

Huge Payday for Insurance Company under the Affordable Care Act's Exchanges

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$214 million dollars. That was the amount a Court of Federal Claims judge recently decided the government owes an Oregon health insurer for failing to make payments to the company for obligations under the Affordable Care Act (ACA). The ruling, in favor of Moda Health Plan, Inc. ("Moda"), may open the floodgates for other insurers that offered plans on the ACA's exchanges to get huge payments from the government.

The recently announced Republican legislative proposal to "repeal and replace" the ACA may affect appeals of this decision, and may limit its value as precedent. Additionally, the Trump administration will most likely not be happy about getting stuck with these big bills. But for the moment, the fact is that judicial decisions like this one have the potential to inflict significant damage to the financial viability of the ACA.

The ACA had provisions known as "risk corridors," which were designed to entice insurers like Moda to offer plans on the exchanges by limiting their potential for financial losses. Specifically, the government would pay insurers if they suffered losses during the first three years of the ACA's implementation, 2014 to 2016. Conversely, insurers would pay the government a percentage of any profits they received in each of these first three years.

Moda suffered losses on its health insurance plans during 2014 and 2015 and the government had only paid 12.6% of Moda's claimed risk corridors payment for 2014, and had made zero payments for 2015.

The court held that the risk corridor provisions require "full annual payments to insurers." The court stated that the exchanges were a government-created incentive program on which insurers could sell plans that satisfied certain ACA requirements. In return for insurers' participation, the government promised the risk corridors payments in specific sums as a financial backstop for unprofitable insurers,

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and breached that contract when it failed to make these payments.

Moda is the first domino to fall in favor of insurance companies that offered plans on the ACA's exchanges. Estimates are that another $8 billion may be owed to the insurance companies – and now they all may win their lawsuits.

Newly minted Attorney General Jeff Sessions must decide whether to appeal the Moda decision. We think it is likely that he will since another Court of Federal Claims judge ruled the opposite way in favor of the government on this very same issue in *Land of Lincoln Mutual Health Insurance v. U.S.*

Still, the Moda decision demonstrates that the government – and effectively the U.S. taxpayer – may owe insurers large sums of money moving forward.

For more information, please contact a member of our Health Care Innovation Team. You can also visit our Health Law Matters blog for more insight into legal issues impacting the health care industry.

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