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Health Policy in Transit

A Purchaser Viewpoint

National Alliance of Healthcare Purchaser Coalitions
Driving Health, Equity and Value

## Federal Litigation on ACA's Requirement to Cover Preventive Services

On September 7, 2022, a federal district court judge in Texas issued a ruling that calls into question the requirement in the Affordable Care Act for plan sponsors to provide preventive services at no cost to plan enrollees. The judge found that members of one of the agencies making coverage recommendations, the U.S. Preventive Services Task Force (USPSTF), were not lawfully appointed under the Constitution because they do not require Senate confirmation. In addition, he held that requiring the plaintiff in this case to pay for HIV prevention violates their religious freedom.

*This ruling may **allow but not require** plan sponsors, including employers and plans selling on the Marketplaces, to adjust coverage of these preventive services and impose cost sharing and/or apply deductibles. At this point, it is unclear what the next steps are, since the judge in this case has decided to wait to issue another ruling on what the remedies for these plaintiffs are and how the decision may apply nationwide.*

Depending on what the judge says regarding remedies, payers and plan sponsors may now have to decide whether to keep first-dollar coverage for HIV prevention and for the 52 preventive services recommended by the USPSTF, or else impose deductibles and copays for at least some of those services. Services recommended by that agency include screening tests for breast cancer, colorectal cancer and lung cancer, sexually transmitted infections, diabetes, and depression. Notably, the judge upheld the constitutionality of two other agencies that recommend preventive services — the Health Resources and Services Administration (HRSA) and the CDC's Advisory Committee on Immunization Practices. So first-dollar coverage for the services they recommend for women and children and for immunizations is not in jeopardy.

The result of this ruling could be a patchwork of different health plan designs and preventive services coverage in various industry sectors and different parts of the country. If this decision does apply nationwide, employers and other plan sponsors may wish to undertake an item-by-item review of all preventive services currently covered and determine whether to impose cost sharing or deductibles depending on a variety of factors such as effectiveness of a particular service (to the extent data is available), the employer's particular industry and whether certain services are particularly important, with particular focus on reducing barriers to access to services for lower-paid and marginalized communities. There is significant concern that imposing cost sharing for preventive services will worsen health disparities.

Overall, there is concern that a patchwork of preventive services coverage will cause confusion among both providers and patients and cause the overall system to lose some of the gains made over the past few years in ensuring more people have access to and use preventive care. A payer or plan sponsor may impose cost sharing or apply deductibles to preventive services in order to reduce cost increases, at least in the short run. However, there is very strong evidence that access to and use of preventive services is reduced when subject to cost sharing and thus could result in lower take-up of preventive services and over time impact health outcomes.

Employers will want to carefully weigh these two considerations – keeping premiums and costs lower by imposing some kind of cost sharing versus the potential for less healthy, less productive and potentially more costly employees and dependents over time. This may be especially true if a large portion of an employer's covered population is covered in a high-deductible health plan.

We will be monitoring this case for any further developments, including how the judge in this particular case determines the legal remedies for the plaintiffs. We will be working closely with our sister organizations here in DC to analyze any further activity from this court to help determine whether/how this ruling may affect ERISA plan sponsors nationwide.