



Federal Judge: HIV-Prevention Drug Mandate Violates Religious Freedom

A federal judge in Texas has ruled that the Affordable Care Act's (ACA) mandate that group health plans and health insurance issuers provide coverage for the HIV-prevention drug PrEP violated the religious beliefs of a Christian-owned company.

The ACA requires most private health insurance to cover four categories of preventive care without cost-sharing, including two pre-exposure prophylaxis drugs (PrEP). The ACA empowers three agencies affiliated with the Department of Health and Human Services to determine what services fall within those four categories.

One of those agencies, the U.S. Preventive Services Task Force, recommended in 2019 that PrEP be added to the four categories of preventive care. Since that time, most group health plans and health insurance issuers have been required to provide coverage for PrEP free of charge to plan participants.

Plaintiffs in this case were six individuals and two businesses who challenged the legality of the PrEP coverage mandate under the Religious Freedom Restoration Act (RFRA). Specifically, they argued that providing coverage of PrEP drugs “facilitates and encourages homosexual behavior, intravenous drug use, and sexual activity outside of marriage between one man and one woman,” and that providing such coverage would make plaintiffs complicit in these behaviors.

In order to prevail under the RFRA, plaintiffs “must show that (1) the relevant religious exercise is grounded in a sincerely held religious belief, and (2) the government’s action or policy substantially burdens that exercise by, for example, forcing [plaintiffs] to engage in conduct that seriously violates their religious beliefs.” If plaintiffs carry that burden, the government “may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest.”

Here, the court found that the plaintiffs have shown that the PrEP mandate substantially burdens their religious exercise. “If an employer has a religious objection to a [mandated covered service], and that employer has a sincere religious belief that compliance with the mandate makes it complicit in that conduct, then the RFRA requires that the belief be honored.” Therefore, the burden shifted to the government to show that the PrEP mandate furthers a compelling governmental interest.

The court noted that, although the government defendants outlined a generalized policy to combat the spread of HIV, it did not show a compelling interest in forcing private, religious corporations to cover PrEP with no cost-sharing and no religious exemptions, despite the treatment’s success. Specifically, the court said, the government provided no evidence of the scope of religious exemptions, the effect such exemptions would have on the insurance market or PrEP coverage, or the prevalence of HIV in the affected communities. Moreover, the ACA’s exemptions for grandfathered health plans and employers with fewer than fifty employees undermine the government’s claim of the “critical importance of reducing barriers to PrEP access.” Thus, the government has not carried its burden to show that the PrEP mandate furthers a compelling governmental interest.

A subsequent court ruling is expected to clarify whether this ruling applies only to the plaintiffs or to a broader group.

[Full text of Braidwood Management v. Becerra, 4:20-cv-00283 \(N.D. Tex., Sept. 7, 2022\)](#)

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