HIV Cases Will Spike if Health Care Doesn't Cover Prevention, Warn Experts

Ending the mandate to cover preventive care such as PrEP "will cause incalculable harm to our efforts to end the HIV epidemic."

June 30, 2023 By Trent Straube

Nearly 30 groups representing the HIV community and health care providers filed briefs urging a U.S. Court of Appeals not to end the requirement that health care insurers must cover certain preventive services without cost sharing, notably pre-exposure prophylaxis (PrEP), the daily pills and long-acting injectables that prevent HIV. Other preventive care is at stake as well, including diabetes and cancer screenings and HIV and hepatitis tests.

The U.S. Court of Appeals for the 5th Circuit is reviewing the decision earlier this year in Braidwood v. Becerra, in which a conservative Texas judge ruled that health care providers don't have to cover services recommended by the U.S. Preventive Services Task Force (USPSTF). The plaintiffs in the case argued that providing PrEP amounted to promoting homosexuality.

> In our new brief with @HIVMA, @NASTAD, and @Mintz_Law, experts urge the appeals court to overturn a ruling that would make PrEP unaffordable to many who need it. Letting the ruling stand would have a devastating impact on efforts to end the HIV epidemic. https://t.co/TU9gSjIX6W pic.twitter.com/7rr47CpJCY
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> — GLAD (@GLADLaw) June 28, 2023

Striking down mandatory coverage of PrEP "will exacerbate racial health disparities, increase new HIV diagnoses by the tens of thousands and have devastating consequences on our efforts to end the epidemic," said Ben Klein, senior director of litigation and HIV law at GLBTQ Legal Advocates & Defenders (GLAD), in a press statement. GLAD attorneys coauthored an amicus curiae (friend-of-the-court) brief with the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC. The brief was signed by the HIV Medicine Association (HIVMA) and the National Alliance of State and Territorial AIDS Directors (NASTAD). The two groups represent thousands of health care providers and HIV experts. You can read and download that brief here.

A separate amicus brief was filed by the HIV+Hepatitis Policy Institute and 24 other HIV and hepatitis organizations. You can read and download that brief here.

> @HIVHep & 24 other #HIV & #hepatitis orgs filed an amicus brief supporting the US govt's appeal in Braidwood v Becerra to ensure that preventive services, such as HIV & hepatitis testing & #PrEP, are covered by insurers w/o cost-sharing: https://t.co/V697ehS4yJ pic.twitter.com/SMpp3f96me
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> — HIV+Hepatitis Policy Institute (@HIVHep) June 29, 2023

"We must not allow a couple of individuals who want to discriminate against people who use PrEP and don't support insurance coverage of preventive services, such as HIV and hepatitis B and C testing, to destroy the public health of our country," said Carl Schmid, executive director of the HIV+Hepatitis Policy Institute, in a statement. "We filed this amicus brief to emphasize the important role testing for HIV and hepatitis plays in linking people to life-saving medications and, in the case of hepatitis C, curative treatment, along with the importance of helping people know if they have an infectious disease. Additionally, we take issue with the claim that PrEP is only for certain groups of people, to whom the plaintiffs object. PrEP is for anyone who may be at risk of HIV, and no employer knows or should know who those people are."

If health care insurers charge copays and deductibles for PrEP, then fewer people will access HIV prevention, write the experts in the GLAD-authored brief. "As an organization representing thousands of physicians and other health care professionals working on the front lines of the HIV

epidemic in communities across the country, we are deeply concerned about the harmful and far-reaching impacts this decision will have if allowed to stand," said Michelle Cespedes, MD, MS, chair of HIVMA, in the GLAD press statement. "Reinstating cost sharing for PrEP would directly cause tens of thousands of preventable cases of HIV transmission and set back decades of progress toward curbing the epidemic."

"The Braidwood decision is rooted in stigma and bigotry toward the LGBTQ+ community and people vulnerable to HIV," added Stephen Lee, MD, MBA, NASTAD's executive director. "It will cause incalculable harm to our efforts to end the HIV epidemic."

The brief led by the HIV+Hepatitis Policy Institute also argues that the requirement to cover PrEP does not violate the Religious Freedom Restoration Act (RFRA).

That brief states in part:

> "The district court erred in accepting their claim that this requirement would force complicity in several behaviors, including "homosexual behavior, drug use, and sexual activity outside of marriage between one man and one woman. No research demonstrates that having access to PrEP causes individuals to engage in said behaviors.
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> "Simply put, PrEP is for people who do not have HIV and do not wish to acquire HIV. PrEP will work in the same manner regardless of whether a person is in a heterosexual or same-sex relationship. HIV can be transmitted in a monogamous or non-monogamous relationship."

For background on this court 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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