



Federal Judge in Texas Strikes Down Key ACA Provision Regarding Preventive Care Services

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On March 30, 2023, the U.S. District Court in the Northern District of Texas (Court) issued a final ruling invalidating certain provisions of the Affordable Care Act's (ACA) preventive care mandate. Although the ultimate outcome of this decision remains to be seen, the ruling has created some confusion for plan sponsors of group health plans and other interested stakeholders. The ruling generally applies to invalidate the requirement that non-grandfathered health plans cover preventive care services recommended by the U.S. Preventive Services Taskforce (USPSTF) with no cost sharing after the effective date of the ACA (March 23, 2010). The Biden administration filed a Notice of Appeal on April 3, 2023, and will presumably seek a stay of this decision from the Fifth Circuit Court of Appeals (Fifth Circuit). A stay would prevent the decision from going into effect until a decision on the merits is issued by the Fifth Circuit or potentially the U.S. Supreme Court.

As background, the Court's decision in *Braidwood Management v. Becerra* invalidated the ACA mandate for coverage of preventive services recommended by the USPSTF based on an argument that the appointment of the USPSTF was unconstitutional. As argued by the plaintiffs, the members of the USPSTF were not nominated by the President of the United States nor approved by Congress as required by the Appointments Clause of the U.S. Constitution. The Court agreed and found all preventive services required by the ACA based on a recommendation of the USPSTF after March 23, 2010, to be invalid. The ruling does not overturn coverage requirements for vaccines recommended by the Advisory Committee on Immunization Practices (ACIP), women's health services (such as contraception) recommended by the Health Resources and Services Administration (HRSA), or children and young-adult services recommended by Bright Futures. However, the plaintiffs in the *Braidwood Management* case had also challenged those recommendations and could appeal.

In addition, the Court previously found that the mandate to cover pre-exposure prophylaxis (PrEP), a medication taken to prevent HIV, violates the plaintiffs' religious rights under the Religious Freedom Restoration Act (RFRA). The RFRA ruling applies only to the plaintiff and not to the requirement to cover

PrEP generally. However, PrEP was recommended by the USPSTF after March 23, 2010, which would make the mandate to cover it generally unenforceable under the Court's USPSTF portion of the ruling.

Plan sponsors of group health plans may want to consult with their advisors regarding next steps and how to manage the impact of the Court's ruling on their group health plans. In particular, plan sponsors of high deductible health plans will want to evaluate the impact of maintaining no cost sharing coverage for the USPSTF-mandated preventive care benefits on the continued qualification of participant health savings accounts (HSAs). In this regard, certain items that were previously allowed to be paid without cost sharing in an HSA because of the ACA preventive care mandate may not qualify for first dollar coverage under the preventive care exception for HSAs. The preventive health services mandated by the ACA are described very differently than the requirements applicable to HSAs. The IRS has previously interpreted the definition of preventive care for HSA purposes to include any preventive health services mandated by the ACA.

Given the significant impact of the Court's ruling on group health plans and issuers, further guidance from the IRS and other federal agencies, in the absence of a stay from the Fifth Circuit, would be welcome.

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