

CLIENT ALERT

U.S. Supreme Court Hears Argument in *Maine* and Companion Cases

Dec.10.2019

On December 10, the U.S. Supreme Court heard argument in *Maine Cmty. Health Options et al v. United States* (a C&M case), on appeal from the U.S. Court of Appeals for the Federal Circuit. *Maine*, along with two companion cases, sought review of the Federal Circuit's opinion in the Affordable Care Act "risk corridors" cases, in which the Court held that while the ACA's risk corridors program contained a \$12.7 billion mandatory payment obligation on the part of the Government, that payment obligation was suspended by appropriations riders that restricted HHS funds available to satisfy the obligation. The Federal Circuit reached this conclusion notwithstanding the fact that the riders did not amend or repeal the statutory payment obligation and even though the health plans had already performed their own reciprocal obligations under the statute. The petitioners sought review of the Federal Circuit's opinion on several grounds, including (i) that the restriction of funds to an agency via appropriations rider does not extinguish a statutory payment obligation of the United States, and (ii) that a rider that does not by its terms repeal or amend a money-mandating statute cannot impliedly and retroactively extinguish the Government's payment obligation. "The central question to be decided is whether the government's failure or refusal to allocate money to pay a debt cancels that debt," says Kevin Lewis, CEO of Maine Community Health Options. "The government's argument is that future budgetary language can put a stranglehold on prior federal commitments well after the fact. [I]f left unchecked, this bait and switch tactic will place an increased risk on future dealings with the federal government." The *Maine* briefs are linked [here](#), [here](#), and [here](#).

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