

Proactive State Solutions to Guarantee People's Access to Cost-Free Preventive Services

A Guide to Help States Navigate Court Challenges to the ACA's Preventive Services Mandate

In recent years, federal lawmakers have taken steps to [expand access](#) to affordable health care for all people and [improve the quality of care](#) for those who already have it. One of the reforms under the Affordable Care Act (ACA) requires most commercial health plans to cover preventive services without cost-sharing, such as deductibles or copays. Preventive services that receive an "A" or "B" rating from the panel of medical experts at the US Preventive Services Task Force (USPSTF), created in 1984 to promote access to preventive care, are required to be covered without cost-sharing under this provision.

[Nearly two thirds](#) of Americans believe these protections to be very important and more than [150 million people](#) – including approximately 37 million children – with private insurance benefit from access to no-cost preventive services, such as vaccinations, cancer screenings, and counseling services. By providing these and other services at no cost, [more people](#) actually receive and use them. Concerns about possible costs can keep people from getting preventive services – [one third of people](#) who hadn't yet received the COVID-19 vaccine expressed concern over its cost, even though it remains free to all.

Health Benefits are at Risk: *Braidwood Management v. Becerra*

On September 7, 2022, a federal district judge in Texas issued a [decision](#) in the case *Braidwood Management v. Becerra*, a lawsuit that challenges the ACA's preventive services requirement. The judge ruled that it was unconstitutional for private health plans to be required to provide no-cost preventive services as recommended by the USPSTF because members of that task force are not appointed by the President nor confirmed by the Senate, despite being appointed by members of the executive branch, just as are many other government officials.

While the ruling did not extend to preventive services recommended for women, infants, and kids by the [Health Resources and Services Administration \(HRSA\)](#) or vaccinations by the [Advisory Committee on Immunization Practices \(ACIP\)](#), it is possible these services may also be at risk as the decision is appealed. The ruling did specifically state that *Braidwood's* religious beliefs had been violated under the Religious Freedom Restoration Act given its objection to covering pre-exposure prophylaxis (PrEP), an HIV prevention medication, for employees. Without the no-cost preventive services requirement, people would be required to pay out-of-pocket – for PrEP alone that could be over \$1,000 per month – for this medication or forgo care entirely.

Should this ruling take effect nationwide in part or in full, any disruption to preventive services coverage will increase uncertainty, cause people to delay preventive screenings and immunizations, and increase the cost of health care. While the case is currently pending, changes to this coverage could have a disproportionate impact on communities of color, [further limiting](#) disadvantaged communities' access to essential preventive services and reversing progress in [reducing health disparities](#). **While the case is ongoing and appealed, there is an opportunity for state policymakers to take action to protect people's access to these services without cost-sharing.**

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How States Can Act

Because certain populations, including low-income people, are [more likely](#) to postpone care due to cost, it is important that state policymakers take action to ensure these critical services remain available to people without cost-sharing to avoid further financial strain and disparities for these populations. Among the actions states could take:

- ★ **Analyze state statute.** A majority of states have not taken action to codify the ACA's preventive services requirement. Prior to states taking steps to address the cost of preventive services, states should identify whether these services are already protected under state law and offered without cost-sharing.
- ★ **Update state insurance codes.** In the event the ACA's preventive services requirement is struck down, states can update their own regulations to reinterpret existing statutory authority to ensure people have continued access to these services without cost-sharing. Many states already require insurers to cover some preventive services, although most do not have the no cost-sharing requirement.
- ★ **Pass legislation.** States have jurisdiction over health plans on the individual and small group markets, as well as state employee health plans, and lawmakers can use their authority to pass legislation, similar to [legislation](#) introduced in Colorado, to require these plans to cover preventive services without cost-sharing. Legislation could establish a government oversight agency to ensure the list of services offered without cost-sharing are up-to-date.
- ★ **Support federal action.** While state legislators cannot set standards for employer-sponsored plans, they can support federal legislative action to amend the ACA to resolve the constitutional issue at hand to ensure preventive services are covered without cost-sharing.