In *Moda Health Plan v. United States* the Supreme Court will decide whether Congress may enact appropriations riders restricting the sources of funding available to pay health insurers for losses incurred that were supposed to be paid per federal law.

The Affordable Care Act’s (ACA) risk corridor program provided that if a health insurance plan participating in the exchange lost money between 2014-2016 it would receive a payment from the federal government based on a formula defined in the statute. If it made money the plan had to pay the federal government based on a formula. The purpose of the program was to induce health insurance companies to offer plans on the exchange despite the fact they didn’t have reliable data to price the plans.

The Government Accountability Office (GAO) identified a particular funding source the federal government could use to make payments. Congress passed appropriations riders for all three years disallowing that funding source to be used to make risk corridor payments.

Over the three-year period the risk corridor program was short $12 billion. Moda Health Plan claims it is owed $290 million.

The Federal Circuit held that the federal government is not obligated to pay the statutory formula for what it owes insurers under the risk corridor program because of the appropriations riders.

The Federal Circuit concluded that the section of the ACA related to the risk corridor program is “unambiguously mandatory” and requires the federal government to “make payments at the full amount indicated by the statutory formula if payments in fell short.”

However, the federal government suspended its obligation to pay the full formula amount through the riders. “Congress clearly indicated its intent here. It asked GAO what funding would be available to make risk corridors payments, and it cut off the sole source of funding identified beyond payments in. It did so in each of the three years of the program’s existence.”

Moda Health plan argues that the Congressional intent the Federal Circuit relied on was “divined not from the text of the riders (which simply restricted one source of funds to honor the commitment), but from two snippets of purported legislative history. That holding disregards literally centuries of precedent holding that a later statute cannot be construed to repeal or suspend an earlier one unless that construction is ‘necessary and unavoidable.’” “To state the obvious, legislative history cannot satisfy that demanding test, and the decision below cannot be reconciled with this Court’s precedents.”

Moda Health Plan also argues that it has a contractual right to receive full payment “from the combination of [the statutory] text, HHS’s implementing regulations, HHS’s preamble statements before the ACA became operational, and the conduct of the parties.” The Federal Circuit disagreed stating: “Here, no statement by the government evinced an intention to form a contract. The statute,
its regulations, and HHS’s conduct all simply worked towards crafting an incentive program. These facts cannot overcome the ‘well-established presumption’ that Congress and HHS never intended to form a contract by enacting the legislation and regulation at issue here.”

This case does not directly impact states and local governments as they don’t offer health insurance plans on the exchange. About 20 states filed a certiorari-stage amicus brief [4] asking the Court to review the Federal Circuit court’s decision because of its implications for the states as regulators of health insurance.

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