Court Mostly Upholds Coverage of PrEP and Preventive Care

Most employers must continue to cover preventive services, but future coverage may still be at risk.

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Following a federal appeals court decision, most health insurers must continue to cover certain preventive services and their related costs, including pre-exposure prophylaxis (PrEP) to prevent HIV as well as 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.

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 that is part of the Affordable Care Act (ACA, or Obamacare) nationwide, 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.

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, Medicaid and Medicare.

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.

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 with HIV.

"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."

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