



Braidwood v Becerra - Talking Points For Partners

April 12, 2023

BACKGROUND: Why is *Braidwood v. Becerra* important?

Under the Affordable Care Act's (ACA) preventive services mandate, most private health plans are required to cover more than 100 preventive health services without cost to consumers. This has led to improved health outcomes and reduced disparities in access to care for over 150 million people.

On September 7, 2022, a federal district judge in Texas issued a ruling in the case *Braidwood Management v. Becerra* regarding the statute requiring private health plans cover preventive services at no cost to the enrollee, including more than 50 common preventive services such as cancer and blood pressure screenings. This ruling stated that the preventive services mandate was unconstitutional. However, it remained unclear whether this ruling applied only to the parties privy to the lawsuit, or nationwide.

On March 30, 2023, this same federal judge issued another ruling, clarifying that his decision applies nationwide and not just to the parties involved in this case. **With this additional ruling, access to critical preventative care for more than 150 million people is now at risk – including approximately 37 million children.**

This decision is a sweeping ruling that will have significant implications for our health care system by eliminating free access to preventive services nationwide for millions of Americans and rolling back progress made toward making care more affordable.

Talking Points

1. PREVENTIVE SCREENINGS:

- a. This decision will make it difficult for nearly half the country, over 151 million people (privately insured), to get the no-cost preventive screenings they need to stay healthy.
- b. This decision puts some no-cost health coverage for important services at risk, including some **cancer screenings, HIV prevention medication, and some mental health screenings and interventions for kids and adults**
 - i. **CANCER:** colorectal and lung cancer screenings, as well as breast cancer prevention medications.
 - ii. *(Contraception, immunizations are not currently included in the scope of this decision, so avoid this as a topic for now.)*
- c. While this decision only restricts cost-free access to preventive services recommended by the United States Preventive Services Task Force, other preventive services may be at risk as this case works its way through the courts.

2. PEACE OF MIND/IMPACT:

- a. People want the peace of mind to know they can afford their medical care and depend on their coverage for needed screenings. [Research](#) tells us that the possibility of having to pay extra for health care discourages people from getting necessary tests and check-ups.
- b. Historically underserved communities will be [disproportionately impacted](#): for those with low-incomes, even a small copay could deter someone from receiving preventive care. This ruling will make it even harder to get necessary care and will exacerbate health disparities.
- c. *Cost-sharing hits communities of color and the LGBTQ+ community especially hard, and groups most at risk of HIV transmission (Black/Latino MSM and trans women) will be severely impacted by restricted access to affordable pre-exposure prophylaxis (PrEP), an HIV prevention medication.*

3. IMPACTFUL & POPULAR:

- a. [No-cost preventive services are one of the most popular aspects of health care coverage](#) across demographics and party lines.
- b. Since no-cost cancer screenings became available, cancer deaths have declined by 17%.
- c. HIV infections have decreased by 73% since the mid-1980's, thanks in part to PrEP being covered for free.
- d. Nearly 1 in 4 respondents to a [Morning Consult survey](#) said preventative care is the most important service that insurance plans should cover under the ACA.
- e. A [more recent survey](#) released before the recent *Braidwood* decision showed that **2 in 5 adults would skip necessary preventive care should these services and screenings not be covered cost-free.**
- f. [Almost two-thirds of Americans](#) believe these protections are important and should stay in place, and efforts to restrict access to these free services are [unpopular](#) regardless of political affiliation

4. LEGISLATIVE OPTIONS

- a. This is a bad ruling that ought to be overturned in the courts. Short of rectifying it through the judicial process, various stakeholders can start to identify ways to preserve access to preventive services at no cost.
- b. States have an opportunity to explore avenues to strengthen existing protections and/or establish new laws that preserve access to no cost preventive services.
- c. Some carriers are also taking steps to publicly declare their intention to continue coverage of preventive services at no cost.
- d. Employers also have a role to play in deciding coverage and benefits for their employees, and therefore have control as to whether their health plan includes free preventive services for employees.
- e. Depending on how the legal process unfolds, and likely taking into account several months to years of litigation, Congress ought to be watching the case closely and prepared to restore access to no-cost preventive services if the Courts do not reverse this decision.

5. DOUBLE THE IMPACT: Braidwood and Medicaid Redetermination

- a. This case will have a substantial negative impact on health care in America.
- b. Compounded with Medicaid redeterminations, which began on April 1, many people are facing threats to their health care on two fronts.
- c. Medicaid enrollment has [increased since the pandemic](#), primarily due to the continuous enrollment provision of the Families First Coronavirus Response Act (FFCRA).
- d. Redetermination allows states to start kicking people off Medicaid starting April 1, 2023.
- e. With Medicaid beneficiaries losing coverage, and those with private insurance at risk for losing no-cost care covered by insurers due to *Braidwood*, health outcomes and equity will worsen.

6. A DANGEROUS PATH

- a. Preventive care should be guided by evidence-based recommendations to ensure all have equitable access to these services and not be based on subjective criteria like popularity or what a group of employers or lawmakers believe is worthy.
- b. We must trust expert recommendations from doctors and nurses over those of politicians and employers.
- c. Everyone deserves equal access to the care they need to stay healthy.

7. A DIRE SITUATION

- a. We can't sugarcoat this ruling; it's potentially devastating.
- b. We've made progress in narrowing health disparities and increasing access to care, progress that is threatened by this ruling.
- c. We can't go backwards.