

April 6, 2023

# FEDERAL JUDGE VACATES ACA PREVENTIVE CARE COVERAGE REQUIREMENTS

Last Thursday, U.S. District Court Judge Reed O'Connor of the Northern District of Texas issued [a final judgment](#) that strikes down portions of the Affordable Care Act's (ACA) preventive care coverage requirement. The ACA requires the following preventive care services be provided to participants without cost-sharing:

- Services with an A or B rating in the current recommendations of the U.S. Preventive Services Task Force (USPSTF);
- Preventive care and screenings for infants, children, and adolescents in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA);
- Preventive care and screenings for women's health specified in HRSA guidelines; and
- Immunizations recommended by the Advisory Committee on Immunization Practices (ACIP).

Judge O'Connor's ruling states that health plans cannot be required to cover the services with an A or B rating recommended by the USPSTF after the passage of the ACA free of charge. Examples of these services include colonoscopies, various cancer screenings, chemotherapy for breast cancer, and HIV PrEP care. The ruling further provides that employers with religious objections to PrEP HIV medications cannot be required to cover those medications.

It is important to note that this decision has no impact on the ACA's preventive care requirements for ACIP-recommended immunizations and HRSA-recommended preventive care, including women's contraceptive care. Additionally, this ruling does not affect the preventive services that health savings account-compatible high-deductible health plans can cover without applying a deductible.

This ruling may ultimately result in limited cost-sharing for some plans, but change is not mandatory. Health plans are not required to stop covering USPSTF-recommended A & B services, nor must they apply cost-sharing to these services. The primary consequence of the decision is that if it withstands further legal challenges, first-dollar coverage for these services will no longer be required. In any event, immediate changes in plan designs are unlikely because of: (1) the strict limitations on the ability to change plan designs midyear that apply to both fully insured and self-funded plans, and (2) the legal uncertainty surrounding the future of this holding. In this regard, the Department of Justice has already

appealed Judge O'Connor's ruling, and the Fifth Circuit Court of Appeals will hear the appeal. We will continue to monitor this case and provide updates as they become available.

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