REALHEALTH

UPDATE: Court Pauses Judge's Ruling to End Health Coverage of Some Preventive Services

A Texas judge had struck down mandatory coverage of much preventive care, including cancer and diabetes screenings and PrEP.

May 17, 2023 By Trent Straube

UPDATE: On Monday, May 15, a U.S. Court of Appeals temporarily paused a Texas judge's ruling that ended mandatory health care coverage of certain preventive services, reports The New York Times. This means that while the case is under full review, health insurers are once again required to cover preventive care, notably pre-exposure prophylaxis (PrEP) to prevent HIV. Regardless of the court's decision, the case will likely head to the Supreme Court.

Below is an April 3 article detailing the judge's ruling. For more insight, see "Judge's Decision Would Make Some No-Cost Cancer Screenings a Thing of the Past" by Kaiser Health News.

APRIL 3, 2023: On Thursday, March 30, a federal judge in Texas struck down the mandate that health insurance must cover many preventive health care services, including cancer and diabetes screenings, HIV tests and pre-exposure prophylaxis (PrEP) to prevent HIV. Immediately, HIV activists went on the offensive—planning a virtual town hall, for example—and by Friday the Department of Justice, under the Biden administration, appealed the ruling.

BREAKING: Join us, along with @HIVpxresearch, @HIVMA, @hivlawandpolicy, @LambdaLegal, and other HIV prevention advocates for an emergency town hall on 4/4 to discuss today's Braidwood v. Becerra judgment and the impact on PrEP users.

Read our statement: https://t.co/SMNjMzz7re
pic.twitter.com/vHu4BZjgjy

— PrEP4All (@PrEP4AllNow) March 30, 2023

"Preventive care is an essential part of health care: It saves lives, saves families money and improves our nation's health," said Kamara Jones, a spokesperson for the Department of Health and Human Services, regarding the Texas ruling. "Actions that strip away this decade-old protection are backwards and wrong."

Next, the case will go to the 5th U.S. Circuit Court of Appeals. The majority of the judges sitting on the court, reports CNBC, were appointed by Republican presidents.

"The Biden administration…will seek a stay of this remedy from the Fifth Circuit Court of Appeals," according to a Kaiser Family Foundation policy analysis on the ruling. "The Fifth Circuit may or may not issue that stay or do so in an expedient way, and the rulings could be appealed to the Supreme Court, specifically to what is known as the 'shadow docket,' which means that the Supreme Court would review the issue of the stay, not the merits of the case as a whole. However, the merits of the case itself could eventually be reviewed by the Supreme Court."

In the immediate future, the HIV advocacy group PrEP4All will hold an emergency virtual town hall via Zoom Tuesday, April 4, at 6 p.m. ET. You can register here.

"PrEP4All and the HIV advocacy community are outraged at U.S. District Judge Reed O'Connor's judgment in Braidwood v. Becerra which blocks the requirement that most insurers cover preventative care such as PrEP, HIV testing, cancer screenings, diabetes screenings, and more," reads the event's description. "We will help the community better understand the implications of Judge Reed's ruling and discuss next advocacy steps to ensure those in need of PrEP can access it."

The Texas ruling jeopardizes the future of many free preventive care services. The Affordable Care Act (ACA, or Obamacare) requires health insurance plans to cover preventive health care services that have received an A or B grade from the U.S. Preventive Services Task Force (USPSTF).

Such services include screenings for depression, diabetes, statin use, hepatitis B and C, sexually transmitted infections, HIV and numerous cancers (breast, colorectal, lung and skin cancers, to name a few). Other covered services include smoking cessation, weight loss programs and PrEP to prevent HIV.

For a complete list of services with an A or B grade, visit USPreventiveServicesTaskForce.org.

Judge O'Connor also ruled that USPSTF members are approved in an unconstitutional manner. As CNBC reports, the judge believes that members should be appointed by the president and approved by the Senate. But since they aren't, then USPSTF recommendations can't be the legal basis of an ACA mandate. (As CNBC also points out, Judge O'Connor had previously tried to strike down Obamacare in 2018, but the Supreme Court overruled him.)

"As sweeping as the ruling is, it does not completely and immediately wipe out preventive services coverage under the ACA," explained the Kaiser Family Foundation. "That's because the ruling applies specifically to services recommended by the U.S. Preventive Services Taskforce (USPSTF). The ruling would 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, though the plaintiffs had asked that those be struck down as well, and that decision could be appealed. The ruling also only applies to updates to or new USPSTF recommendations issued since March 2010, when the ACA was enacted. It would effectively lock in place coverage requirements based on evidence from 13 years ago."

Regarding PrEP coverage, the Kaiser policy analysis noted that the Texas judge ruled that the mandate to cover PrEP "violates the plaintiffs' religious rights under the Religious Freedom Restoration Act (RFRA). While the RFRA remedy is limited specifically to the plaintiffs, because PrEP was recommended by the USPSTF after 2010, the medication and certain ancillary services can now be subject to out-of-pocket costs across all health plans and plans could elect to drop coverage altogether."

The authors continued: "While some health plans could opt to drop PrEP coverage altogether, we are more likely to see plans requiring copays, coinsurance, or deductibles. For generic PrEP, out-of-pocket costs might be nominal (the cash price for the drug is about $30 per month); for a brand name drug, particularly the new long-acting injectable formation, cost-sharing could be substantial. For example, some enrollees could face a 20% or 50% cost in coinsurance for a $2,000 per month drug. Enrollees may also face cost-sharing for some of the ancillary care that is necessary for PrEP users, such as certain labs and provider visits. Before the ruling, these had been covered without cost-sharing following a 2021 clarification from the federal government that the PrEP recommendation encompassed those ancillary services."

For more details about the rulings, see "Judge's Decision Would Make Some No-Cost Cancer Screenings a Thing of the Past."

The Texas ruling drew immediate fire from HIV advocacy groups.

"This ruling expands on last year's shocking decision on PrEP and religious freedom and further undermines the right to health for an even larger group of Americans. It is the latest blow in a campaign to roll back bodily autonomy and human rights for a wide swath of the population and will degrade the quality of life for all Americans by denying lifesaving preventive care," said Mitchell Warren, executive director of AVAC, a global advocacy group for HIV prevention.

In a separate release, NMAC executive director Paul Kawata stressed that "the ruling deals a particularly cruel blow to the communities most impacted by the nation's ongoing health disparities and the HIV epidemic—especially Black and Latinx communities that comprised 47% and 24% of new HIV infections in 2020, respectively. It cannot be allowed to stand, and we are calling on the Biden administration to appeal it immediately."

The National Coalition of STD Directors (NCSD) responded to the ruling with the following statement from executive director David C. Harvey: "[Thursday's] ruling threatens the most powerful tools this nation has to fight the epidemic of sexually transmitted infections (STIs)—guaranteed insurance coverage for basic preventive medical care. We cannot reduce the devastating impact of completely preventable infections like congenital syphilis if people cannot count on their insurance to help them pay for essential routine health services.... STIs impact people of all walks of life and can have devastating consequences when left undetected and untreated. The overreach of one judge should not threaten the health and safety of hundreds of millions of lives."
