

Blog Post

SCOTUS Rules Government Must Pay \$12 Billion to Unprofitable ACA Insurers

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Despite Congress' efforts to use riders to neutralize a provision of the Affordable Care Act (ACA or Act), the Federal government (Government) owes certain insurers \$12 billion. On April 27, 2020, the Supreme Court of the United States (SCOTUS) ruled 8-1 that congressional riders added to appropriations bills that funded the Centers for Medicare & Medicaid Services (CMS) in 2014, 2015, and 2016 did not, in fact, override the Government's payment obligations pursuant to the ACA's "Risk Corridors" provision at Section 1342 of the Act (Section 1342).

The Risk Corridors program provided a formula to determine whether health plans participating in the ACA's healthcare exchanges incurred gains or losses at the end of each of the first three years of Obamacare. Section 1342 states that profitable plans "shall pay" a sum to the Secretary of the Department of Health and Human Services (Secretary), while the Secretary "shall pay" a sum to eligible unprofitable plans.

For years 2014-2016, the amount of money that profitable insurers owed the Government fell below the amount that the Government owed non-profitable insurers, yielding a total deficit exceeding \$12 billion. The Government accepted payments from the profitable insurers but did not pay the non-profitable insurers, and four of those insurance

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companies filed suit in the Court of Claims. The Federal Circuit Court of Appeals ruled for the Government, finding that the riders “impliedly ‘repealed or suspended’ the Government’s obligation” to pay, despite acknowledging that “[r]epeals by implication are generally disfavored.”

SCOTUS first determined that the rules of statutory construction and the plain meaning of the “shall pay” language meant that the Government had a legal obligation to pay the non-profitable health plans under Section 1342. The Court took note that CMS had stated that the ACA required the Secretary to pay the amounts due the insureds pursuant to the Risk Corridor program, “even ‘in the event of a shortfall.’”

The Court then found that the congressional riders designed to block the Risk Corridor payments failed to do so. The riders for each of the years at issue were substantially similar and stated that “[n]one of the funds made available by this Act “. . . ” [to CMS] may be used for payments under” the Risk Corridor program in Section 1342. SCOTUS noted that “a mere failure to appropriate does not repeal or discharge an obligation to pay” and found that the riders’ language failed to “manifestly repeal or discharge” the Government’s payment obligation to the insurers.

The Supreme Court concluded that the insurers had a private cause of action for damages in the U.S. Court of Claims under the Tucker Act, 28 U.S.C. § 1491. Justice Samuel Alito served as the sole dissenter. He wrote that the Court had “basically gotten out of the business of recognizing private causes of action not expressly created by Congress,” but yet the majority decision “infers a private right of action that has the effect of providing a massive bailout for insurance companies that took a calculated risk and lost.”

SCOTUS’ majority opinion reversed the appellate court’s decision and remanded the four consolidated

cases back to the Court of Claims for further proceedings consistent with its opinion. Those cases are *Main Community Health Options v. U.S.*, *Moda Health Plan Inc. v. U.S.*, *BCBS of North Carolina v. U.S.*, and *Land of Lincoln Mutual Health Ins. Co. v. U.S.*

The full text of the Supreme Court Opinion can be found [here](#).

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