

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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MODA HEALTH PLAN, INC.,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 17-1994
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant-Appellant.	)	

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**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMERICA’S  
HEALTH INSURANCE PLANS, INC. AS *AMICUS CURIAE* IN SUPPORT  
OF REHEARING EN BANC**

Pursuant to Federal Rule of Appellate Procedure 29(b) and Federal Circuit Rules 29 and 35(g), America’s Health Insurance Plans, Inc. (“AHIP”) hereby moves for leave to file a brief as *amicus curiae* in support of rehearing en banc. AHIP has conferred with counsel for all parties, none of whom opposes this motion. The proposed amicus brief will be filed simultaneously with this Motion.

AHIP is the national trade association representing the health insurance community. AHIP advocates for public policies that expand access to affordable healthcare coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation. AHIP’s members provide health and supplemental benefits through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. As a result, AHIP’s members have broad experience working with other healthcare stakeholders, including medical

providers as well as state and federal government agencies, to ensure that patients have access to needed treatments and medical services.

That experience gives AHIP extensive first-hand knowledge about the Nation's healthcare and health insurance systems and a unique understanding of how those systems work. Given the pervasive role of the federal government in those systems, including as a result of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 ("ACA"), AHIP's experience is that those systems can function as intended only when the government meets its obligations as a reliable business partner. AHIP supports en banc review because the panel opinion, by upending decades of Federal Circuit and Supreme Court precedent, jeopardizes the reliability of health insurance providers' ongoing business relationships with the federal government.

For the foregoing reasons, AHIP respectfully requests that this unopposed motion be granted and that it be permitted to file the proposed amicus brief.

Dated: August 10, 2018

Respectfully submitted,

By: /s/ Leslie B. Kiernan

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## CERTIFICATE OF INTEREST

As called for by Federal Circuit Rule 47.4, Counsel for *Amicus Curiae* America's Health Insurance Plans, Inc. certifies the following:

1. The full name of every party or amicus represented by me is:

America's Health Insurance Plans, Inc.

2. The name of the real party-in-interest (if the party named in the caption is not the real party in interest) represented by me is: Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None. America's Health Insurance Plans, Inc. has no parent corporation and is a trade association whose members have no ownership interests.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this Court are:

AKIN GUMP STRAUSS HAUER & FELD LLP: Leslie B. Kiernan, Pratik A. Shah, and Robert K. Huffman.

DEUTSCH HUNT PLLC: Hyland Hunt and Ruthanne M. Deutsch.

Ralph C. Nash, Professor Emeritus, George Washington University Law School.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:

Federal Circuit

*Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224

*Blue Cross and Blue Shield of North Carolina v. United States*, No. 17-2154

*Maine Cmty. Health Options v. United States*, No. 17-2395

Court of Federal Claims

*Alliant Health Plans, Inc. v. United States*, No. 16-1491C (Braden, J.)

*BCBSM, Inc. v. United States*, No. 16-1253C (Coster Williams, J.)

*Blue Cross and Blue Shield of Alabama v. United States*, No. 17-347C  
(Campbell-Smith, J.)

*Blue Cross and Blue Shield of Kanas City v. United States*, No. 17-95C  
(Braden, J.)

*BlueCross BlueShield of Tennessee v. United States*, No. 17-348C (Horn, J.)

*Blue Cross of Idaho Health Service, Inc. v. United States*, No. 16-1384C  
(Lettow, J.)

*Common Ground Healthcare Cooperative v. United States*, No. 17-877C  
(Sweeney, J.)

*EmblemHealth, Inc. v. United States*, No. 17-703C (Wheeler, J.)

*Farmer v. United States*, No. 17-363C (Campbell-Smith, J.)

*First Priority Life Ins. Co. v. United States*, No. 16-587C (Wolski, J.)

*Health Alliance Medical Plans, Inc. v. United States*, No. 17-653C  
(Campbell-Smith, J.)

*Health Net, Inc. v. United States*, No. 16-1722C (Wolski, J.)

*Health Republic Ins. Co. v. United States*, No. 16-259C (Sweeney, J.)

*HPHC Ins. Co., Inc. v. United States*, No. 17-87C (Griggsby, J.)

*Medica Health Plans v. United States*, No. 17-94C (Horn, J.)

*Minuteman Health Inc. v. United States*, No. 16-1418C (Griggsby, J.)

*Molina Healthcare v. United States*, No. 17-97C (Wheeler, J.)

*Montana Health CO-OP v. United States*, No. 16-1427C (Wolski, J.)

*Neighborhood Health Plan, Inc. v. United States*, No. 16-1659C (Smith, J.)

*New Mexico Health Connections v. United States*, No. 16-1199C (Bruggink, J.)

*Ommen v. United States*, No. 17-712C (Lettow, J.)

*Sanford Health Plan v. United States*, No. 17-357C (Bruggink, J.)

Dated: August 10, 2018

By: /s/ Leslie B. Kiernan  
Leslie B. Kiernan

**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing motion with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system this 10th day of August, 2018, and served a copy on counsel of record by the CM/ECF system.

Dated: August 10, 2018

/s/ Leslie B. Kiernan  
Leslie B. Kiernan