



FAQ on *Braidwood v. Becerra* Preventive Services Case

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Background

What is the *Braidwood Management v. Becerra* case?

The *Braidwood Management v. Becerra* case challenged the Affordable Care Act's (ACA) requirement that most private insurance plans cover recommended evidence-based preventive care services with no out of pocket costs for people.

What was the ruling?

U.S. District Judge Reed O'Connor issued a ruling that deemed a portion of the preventive services mandate under the ACA unconstitutional. The ruling blocks the federal government from requiring health plans to provide free preventive services recommended by the United States Preventive Task Force (USPSTF), the entity responsible for making recommendations on the types of preventive screenings and services people need, with an A or B rating *on or after March 23, 2010*. The judge also found the requirement that health insurance plans cover pre-exposure prophylaxis, or PrEP, an HIV prevention medication, violated the Religious Freedom Restoration Act.

- The ruling did not affect coverage requirements for USPSTF services recommended prior to March 23, 2010 and also did not affect the requirement for plans to provide free preventive services for women and children as recommended by Health Resources and Services Administration (HRSA) or free vaccines recommended by the CDC's Advisory Committee on Immunization Practices (ACIP).
- Because the USPSTF's members were not appointed by the President, nor confirmed by the Senate, the judge ruled that the requirement to cover the services USPSTF recommends with no cost sharing violated the appointment clause. The judge ruled that, because the ACIP and HRSA are overseen by the HHS Secretary (a Senate confirmed position), the same logic did not apply for services required by those agencies.

How does the decision affect other parts of the ACA?

Aside from the preventive services mandate, the ACA remains unaffected. The ACA's essential health benefit (EHB) requirements, which include preventive services, are still in effect.

Resources:

- [3/30/23: *Braidwood Management v. Becerra* Opinion and Order](#)

Implications of the Ruling:

Who will this ruling impact?

This ruling impacts those on private health plans, including plans offered through the individual, small and large group markets. Nearly half of Americans, over [151 million](#) people, who have private health insurance coverage may lose access to free preventive services, such as cancer screenings, mental health interventions and PrEP. This includes nearly 37 million children.

- The ruling may also impact the more than [21 million](#) people who qualify for Medicaid as a part of the expansion. Similar to private insurance, states must cover ten categories of [Essential Health Benefits \(EHBs\)](#), which include preventive services, for people who qualify for Medicaid as part of the expansion population. If the *Braidwood* decision stands, the decision of what preventive services are covered would be left up to the state and its state private insurance benchmark plan, which may or may not include all services currently covered.
- The Secretary of Health and Human Services determines coverage for preventive services for Medicare beneficiaries, therefore Medicare beneficiaries would likely not be affected by any ruling on the current litigation.

Which preventive services are no longer covered without cost sharing?

Insurers are no longer required to provide free coverage for any A or B grade services recommended by the USPSTF after the passage of the ACA in March 2010.

- This includes things like anxiety screenings for children, perinatal depression preventive interventions for pregnant people, screenings for intimate partner violence and elder abuse, and more. United States of Care created a [chart](#) listing which preventive services are affected by the Braidwood decision.
- Judge O'Connor's ruling also allows for employers to cite religious objections as grounds for not covering PrEP in their plans despite it being a recommended service by the USPSTF. Given that over [80%](#) of PrEP users are covered by commercial insurers, this could have devastating ramifications for cost and access.
- While other services, such as contraception and other forms of birth control, are not included in the *Braidwood* ruling, this case could open the door to employers objecting to offering these services on the grounds of religious freedom.

Which preventive services are still covered without cost sharing?

All recommendations that received an A or B grade from the USPSTF PRIOR to March 23, 2010 are required to be covered.

- These services are required to be covered at no cost to enrollees, but may be outdated or no longer considered a best practice. United States of Care created a [chart](#) listing which preventive services are affected by the Braidwood decision.
- While Judge O'Connor's ruling deemed it unconstitutional for the vast majority of the country's private health plans to be required by the USPSTF to provide no-cost preventive services, the ruling did not extend to preventive services recommended for

women, infants, and kids by HRSA or ACIP. However, the plaintiffs have filed a [notice](#) of cross appeal, signaling that they plan to ask the Fifth Circuit to include the HRSA and ACIP preventive services in a future decision.

Why Does This Matter?

No-cost preventive services are one of the [most popular](#) aspects of health care coverage, and are [scientifically proven](#) to improve health outcomes and lower costs. 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.
- Concerns about possible costs can keep people from getting preventive services – nearly [half of all people](#) would not be willing to pay for some of the most common preventive services, such as HIV screenings or tobacco cessation, if there were a cost. For example, [research](#) shows that introducing some form of cost sharing for PrEP could increase HIV infections by 2000 a year.
- These changes to coverage will likely have a disproportionate impact on communities of color, low income people, and the LGBTQ community, [further limiting](#) these populations' access to essential preventive services and reversing progress in [reducing health disparities](#).

When will people feel the impact of this decision?

Generally, people's coverage will not change immediately.

- Although the ruling is effective immediately, individual market health plan contracts are in place for the calendar year, which prohibit changes to benefits during that time.
- People covered by their employer's health plan are subject to their employer's discretion. As of right now, many insurance companies have said they do not plan on making changes immediately.

Resources:

- [FACT SHEET: Braidwood Management Inc. v. Becerra Challenges Preventive Services Requirement Under the Affordable Care Act](#)
- [AHIP Statement on the Braidwood v. Becerra Decision](#)
- [FACT SHEET: No-Cost Preventive Services Affected by Braidwood Decision](#)

What Should States Be Doing?

Is there any harm in states acting to protect free preventive services?

While litigation continues, states should take action now to protect access to preventive services at no-cost – these efforts would not interfere with any future federal action.

- 14 states already require individual market insurers to cover, without cost sharing, the same categories of preventive services as Section 2713 of the Affordable Care Act (ACA).

What can and should states do to protect free access to preventive services?

While awaiting the appeals process, and absent Congressional action, it is important that state policymakers take action now to ensure these critical services remain available to people free of charge. Among the action states could take:

- **Analyze state statutes.** A majority of states have not taken action to codify the ACA's preventive services requirement. States should identify whether these services are already protected under state law and required to be covered without cost-sharing.
- **Update state regulations.** If the court's decision invalidating the ACA's preventive services requirement is upheld, states can update their own regulations to ensure people have continued access to these services free of charge to the insured. 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 over state employee health plans. States looking to establish state-level protections should act sooner rather than later to help to prevent or mitigate any gaps in coverage.

Resources:

[FACT SHEET: Solutions States Can Take to Preserve Access to Free Preventive Services](#)

What Can We Expect Next?

Should Congress take action?

- Congress should continue to monitor this case closely and be prepared to restore access to no-cost preventive services if Courts do not reverse this decision.

How is the federal government responding?

- The Department of Justice (DoJ) is [appealing](#) the court's decision to the US Court of Appeals for the Fifth Circuit, and – following the appellate court's ruling – either party may, and are expected to, petition to have the case heard by the Supreme Court. This process will likely be lengthy, and it could be several years before a final verdict is reached.
- In the meantime, DoJ has requested that the US District Court in the Northern District of Texas issue a partial [stay](#), pending appeal, of its March 30 ruling, which would prevent the portion of the ruling finding no-cost coverage of preventive services unconstitutional from taking effect until the legal process plays out. Left out of this request is the part of the ruling that struck down the requirement that employers be required to cover PrEP. If the District Court declines to grant a stay, DoJ could request a stay from the Fifth Circuit, and, if similarly denied, then the Supreme Court, while the appeals process is ongoing.

While this ruling will have a significant impact on access to affordable health care, state policymakers can take action now to ensure these preventive care services remain available without cost-sharing for people. We've compiled a list of resources to help our partners navigate

the decision as we await further action from the courts. You can find a complete list of those resources [here](#).