Judge Blocks Insurance Mandate to Cover Prevention Services Such as PrEP and Cancer Screening

UPDATE: A previous Texas ruling found that the federal mandate to cover preventive care, including HIV, violated religious freedoms.

March 30, 2023 By Trent Straube

UPDATE: A federal judge in Texas ruled March 30 against the requirement that health insurance cover PrEP to prevent HIV along with other preventive health care, including screenings for cancer and diabetes, Reuters reports.

The ruling blocks the federal government from enforcing coverage of preventive services that is required under the Affordable Care Act (ACA, or Obamacare).

“While not surprised by Judge [Reed] O’Connor’s decision, which will immediately impact coverage of HIV testing, hepatitis B and C testing, along with PrEP, it is imperative that these critical preventive services must continue for the health of our nation,” said Carl Schmid, executive director of the HIV+Hepatitis Policy Institute, in a separate emailed statement. “We expect that the U.S. government will quickly act to stay this decision so that preventive services can continue nationwide, and appeal it. Preventive services are all critical and well-established medical services. The decision to single out PrEP is based on a deep discrimination against people who can benefit from it and would greatly impede our efforts to reduce HIV cases. On behalf of the HIV and hepatitis communities, we look forward to participating in the appeals process of the judge’s decision so that his destructive decision does not stand. While the appeals process moves forward, we call on health insurers to act on their own and continue to cover these preventive services without cost-sharing for the benefit of their enrollees.”

This is a developing story, and we will provide more details in a later story. The March 30 ruling follows a previous, similar ruling from a district judge in Texas. Details about that case are in the original article, from September 7, below.

A district judge in Texas has ruled that requiring health insurance to cover PrEP as HIV prevention violates the religious beliefs of a Christian-owned company, reports Bloomberg.

However, in his summary judgement, District Judge Reed O'Connor in Fort Worth did not decide the "appropriate remedy" for the specific lawsuit. Therefore, it is unclear whether the ruling will apply only to the plaintiff company—Braidwood Management, which employs about 70 people—or have further reach, Bloomberg reports. Most certainly, the ruling in Braidwood Management v. Becerra will be appealed.

HIV and LGBTQ advocates were swift to denounce the ruling.

Carl Schmid, the executive director of the HIV+Hepatitis Policy Institute, issued the following statement:

> "We are not surprised by Judge O'Connor's decision. He has a long history of issuing rulings against the Affordable Care Act and LGBT individuals, and we expect the case to be successfully appealed as has been the case with his previous discriminatory decisions. Preventive services covered by private insurance plans without cost-sharing, such as HIV testing, hepatitis B and C testing, and PrEP, are all critical and well-established public health preventive services that must continue. To single out PrEP, which are FDA [Food and Drug Administration] approved drugs that effectively prevent HIV, and conclude that its coverage violates the religious freedom of certain individuals, is plain wrong, highly discriminatory, and impedes the public health of our nation.
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> "PrEP is not just for gay men, but for anyone who may be at risk of HIV. In fact, according to the CDC [Centers for Disease Control and Prevention], of the 1.2 million people who might benefit from PrEP, over half are heterosexual. We as a nation must do all we can to prevent HIV, no matter whom it may impact. We look forward to a successful appeal of this decision."

In a separate statement, Ivy Hill, the community health program director of the Campaign for Southern Equality, said:

> "This ruling is about imposing extreme religious beliefs—not, as it purports, about protecting religious freedom: Far right extremist judges are attacking privacy and access to health care. We must be increasing access to life-saving medications like PrEP, not using it as the latest political wedge to attack LGBTQ people in the South. Whether it's access to abortion, trans-affirming care, birth control, or PrEP, we are seeing dangerous action from activist courts intervening in Americans' health care decisions—and we must push back."

You can read a POZ blog post by Jesse Milan Jr, JD, the president and CEO of AIDS United, on the topic of the ruling. It states in part:

> "Whether or not someone chooses to be on PrEP is a private health decision. Their ability to engage in care should not be jeopardized by anyone else's personal beliefs. Coming on the heels of the Supreme Court's destructive decision to overturn Roe v. Wade, this ruling is the latest in a frightening series of attacks on the bodily autonomy and health of the majority of Americans by a small minority with a flagrant agenda that is anti-science, homophobic, and misoynistic. This ruling, and the other reactionary court decisions in recent years, are not

> representative of the will of the people or of public health best practice, but increasingly of the religious beliefs and disparaging attitudes of regressive judges appointed to promote right wing causes and agendas. This must not continue.
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> "This ruling—and the possibility that the Supreme Court might ultimately agree with it—underscores the need for the HIV community to play an active role in elections."

Last summer, the U.S. government clarified that a provision of the Affordable Care Act (ACA, or Obamacare) requires that health insurers must cover pre-exposure prophylaxis (PrEP) to prevent HIV and that they must do so at no cost to patients. The federal guidance clarified that insurance plans must also cover the health services related to PrEP, such as doctor visits, blood work and tests for HIV and sexually transmitted infections (STIs).

PrEP is covered under federal regulations because in June 2019 the U.S. Preventive Services Task Force, an independent panel of health experts, gave PrEP a grade A recommendation, meaning that scientific evidence shows that PrEP works very well and is safe. The Affordable Care Act (ACA, or Obamacare) requires health plans to cover preventive services that receive an A or B grade.

Nonetheless, as many media outlets reported in July 2022, Jonathan Mitchell, a conservative Texas lawyer who fought abortion rights, was also filing cases to challenge the ACA's requirement that health insurers cover PrEP.

A 2020 lawsuit challenging PrEP coverage led by Mitchell—Kelley v. the United States of America—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. To learn more, see the POZ Basics on HIV Prevention. And for a collection of related articles, click #PrEP. You'll find articles such as "Over 100 HIV Groups Urge Congress to Fund a PrEP Program," "Black HIV Advocates Plan Summit to Address PrEP Disparities"and "On-Demand PrEP Works as Well as Daily Pills."

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http://beta.docker.poz.com/article/judge-rules-mandate-cover-hiv-prevention-prep-violates-religious-freedom