
Fifth Circuit Puts USPSTF Preventive Care Ruling on Hold

Employer Plans Must Comply With Task Force's Preventive Care Mandate While Case Proceeds

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On May 15, 2023, the Fifth Circuit Court of Appeals temporarily stayed a district court decision that prevented the U.S. Departments of Labor, Treasury, and Health and Human Services (the Departments) from enforcing certain preventive care requirements for group health plans under the Affordable Care Act (ACA). The Fifth Circuit's decision means that employer group health plans must continue to comply with all of the ACA preventive care requirements until further court action.

This Aon bulletin discusses the following:

- Background and Decision
- Impact on Employers
- Next Steps

Background

The ACA requires most group health plans to cover certain preventive care services without participant cost-sharing. The preventive care services that must be covered under the ACA have been developed by three agencies:

- The Advisory Committee on Immunization Practices for immunizations;
- The Health Resources and Services Administration for women, infants, children, and adolescents; and
- The U.S. Preventive Services Task Force (USPSTF) for specific evidence-based items and services with an "A" or "B" rating, such as colorectal, diabetes, depression, and breast cancer screenings.

In 2022, the District Court for the Northern District of Texas ruled in *Braidwood Management v. Becerra* that the ACA's designation of the USPSTF violated the Appointments Clause of Article II of the Constitution. As a result, the District Court held that any ACA requirements based on USPSTF recommendations were not valid and could not be enforced against health plans.

In March 2023, the District Court applied the order nationwide, in effect preventing the Departments from implementing or enforcing the ACA preventive care requirements that were developed by the USPSTF against group health plans. The Biden Administration appealed the decision and additionally asked that the District Court's ruling be put on hold until a final decision by the Fifth Circuit. The Fifth Circuit granted the Biden Administration's request for the hold temporarily, effectively re-imposing the ACA requirements for group health plans that were in effect prior to the District Court's decision.



Impact on Employers

With this temporary stay imposed by the Fifth Circuit, group health plans must continue to cover these preventive care items and services based on the USPSTF's "A" or "B" recommendations as required under the ACA. This is a change from previous guidance earlier this year based on the District Court's order and Frequently Asked Questions Part 59 issued by the Departments, which provided that group health plans were permitted (but were not required) to stop covering or to impose cost-sharing for items and services based on the USPSTF "A" or "B" recommendations. With the most recent Fifth Circuit ruling, plans must continue to cover these USPSTF "A" or "B" recommended items and services as required under the ACA until further court action.

Next Steps

Litigation on this issue is ongoing. Until further court action, plans must continue to cover the USPSTF recommended items and service as required under the ACA.



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