Court Mostly Upholds Coverage of PrEP and Preventive Health Care, for Now

A federal appeals court ruled that eight employers don't have to cover certain preventive health care, but is future coverage for all at risk? Learn more at a Zoom townhall.

June 25, 2024 By Trent Straube

Following a federal appeals court decision it deemed "something of a mixed bag," most health insurers must continue to cover certain preventive services and their related costs, including pre-exposure prophylaxis (PrEP) to prevent HIV along with screenings for cancer. However, the court ruled against the system that decides which procedures must be covered, declaring that the agency behind the health coverage requirement operates unconstitutionally.

You can read the court's ruling in full here.

In short, only the eight businesses that brought the Texas lawsuit, Braidwood v. Becerra, will no longer be required to cover certain preventive health care services. Although the 5th Circuit Court of Appeals in New Orleans didn't strike down the prevention coverage mandate nationwide that is part of the Affordable Care Act (ACA, or Obamacare), the case was sent back to the lower court and could eventually land at the Supreme Court, potentially endangering robust prevention coverage in the future.

BREAKING: The U.S. Court of Appeals for the Fifth Circuit today issued its ruling in Braidwood v. Becerra, a challenge...

Posted by Lambda Legal on Friday, June 21, 2024

Under current ACA guidelines, a panel of experts called the U.S. Preventive Services Task Force (USPSTF) grades preventive services; those that receive an A or B must be covered by health insurance plans. (For a complete list of services with an A or B grade, visit

USPreventiveServicesTaskForce.org.)

In earlier rulings involving this case, a Texas judge said that because the USPSTF's members are not appointed by the president and approved by the Senate, the panel is unconstitutional.

If this sounds confusing or threatening, you can learn more about the ruling and what it means during the Braidwood v. Becerra Townhall held via Zoom on Friday, June 28, at 3 p.m. ET (12 p.m. PT) organized by PrEP4All, the Center for HIV Law and Policy, the Center for Health Law and Policy Innovation at Harvard and Lambda Legal. You can register here.

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Posted by Harvard Law School Center for Health Law and Policy Innovation on Monday, June 24, 2024

The case stems from a 2020 lawsuit challenging PrEP coverage that read in part: "The PrEP mandate forces religious employers to provide coverage for drugs that facilitate and encourage homosexual behavior, prostitution, sexual promiscuity and intravenous drug use. It also compels religious employers and religious individuals who purchase health insurance to subsidize these behaviors as a condition of purchasing health insurance. This substantially burdens the exercise of religion."

PrEP refers to daily pills or long-acting injectables that are highly effective at preventing HIV. They are for anyone at risk for HIV, including heterosexual people and married couples in which one person is living HIV. To learn more, see the POZ Basics on HIV Prevention.

"While we were predicting the worst, at the moment insurers will still have to cover preventive services, including PrEP, except for the original plaintiffs. That is the good news," said Carl Schmid, executive director of the HIV+Hepatitis Policy Institute, in a statement.

"The bad news is, the court still finds the mandate to cover USPSTF recommended services unconstitutional and now asks the lower court to review both the [Health Resources and Services Administration] and [Advisory Committee on Immunization Practices] preventive services," Schmid continued. "The case is not going to the Supreme Court at this time but back to the lower court. Coverage of preventive services continues."

“Lambda Legal is relieved after the recent narrow decision by the U.S. Court of Appeals for the Fifth Circuit in the case of Braidwood v. Becerra that ruled most of the nation’s insurance providers must continue to cover PrEP medication and other preventative services,” said Lambda Legal HIV project director Jose Abrigo in a statement.

“Because the ruling is limited to the plaintiffs in the Braidwood case, the broader protections and health care policies at the national level providing access to preventative care remain intact. However, the narrow scope of this ruling does not diminish our concerns about the threat posed to access by this case and the potential for future challenges that could threaten the health care rights and protections for millions of Americans.

“Preventative care is a cornerstone of a healthy society, ensuring that individuals can lead long, fulfilling lives while reducing the overall burden on the health care system.”

For background on this case, see “UPDATE: Court Pauses Judge’s Ruling to End Health Coverage of Some Preventive Services” and “Judge’s Decision Would Make Some No-Cost Cancer Screenings a Thing of the Past.”

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