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Federal Trial Court Rules ACA's Preventative Care Mandate is Unconstitutional

On March 30, 2023, a federal district court judge in Texas struck down a provision of the Patient Protection and Affordable Care Act ("ACA") that required private health insurers and group health plans to provide coverage for certain preventative care services, at no cost to patients. The court's ruling took effect immediately and applies nationwide. On March 31 the U.S. Department of Justice appealed the court's decision.

Background

The ACA relies on three panels of health care experts to advise the government on what preventive services must be covered by group health plans. The district court ruled that one of those panels, the United States Preventive Services Task Force ("PSTF"), did not have constitutional authority to determine what benefits plans must cover. The court based its ruling (the "Texas Decision") largely on the fact that the PSTF is a body of private experts who serve on a volunteer basis and that such volunteer status violated the Appointment Clause of the United States Constitution. Pursuant to this purported violation, the court ruled that all relevant recommendations issued by the PSTF were unconstitutional and retroactively vacated all such recommendations.

What Are the PSTF Preventive Care Services?

The PSTF recommends various preventive care services. For example, since 2010 the PSTF has endorsed several types of preventive care, including treatment for children's anxiety, drug use, diabetes, osteoporosis, colon cancer, skin cancer, lung cancer, and breast cancer. Since 2010 the PSTF has also recommended PrEP, which is a medication that is highly effective at preventing the transmission of H.I.V. Under the Texas Decision, group health plans do not have to follow the PSTF's post-2010 recommendations.

What Preventive Care Services are Unaffected?

The Texas Decision would not change coverage requirements for vaccines (including the Covid-19 vaccine) recommended by the Advisory Committee on Immunization Practices ("ACIP"), women's health services (including all types of contraception) recommended by the Health Resources and Services Administration ("HRSA"), or children and young-adult services recommended by Bright Futures. These categories of preventative care, and other preventive care requirements based on recommendations

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from ACIP and HRSA, are not affected by the Texas Decision because, unlike PSTF, the ACIP and HRSA are under the direct control and supervision of the U.S. Department of Health and Human Services. The Texas Decision held that such control and supervision rendered recommendations made by the ACIP and HRSA appropriate under the Appointment Clause of the United States Constitution.

Impact of the Texas District Court Decision

As of March 30, 2023, unless the Texas Decision is stayed pending appeal, group health plans are no longer required to provide no-cost coverage for any preventative care which was recommended by the PSTF on or after March 23, 2010. Following the Texas Decision, absent a stay or other relief, group health plans may be amended to start charging co-payments, coinsurance, and deductibles for applicable PSTF-recommended preventative care services. Employers and insurers may be reluctant to immediately take away a benefit that is subject to future legal challenge.

Next Steps

The United States federal government appealed the Texas Decision on March 31, 2023. Along with the appeal, the United States is highly likely to request a stay of the Texas Decision to prevent it from going into effect until the appeals process has concluded. The United States must request such a stay on or before May 29, 2023. If the appeals court grants the United States' request for a stay, it would put the Texas Decision on hold and bring the preventive care mandate, as it stood prior to the Texas Decision, back into effect. If a stay is not granted, group health plans will not be required to provide the PSTF-recommended preventative care services that were struck down by the Texas Decision.

If you have any questions or need assistance, please contact a member of the Kutak Rock [Employee Benefits Group](#).

