Amy Howe at SCOTUSblog aptly describes Maine Community Health Options v. United States as “relatively low-profile but super-high dollar!” In this case the Supreme Court held 8-1 that health insurance plans can sue the federal government to recover unpaid Risk Corridors payments under the Affordable Care Act (ACA).

The Risk Corridors program was designed to induce health insurance plans to participate in the new health insurance exchanges called for by the ACA. Insurers lacked “reliable data to estimate the cost of providing care for the expanded pool of individuals seeking coverage.” To reduce their risk of losing money, §1342 states that for three years, the eligible profitable plans “shall pay” the Secretary of the Department of Health and Human Services (HHS), while the Secretary “shall pay” the eligible unprofitable plans.

For each of the relevant three years, Congress included the following appropriations rider to a bill appropriating funds: “None of the funds made available by this Act . . . may be used for payments under [the risk corridor program].” The federal government, citing the appropriations riders, didn’t pay Risk Corridors deficiencies which totaled over $12 billion. A number of health insurance companies sued the federal government to recover their losses.

The Supreme Court, in an opinion written by Justice Sotomayor, held that the ACA obligated the federal government to pay participating insurers the full amount calculated by the statute, the appropriations riders didn’t diminish that obligation, and that the insurance companies could sue the federal government to recover the obligation.

The federal government argued that regardless of the appropriations riders the Constitution’s Appropriations Clause and the Anti-Deficiency Act made Risk Corridors payments contingent on appropriations by Congress. The Court responded that such “language appears nowhere in §1342, even though Congress could have expressly limited an obligation to available appropriations or specific dollar amounts.”

The Court next held that Congress failed to impliedly repeal the obligation by appropriations riders. The Court noted that “repeals by implication are not favored,” especially in the appropriations context. The Court cited to United States v. Langston (1886) where Congress established a statutory obligation to pay a particular salary but appropriated a lesser amount. “This Court held that Congress did not ‘abrogat[e] or suspen[d]’ the salary-fixing statute by ‘subsequent enactments [that] merely appropriated a less amount’ than necessary to pay, because the appropriations bill lacked ‘words that expressly or by clear implication modified or repealed the previous law.’” Similarly, in this case, “[t]he riders stated that ‘[n]one of the funds made available by this Act,’ as opposed to any other sources of funds, ‘may be used for payments under’ the Risk Corridors statute.”

Finally, the Court held that the health plans could sue the federal government under the Tucker Act for damages. Per the Tucker Act the federal government has waived immunity for certain damages suits in the Court of Federal Claims. For a statutory claim to fall within the Tucker Act’s immunity
waiver it must “fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.” According to the Court, “Section 1342’s triple mandate—that the HHS Secretary ‘shall establish and administer’ the program, ‘shall provide’ for payment according to the statutory formula, and ‘shall pay’ qualifying insurers—falls comfortably within the class of money-mandating statutes that permit recovery of money damages in the Court of Federal Claims.”

Justice Alito’s dissent criticizes the majority for “infer[ring] a private right of action that has the effect of providing a massive bailout for insurance companies that took a calculated risk and lost.”

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