

Braidwood Management Inc. v. Becerra Challenges Preventive Services Requirement Under the Affordable Care Act

Overview & Key Facts

On September 7, 2022, Judge Reed O'Connor, a federal district judge in Texas, issued a ruling¹ in the case *Braidwood Management Inc. v. Becerra*, a lawsuit that challenges the requirement that most health plans cover preventive services at no cost under the Affordable Care Act (ACA).

Judge O'Connor ruled that it was unconstitutional for health plans to be required to provide no-cost preventive services with an "A" or "B" rating by the United States Preventive Services Task Force (USPSTF),² the entity responsible for making recommendations on health screenings and testing for a myriad of conditions and diseases. His ruling states that relying on recommendations of the USPSTF violates the Appointment Clause in the Constitution because the USPSTF members are not appointed by the President and confirmed by the US Senate.

Notably, Judge O'Connor's ruling did not extend to preventive services recommended for women, infants, and kids by the Health Resources and Services Administration (HRSA) or Advisory Committee on Immunization Practices (ACIP). The ruling did, however, hold that the requirement that one of the employer plaintiffs must cover an HIV prevention medication known as pre-exposure prophylaxis (PrEP) violated the Religious Freedom Restoration Act.

If Judge O'Connor's ruling is upheld, insurers and employers could choose whether to cover preventive care—and, if so, whether to do so without cost sharing. States could fill this gap for insurers but not self-funded plans.

What's Next?

As of the publication date, Judge O'Connor has yet to issue a formal remedy and scope for the ruling issued on September 7. The extent of the ruling could apply only to the plaintiffs, or nationwide in a way that could apply to most health plans.

¹Report: Access to Preventive Services Without Cost-Sharing: Evidence from the Affordable Care Act. Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. January 11, 2022. [Link](#).

²Report: Free Preventive Services Improve Access to Care, Laura Skopec and Jessica Banthin. Urban Institute, July 2022. [Link](#).

Impact on People



This case casts significant uncertainty on ability of the more than **151 million people**³ currently benefiting from access to free preventive services, as well as insurance carriers and employers seeking certainty and stability in delivering health coverage to their enrollees and employees.

- ★ People broadly support no-cost preventive care. Since 2010, the ACA provision that covers people's preventive services without cost-sharing has become widely popular among Americans, with 62 percent considering it "very important."⁴
- ★ The ruling could reverse important progress on screening rates. In the years following the ACA, more Americans received blood pressure, cholesterol, and colon cancer screenings compared to before the ACA. Moreover, more adults and children received recommended vaccinations, such as the flu and HPV vaccines.⁵
- ★ Plans could drop coverage of needed services and screenings. Prior to the ACA, only about a third of private insurance plans covered vaccines for adults aged 18-64 at all, let alone covering preventive services without cost-sharing.⁶
- ★ Out of pocket costs deter people from seeking preventive care. Without free access to preventive services, many people will not prioritize or be able to afford these services.⁵ For example, prior to the ACA, approximately one-third of low-income Americans postponed seeking preventive care due to cost.⁷
- ★ Changes to this coverage could have a disproportionate impact on communities of color, exacerbating health disparities and erecting barriers to services.
 - ★ Overturning the no cost-sharing requirement for these preventive services could have profound implications for communities whose members have historically faced limited access to essential preventive services.⁸
 - ★ Re-introducing cost-sharing as a barrier to preventive services is likely to reverse progress made in reducing disparities in screening rates.⁹
 - ★ Further, research has shown that high costs lead to underutilization of PrEP, particularly among Black and Hispanic adults.¹⁰

Looking Ahead

As the lawsuit evolves, state policymakers may proactively review and evaluate whether existing laws adequately ensure protections for these critical services, or whether additional state action can further protect these services at no-cost for people.

³Report: Access to Preventive Services Without Cost-Sharing: Evidence from the Affordable Care Act. Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. January 11, 2022. [Link](#).

⁴Report: Free Preventive Services Improve Access to Care, Laura Skopec and Jessica Banthin. Urban Institute, July 2022. [Link](#).

⁵Ibid.

⁶Institute of Medicine (US) Committee on the Evaluation of Vaccine Purchase Financing in the United States. Financing Vaccines in the 21st Century: Assuring Access and Availability. Washington (DC): National Academies Press (US); 2003. 3, Public and Private Insurance Coverage. [Link](#).

⁷Report: Preventive Services Covered by Private Health Plans under the Affordable Care Act. Kaiser Family Foundation. August 4, 2015. [Link](#).

⁸Editorial: Health Equity in Preventive Services: The Role of Primary Care, Steven Teutsch, MD, MPH, Timothy S. Carey, MD, MPH, and Michael Pignone, MD, MPH. American Academy of Family Physicians. 2020;102(5):264-265. [Link](#).

⁹Racial Trends in Clinical Preventive Services Use, Chronic Disease Prevalence, and Lack of Insurance Before the Affordable Care Act, Kenneth E. Thorpe, PhD. The American Journal of Managed Care, April 2022, Volume 28, Issue 4. [Link](#).

¹⁰Associated Costs Are a Barrier to HIV Preexposure Prophylaxis Access in the United States, Karishma Srikanth, MPP, et al. American Journal of Public Health, 2022; 112, 834-838. [Link](#).