But as we have insisted, the words of a statute are *not* to be read in isolation; statutory interpretation is a "holistic endeavor," *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988). Viewing the words "recognized as reasonable" in their entire context, they cannot reasonably be understood to authorize a new composite cost determination.

To begin with, it should be borne in mind that §1395ww(h)(2)(A) does not provide directly for a determination of composite costs "recognized as reasonable." It provides for a determination of *the average per full-time resident* of costs recognized as reasonable. If this is to be interpreted as an authorization for a *new* "recognition of composite-cost reasonableness," so to speak, it is a most oblique and indirect authorization– so oblique and indirect as to be implausible. That new computation of composite costs, rather than the relatively mechanical averaging of those costs per full-time resident, would have been the major feature of the provision, so that one would have expected it to read something like "the Secretary shall determine each hospital's reasonable direct GME costs for the 1984 cost reporting period, and the average amount of those costs attributable to each full-time-equivalent resident."

It is impossible to imagine, moreover, how the words "recognized as" found their way into the provision *unless* they were meant to refer to the recognition of reasonableness already made under the pre-existing system. The interpretation that the Court accepts treats them "essentially as surplusage— as words of no consequence," *Ratzlaf* v. *United States*, 510 U. S. 135, 140-141 (1994), which, of course, we avoid when possible.

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times." *Market Co.* v. *Hoffman*, 101 U. S. 112, 115-116 (1879).

See also *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 36 (1992); *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 486 (1985). If §1395ww(h)(2)(A) conferred a new cost-determination authority upon the Secretary, to be exercised in the future, it would have sufficed (and would have been normal) to direct the Secretary "to determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount reasonable under this subchapter for direct GME costs of the hospital for each full-time-equivalent resident." The specification of an amount "*recognized as* reasonable under this subchapter" only makes sense as a reference to a determination made (or to be made) independent of §1395ww(h)(2)(A) itself— *i.e.*, to the amount "recognized" under the procedures already in place for determining the reasonable 1984 GME costs. Indeed, under the Secretary's interpretation the words "recognized as" become not only superfluous but positively misleading, since without them

there would be no question that authority for a new determination was being conferred. It is an unacceptable interpretation which causes the critical words of the text to be (1) meaningless and (2) confusing.

That "recognized as" refers to a determination under the pre-existing regime is strongly confirmed by another provision of the statute that enacted §1395ww(h)(2)(A) into law: "The Secretary . . . *shall report* to [specified Committees of the Senate and House of Representatives], *not later than December 31, 1987*, on whether [§1395ww(h)] should be revised to provide for greater uniformity in the approved *FTE resident amounts established under [§1395ww(h)(2)]*, and, if so, how such revisions should be implemented." §9202(e), 100 Stat. 176 (emphases added). This surely envisions that the Secretary will know the amounts established under §1395ww(h)(2)(A) by December 31, 1987– *well within the three-year window for revisiting and revising any teaching hospital's actual 1984 reimbursement amounts.* The Secretary's assertion that §1395ww(h)(2)(A) confers a *new* authority to make cost determinations can technically be reconciled with this directive for a December 31, 1987, evaluation only by saying that the new authority was supposed to be exercised before that date. But if it was supposed to be exercised before that date, it was entirely superfluous, since all prior determinations could be revised before that date under the old authority. In short, given the evaluation deadline, the Secretary's interpretation makes no sense.

Most judicial constructions of statutes solve textual problems; today's construction creates textual problems, in order to solve a practical one. The problem to which the Secretary's implausible reading of the statute is the solution is simply this: Though the Secretary had plenty of time, after enactment of §1395ww(h)(2)(A), to correct any erroneous determinations of 1984 GME costs before the three-year revision window closed, she (or more precisely

her predecessor) neglected to do so. We obligingly pull her chestnuts from the fire by accepting a reading of the statute that is implausible. The Court asks the following question:

> "Had Congress contemplated that the Secretary would not have responded to the 1986 GME Amendment swiftly enough to catch 1984 NAPR errors within the Secretary's three-year reopening period, what would the Legislature have anticipated as the proper administrative course? Error perpetuation until Congress plugged the hole? Or the Secretary's exercise of authority to effectuate the Legislature's overriding purpose in the Medicare scheme: reasonable (not excessive or unwarranted) cost reimbursement?" *Ante*, at 9-10.

The answer to that question is easy. But it is the wrong question. Of course it can *always* be assumed that Congress would prefer *whatever* would preserve, in light of unforeseen eventualities, "the Legislature's overriding purpose." We are not governed by legislators' "overriding purposes," however, but by the laws that Congress enacts. If one of them is improvident or ill conceived, it is not the province of this Court to distort its fair meaning (or to sanction the Executive's distortion) so that a *better* law will result. The immediate benefit achieved by such a practice in a particular case is far outweighed by the disruption of legal expectations in *all cases*— disruption of the *rule of law*— that government by *ex post facto* legislative psychoanalysis produces.

I would pronounce the Secretary's reaudit regulation *ultra vires* and reverse the Court of Appeals.