

No. 17-1994

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

MODA HEALTH PLAN, INC,
Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,
Defendant-Appellant.

Appeal from the U.S. Court of Federal Claims,
Case No. 1:16-cv-00649-TCW, Judge Thomas C. Wheeler

**UNOPPOSED MOTION BY ASSOCIATION FOR COMMUNITY
AFFILIATED PLANS AND THE ALLIANCE OF COMMUNITY HEALTH
PLANS TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF MODA
HEALTH PLAN, INC.'S PETITION FOR REHEARING EN BANC**

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August 13, 201

Pursuant to Federal Circuit Rules 35(g) and 40(g), Association for Community Affiliated Plans (“ACAP”) and Alliance of Community Health Plans (“ACHP”) respectfully requests leave of the Court to file a Brief of *Amici Curiae* in Support of Moda Health Plan, Inc.’s (“Moda”) Petition for Rehearing En Banc. *See* Dkt. No. 89.

GROUND FOR THE MOTION

ACAP is a national trade association representing community-based not-for-profit health plans, many of whom participate in health-insurance marketplaces under the Affordable Care Act (“ACA”).¹ Collectively, ACAP’s 62 Medicaid, Medicare, and Marketplace plans serve more than 21 million enrollees in 29 states. Many enrollees are among the nation’s poorest and sickest people who lack access to other health insurance. In contrast to many other insurers, ACAP member health plans primarily participate in the low-margin Medicaid market and rarely participate in the higher-margin large group employer market.

The Alliance of Community Health Plans (“ACHP”) is a national leadership organization whose members are not-for-profit, community-based, and regional health plans or subsidiaries of not-for-profit health systems. ACHP’s member health plans provide coverage and care for more than 21 million Americans across 32 states and the District of Columbia. These organizations focus on improving the health of

¹ All parties have consented to the filing of this brief. No party’s counsel authored this brief in whole or in part, and no person other than *amici*, their members, and their counsel contributed money intended to fund preparing or submitting this brief.

the communities they serve and are on the leading edge of innovations in affordability and quality of care.

Amici's members are owed an estimated \$1.88 billion under the risk corridors program. These unpaid debts will have severe impacts on community-based health insurers and their insureds. *Amici* submit this brief to highlight the legal and practical problems the panel decision will cause, absent reversal by the full Court.

STATEMENT OF CONSENT

Plaintiff-Appellee Moda and Defendant-Appellant United States of America consent to this filing.

RELIEF SOUGHT

The *amici* respectfully move the Court to enter and consider the attached *amicl curiae* brief supporting Moda's petition for en banc rehearing in the above captioned case, Dkt. No. 89.

Dated: August 13, 2018

Respectfully submitted,

/s/ William L. Roberts

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, counsel for *amici curiae* Association for Community Affiliated Plans and the Alliance of Community Health Plans certifies the following:

1. The full name of every party or *amici* represented by one or more of the undersigned counsel is: Association for Community Affiliated Plans; Alliance of Community Health Plans
2. The name of the real party in interest (if the party in the caption is not the real party in interest) represented by one or more of the undersigned counsel is: None
3. All parent corporations and publicly held companies that own 10% or more of stock in the party: None
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 (and who have not or will not enter an appearance in this case) are: The attorneys who have entered appearances are: William L. Roberts, Jonathan W. Dettmann, Nicholas J. Nelson, and Kelly J. Fermoye of Faegre Baker Daniels, LLP.
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

Affinity Health Plan, Inc. v. United States, No. 18-110C (Kaplan, J.)

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.)

Community Health Choice, Inc. v. United States, No. 18-5C (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.)

MDWise Marketplace, Inc. v. United States, No. 17-1958C (Coster Williams, 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.)

Sendero Health Plans, Inc. v. United States, No. 17-2048C (Griggsby, J.)

Dated: August 13, 2018

/s/ William L. Roberts
William L. Roberts

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned hereby certifies that foregoing Motion complies with the type-volume limitations in Federal Rule of Appellate Procedure 27(d)(2)(A) and Federal Circuit Rule 27(d). According to the word count function of the word-processing system used to prepare this Motion, it contains 353 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b). This Motion has been prepared in proportionately spaced typeface using Microsoft Word 2010 in 14-point, Garamond.

Dated: August 13, 2018

Respectfully submitted,

/s/ William L. Roberts

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of August, 2018, a copy of the foregoing was filed electronically with the Court's Electronic Case Filing ("ECF") system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

Dated: August 13, 2018

Respectfully submitted,

/s/ William L. Roberts

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