



Supreme Court Holds That The Federal Government Must Reimburse Health Insurers For \$12 Billion In Losses

Maine Community Health Options v. United States, Nos. 18-1023, 18-1028, 18-1038

Decided April 27, 2020

Today, the Supreme Court held 8-1 that Congress failed to effectively repeal the government’s obligation to make more than \$12 billion in payments to insurers under the Patient Protection And Affordable Care Act risk corridors program, and insurers may sue to recover the missed payments.

Background:

The Patient Protection And Affordable Care Act (“ACA”)—President Obama’s signature health care reform legislation—established “exchanges” on which previously uninsured individuals could purchase health insurance. To mitigate the risk to insurers and encourage them to participate in the new exchanges, the ACA created a three-year “risk corridors” program. Under the program, insurance companies that paid more in health care costs than they received in premiums would receive funds from the government to offset a fixed portion of their losses, while insurance companies that collected more in premiums than they paid in costs would pay back a fixed portion of their profit to the government.

After insurance companies had provided coverage and had set future premium rates, the Department of Health and Human Services announced that it would administer the program in a budget-neutral manner, using “payments in” from profitable insurers to make “payments out” to insurers who suffered losses. Congress later enacted language in an appropriations law limiting other sources of funding for payments out. Insurance companies who suffered losses on the exchanges sued the government in the Court of Federal Claims alleging that they were owed billions of dollars collectively in additional payments out. The Federal Circuit held

“Th[e] holdings reflect a principle as old as the Nation itself: The Government should honor its obligations.”

Justice Sotomayor,
writing for the Court

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that the insurers had received all payments due under the program because the appropriations law had “repealed or suspended” the government’s obligation to make additional payments.

Issue:

Did Congress limit the government’s obligation to make payments to insurers under the ACA’s risk corridors program by enacting an appropriations law restricting the sources of funds available to satisfy that obligation?

Court's Holding:

No. Although Congress may enact legislation repealing its obligation to make future payments, Congress did not clearly repeal its obligation under the ACA to make risk corridor payments, and the health insurers properly brought suit for damages under the Tucker Act in the Court of Federal Claims.

What It Means:

- The ruling means that insurers can seek more than \$12 billion in damages for missed payments under the risk corridors program, to be paid from the Judgment Fund—a standing appropriation by Congress of funds available to pay “final judgments, awards, compromise settlements, and interest and costs” awarded against the federal government. 31 U.S.C. § 1304(a)(1).
- The decision recognizes that “Congress can create an obligation directly through statutory language” that is “neither contingent on nor limited by the availability of appropriations or other funds.” For the same reason, Congress’s decision to cut funding for an obligation does not necessarily repeal the obligation absent manifest evidence of intent to repeal.
- The decision also clarifies the circumstances under which the government may be sued under the Tucker Act to enforce a statutory obligation. The Tucker Act waives the government’s immunity to monetary claims “founded . . . upon . . . any Act of Congress or . . . upon any express or implied contract with the United States,” 28 U.S.C. § 1491(a)(1), but does not create a cause of action. The Court endorsed longstanding Federal Circuit precedent holding that a statute’s use of the phrase “shall pay” “often reflects congressional intent ‘to create both a right and a remedy’ under the Tucker Act.”

The Court's opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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