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Employee Benefits Compliance

FAQ Guidance Addresses Texas Court Decision Limiting Preventive Care Coverage Mandate

Introduction

On April 13, 2023, the Departments of Labor, the Treasury, and Health and Human Services (the Departments) released Affordable Care Act (ACA) [FAQ 59](#) in response to the recent Texas federal district court decision in *Braidwood Management Inc. v. Becerra*. Specifically, under the *Braidwood* decision health plans are not required to cover preventive services recommended with “A” or “B” ratings by the USPSTF on or after March 23, 2010. Plans are still required to cover immunizations recommended by the ACIP (including COVID-19 immunizations) and preventive care and screenings for infants, children, adolescents, and women as provided for in comprehensive guidelines supported by the HRSA. Importantly, should High Deductible Health Plans (HDHP) continue to cover these USPSTF preventive care items and services, that coverage will be treated as Health Savings Account (HSA) compatible preventive care.

Background

Beginning in 2010, the ACA required non-grandfathered group health plans to cover the following preventive care items and services without cost-sharing:

- Evidence-based items or services with an “A” or “B” rating by the U.S. Preventive Services Task Force (USPSTF);
- Immunizations for routine use with a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease and Prevention (CDC);
- Evidence-informed preventive care and screenings for infants, children, and adolescents provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA); and
- For women, additional preventive care and screenings as provided for in comprehensive guidelines supported by HRSA.

On March 30, 2023, a Texas federal district court ruled in *Braidwood v. Becerra* that the requirement health plans cover preventive services recommended with “A” or “B” ratings by the USPSTF without cost-sharing unenforceable nationwide. The court’s rationale was that appointments of members of

the USPSTF violated the Constitution, voiding any of their recommendations on or after March 23, 2010. The court also found that the mandate to cover PrEP (a medication taken to prevent contraction of HIV) violated plaintiffs' rights under the Religious Freedom Restoration Act. Although the Justice Department is appealing the decision and filed a motion for a stay on April 12, 2023, the Departments issued ACA FAQ 59 to provide interim guidance on how the *Braidwood* decision affects the requirement to cover preventive services without cost sharing under the ACA.

FAQ Guidance on Coverage of Preventive Services

The FAQs confirm that under the *Braidwood* decision plans are no longer required to cover without cost sharing preventive services recommended with "A" or "B" ratings by the USPSTF on or after March 23, 2010. However, the Departments strongly encourage plans to continue to cover these items and services. Although one FAQ indicates that plans can make mid-year plan design changes to eliminate coverage of these items and services, this is not a recommended approach given that an appeal and motion for a stay are pending. Moreover, a mid-year change would require significant plan amendments and participant communications.

The FAQs note that plans are still required to cover items and services recommended with an "A" or "B" rating by the USPSTF before March 23, 2010, without cost-sharing. The *Braidwood* decision also does not affect the ACA preventive care coverage mandate with respect to immunizations recommended by ACIP, which would include coverage, without cost-sharing, for any qualifying COVID-19 immunization with a recommendation from ACIP. Nor does the decision affect preventive care and screenings for infants, children, adolescents, and women as provided for in comprehensive guidelines supported by the HRSA. This includes, but is not limited to, contraceptive coverage, breastfeeding services and supplies, cervical cancer screening, and pediatric preventive care recommended by HRSA. To the extent recommendations by ACIP and guidelines supported by HRSA overlap with items and services recommended with an "A" or "B" rating by the USPSTF on or after March 23, 2010, plans are still required to provide coverage without cost-sharing under that ACIP or HRSA guidance. Finally, the Departments emphasize that the *Braidwood* decision does not affect the application of state laws that may require health insurance issuers to provide coverage without cost-sharing for items and services recommended with an "A" or "B" rating by the USPSTF on or after March 23, 2010.

Significantly, the FAQs confirm that a HDHP that continues to cover items and services recommended with an "A" or "B" rating by the USPSTF on or after March 23, 2010 will remain HSA compatible coverage. Specifically, these items will continue to be treated as preventive care for

purposes of the HDHP safe harbor for preventive care until further guidance is issued. Therefore, the *Braidwood* decision will not affect an individual's HSA eligibility at this time.

Conclusion

Plans and issuers are not required to make any changes to coverage or cost sharing as a result of the *Braidwood* decision, and the Departments strongly encourage plans and issuers to continue to cover, without cost sharing, items and services affected by the court's decision. To the extent a plan or issuer elects to make coverage changes, they must formally amend all plan documents and comply with applicable notice requirements. This includes the 60-day advance notice requirement for a material modification that affects the content of the most recently provided SBC and ERISA's requirement to provide a summary of material reduction in covered services or benefits within 60 days of adopting the amendment reducing benefits. Alliant will continue to closely monitor developments in the *Braidwood* litigation.

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