

Court Ruling May Spur Competitive Health Plans to Bring Back Copays for Preventive Services

Experts fear that cost sharing for preventive services would hurt growing efforts to reduce health disparities.

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Tom and Mary Jo York are a health-conscious couple, going in for annual physicals and periodic colorectal cancer screening tests. Mary Jo, whose mother and aunts had breast cancer, also gets regular mammography tests.

The Yorks, who live in New Berlin, Wisconsin, are enrolled in Chorus Community Health Plans, which, like most of the nation's health plans, is required by the Affordable Care Act to pay for those preventive services, and more than 100 others, without charging deductibles or copays.

Tom York, 57, said he appreciates the law's mandate because until this year the deductible on his plan was \$5,000, meaning that without that ACA provision, he and his wife would have had to pay full price for those services until the deductible was met. "A colonoscopy could cost \$4,000," he said. "I can't say I would have skipped it, but I would have had to think hard about it."

Now health plans and self-insured employers — those that pay workers' and dependents' medical costs themselves — may consider imposing cost sharing for preventive services on their members and workers. That's because of a federal judge's Sept. 7 ruling in a [Texas lawsuit](#) filed by conservative groups claiming that the ACA's mandate that health plans pay the full cost of preventive services, often called first-dollar coverage, is unconstitutional.

U.S. District Judge Reed O'Connor agreed with them. He ruled that the members of one of the three groups that make coverage recommendations, the [U.S. Preventive Services Task Force](#), were not lawfully appointed under the Constitution because they were not nominated by the president and confirmed by the Senate.

If the preventive services coverage mandate is partly struck down, the result could be a confusing patchwork of health plan benefit designs offered in various industries and in different parts of the country. Patients who have serious medical conditions or are at high risk for such conditions may have a hard time finding a plan that fully covers preventive and screening services.

O'Connor also held that requiring the plaintiffs to pay for HIV prevention drugs violates the Religious Freedom Restoration Act of 1993. He's also considering throwing out the mandate for first-dollar coverage for contraceptives, which the plaintiffs also challenged under that statute. O'Connor postponed ruling on that and legal remedies until after he receives additional briefs from the parties to the lawsuit on Sept. 16. No matter what the judge does, the case is likely to be appealed by the federal government and could reach the Supreme Court.

If O'Connor were to order an immediate end to the no-cost coverage mandate for services that won approval from the preventive services task force, nearly half the [recommended preventive services](#) under the ACA would be in jeopardy. These include screening tests for cancer, diabetes, depression, and sexually transmitted infections.

Many health plans and self-insured employers would likely react by imposing deductibles and copays for some or all the services recommended by the task force.

"Larger employers will evaluate what they cover first-dollar and what they don't cover," said [Michael Thompson](#), CEO of the National Alliance of Healthcare Purchaser Coalitions, a nonprofit group of employer and union health plans that work together to help reduce prices. He thinks employers with high employee turnover and health insurance companies are the likeliest to add cost sharing.

That could destabilize the health insurance markets, said [Katherine Hempstead](#), a senior policy adviser at the Robert Wood Johnson Foundation.

Insurers will design their preventive service benefits [to attract the healthiest people](#) so they can reduce their premiums, she predicted, saddling sicker and older people with skimpier coverage and higher out-of-pocket costs. "It reintroduces the chaos that the ACA was designed to fix," she said. "It becomes a race to the bottom."

The most probable services to be targeted for cost sharing are HIV prevention and contraception, said Dr. Jeff Levin-Scherz, population health leader at WTW (formerly Willis Towers Watson), who advises employers on health plans.

[Studies have shown](#) that eliminating cost sharing boosts the use of preventive services and saves lives. After the ACA required that Medicare cover colorectal cancer screenings without cost sharing, diagnoses of early-stage colorectal cancer increased 8% per year, [improving life expectancy](#) for thousands of seniors, according to a [2017 study](#) published in the journal Health Affairs.

Adding cost sharing could mean hundreds or thousands of dollars in out-of-pocket spending for patients because many Americans are enrolled in high-deductible plans. In 2020, the average annual deductible in the individual insurance market was \$4,364 for single coverage and \$8,439 for family coverage, [according to eHealth](#), a private, online insurance broker. For employer plans, it was \$1,945 for an individual and \$3,722 for families, [according to KFF](#).

O'Connor upheld the constitutional authority of two other federal agencies that recommend preventive services [for women and children](#) and [for immunizations](#), so first-dollar coverage for those services seemingly is not in jeopardy.

If the courts strike down the mandate for the preventive services task force's recommendations, health plan executives will face a tough decision. Mark Rakowski, president of the nonprofit Chorus Community Health Plans, said he strongly believes in the health value of preventive services and likes making them more affordable to enrollees by waiving deductibles and copayments.

But if the mandate is partly eliminated, he expects that competitors would establish deductibles and copays for preventive services to help make their premiums about 2% lower. Then, he said, he would be forced to do the same to keep his plans competitive on Wisconsin's ACA marketplace. "I hate to admit that we'd have to strongly consider following suit," Rakowski said, adding that he might offer other plans with no-cost preventive coverage and higher premiums.

The ACA's [coverage rule for preventive services](#) applies to private plans in the individual and group markets, which cover more than 150 million Americans. It is a popular provision of the law, favored by 62% of Americans, according to [a 2019 KFF survey](#).

Spending on ACA-mandated preventive services is relatively small but not insignificant. It is 2% to 3.5% of total annual expenditures by private employer health plans, or about \$100 to \$200 per person, according to the [Health Care Cost Institute](#), a nonprofit research group.

Several large commercial insurers and health insurance trade groups did not respond to requests for comment or declined to comment about what payers will do if the courts end the preventive services mandate.

Experts fear that cost sharing for preventive services would hurt growing efforts to reduce health disparities.

"If it's left up to individual plans and employers to make these decisions about cost sharing, underserved Black and brown communities that have benefited from the removal of cost sharing will be disproportionately harmed," said [Dr. A. Mark Fendrick](#), director of the University of Michigan Center for Value-Based Insurance Design, who helped draft the ACA's preventive services coverage section.

One service of particular concern is preexposure prophylaxis for HIV, or PrEP, a highly effective drug regimen that prevents high-risk people from acquiring HIV. The plaintiffs in the lawsuit in Texas claimed that having to pay for PrEP [forces them to subsidize "homosexual behavior"](#) to which they have religious objections.

Since 2020, health plans have been required to fully cover PrEP drugs and associated lab tests and doctor visits that otherwise can cost thousands of dollars a year. Of the 1.1 million people who could benefit from PrEP, [44% are Black and 25% are Hispanic](#), according to the Centers for Disease Control and Prevention. Many also are low-income. Before the PrEP coverage rule took effect, only

about 10% of eligible Black and Hispanic people had started PrEP treatment because of its high cost.

O'Connor, despite citing the evidence that PrEP drugs reduce HIV spread through sex by 99% and through injection drug use by 74%, held that the government did not show a compelling governmental interest in mandating no-cost coverage of PrEP.

"We're trying to make it easier to get PrEP, and there are plenty of barriers already," said [Carl Schmid](#), executive director of the HIV + Hepatitis Policy Institute. "If first-dollar coverage went away, people won't pick up the drug. That would be extremely damaging for our efforts to end HIV and hepatitis."

Robert York, an LGBT activist who lives in Arlington, Virginia, who is not related to Tom York, has taken Descovy, a brand-name PrEP drug, for about six years. Having to pay cost sharing for the drug and associated tests every three months under his employer's health plan would force changes in his personal spending, he said. The retail price of the drug alone is about \$2,000 a month.

But York, who's 54, stressed that reestablishing cost sharing for PrEP would affect people in lower-income and marginalized groups even more.

"We've been working so hard with the community to get PrEP into the hands of people who need it," he said. "Why is anyone targeting this?"

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