

LEGAL UPDATE

5th Circuit Requires Health Plans to Continue Providing Free Preventive Care

On June 21, 2024, the 5th U.S. Circuit Court of Appeals [ruled](#) that a key component of the Affordable Care Act's (ACA) preventive care mandate is unconstitutional. However, in a decision it referred to as a "mixed bag," the 5th Circuit limited its ruling to the plaintiffs in the case, a small group of individuals and businesses from Texas. This means that, for now, **health plans and health insurance issuers must continue to provide first-dollar coverage for the full range of recommended preventive health services.**



HIGHLIGHTS

- In March 2023, a federal District Court struck down a key part of the ACA's preventive care coverage mandate and issued a nationwide injunction.
- On June 21, 2024, the 5th Circuit upheld the District Court's ruling but held there was no basis for a nationwide injunction.
- Due to this ruling, health plans and issuers must continue to cover the full range of free preventive care for now.
- An appeal to the U.S. Supreme Court is expected.

This decision impacts the requirement to cover, without cost sharing, a wide range of preventive care services, including screenings for colorectal, lung and cervical cancers, medications for chronic conditions such as cardiovascular disease, screening for HPV, depression and anxiety screenings, and Hepatitis B and C virus screenings.

It is expected that the U.S. Supreme Court will ultimately be asked to review the 5th Circuit's decision.


ACA's Preventive Care Mandate

The ACA requires non-grandfathered health plans and issuers to cover a set of recommended preventive services without imposing cost-sharing requirements, such as deductibles, copayments or coinsurance, when the services are provided by in-network providers. The recommended preventive care services covered by these requirements are:

- Evidence-based items or services with an A or B rating in recommendations of the U.S. Preventive Services Task Force (USPSTF);
- Immunizations for routine use in children, adolescents and adults recommended by the Advisory Committee on Immunization Practices (ACIP);
- Evidence-informed preventive care and screenings in guidelines supported by the Health Resources and Services Administration (HRSA) for infants, children and adolescents; and
- Other evidence-informed preventive care and screenings in HRSA-supported guidelines for women.

Court Decisions

In March 2023, the U.S. District Court for the Northern District of Texas [struck down](#) a key component of the ACA's preventive care mandate. The District Court ruled that the preventive care coverage requirements based on an A or B rating by the USPSTF on or after March 23, 2010, the ACA's enactment date, violate the U.S. Constitution. More specifically, the District Court concluded that



members of the USPSTF had not been appointed in a manner consistent with the Constitution's Appointments Clause. The District Court also issued a nationwide injunction, prohibiting the Biden administration from enforcing the affected preventive care mandates against any health plans or issuers.

The Biden administration appealed the District Court's ruling to the 5th Circuit, which covers Texas, Louisiana and Mississippi. The 5th Circuit put the District Court's decision on hold pending its ruling, which means health plans and issuers have been required to fully comply with the ACA's preventive care mandate without interruption.

The 5th Circuit agreed with the District Court that members of the USPSTF had not been validly appointed under the U.S. Constitution. However, the 5th Circuit limited its relief to the plaintiffs in the case and held that there was no basis for a nationwide injunction. The plaintiffs also challenged the appointments of the two other administrative bodies behind the ACA's preventive care mandates, the ACIP and HRSA. The 5th Circuit remanded these challenges back to the District Court for further consideration.

Impact of Decision

Due to the 5th Circuit's ruling, health plans and issuers must continue to cover the full range of recommended preventive care items and services without cost sharing. Only the plaintiffs in the case are exempt from a portion of the ACA's preventive care mandate. However, the future of the ACA's free preventive care mandate remains uncertain as this case moves through the legal system. The 5th Circuit's decision also opens the door to further litigation seeking an exemption from the mandates. Employers should continue to watch for developments on this issue, as it is likely that the 5th Circuit's decision will be appealed to the U.S. Supreme Court.