



## ***Braidwood v Becerra - Talking Points For Partners***

Updated September 20, 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 to 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.**

On June 13, 2023, the Department of Justice (DoJ) was granted a [partial stay](#) by the Fifth Circuit, which prevents the portion of the ruling finding no-cost coverage of preventive services unconstitutional from taking effect until the legal process plays out. This process will likely be lengthy, and it could be several years before a final verdict is reached.

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 (PreP), 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 in its current scope only restricts cost-free access to preventive services recommended by the [United States Preventive Services Task Force \(USPSTF\)](#), a recent [cross appeal](#) filed by the plaintiffs potentially puts other preventive services (like contraception and immunizations) at risk.

### 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, and uncertainty surrounding this case only serves to confuse people about whether or not services they've received for free for over a decade will continue to be available cost-free.
  - i. Similarly, while the current scope of the case only applies to USPSTF recommended services, the entire range of preventive services protected by the Preventive Services Mandate is at risk should the plaintiffs get their way.
- 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. EMPLOYER AND INSURER ROLE:

- a. **Health insurers understand the value of offering free preventive services;** it costs people and the system overall less money to provide free preventive services that promote wellness rather than treat illness or disease.
- b. Requiring plans to provide free preventive services has [little to no impact](#) on premium rates. **On the flip side, there is significant savings for people and employers when these services are covered for free.**
  - i. For example, requiring out-of-pocket spending for preventive services would save employers less than [0.5%](#) on healthcare spending – by itself, tobacco use screening with a brief intervention was found to save an average of more than [\\$500](#) per smoker.

- c. **Employers and insurers have a role to play by making commitments to maintaining cost-free access to preventive services.**
  - i. Some carriers are also taking steps to publicly declare their intention to continue coverage of preventive services at no cost.
    - 1. States are now undergoing the “rate review” process where health insurance companies offer previews of their plans to state regulators, so we will soon learn more about how plans are addressing this, but we expect that it will be built into plans and the rates people pay, just as it has been in the past.
  - ii. 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.

## 5. LEGISLATIVE OPTIONS:

- a. **This is a bad ruling that ought to be overturned through the judicial process.** 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. Many states – including [Colorado](#) and [Minnesota](#) – have [taken action](#) to strengthen existing protections and/or establish new laws that preserve access to no cost preventive services.
- c. The stay issued by the Fifth Circuit Court of Appeals is a positive step forward, but depending on how the legal process unfolds, 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.

## 6. DOUBLE THE IMPACT: Braidwood and Medicaid Redetermination

- a. This case will have a substantial negative impact on health care across the nation.
- b. Compounded with Medicaid redeterminations, which began on April 1, many people are facing threats to their health care on two fronts.
  - i. States are taking [vastly different approaches](#) to the redetermination process – with some states navigating the process in a responsible way

that prioritizes maintaining access to care, and others kicking people off of Medicaid in droves, despite many of whom still being eligible for Medicaid coverage.

- c. During the pandemic, Medicaid enrollment [increased](#), primarily due to the continuous enrollment provision of the Families First Coronavirus Response Act (FFCRA).
- d. With Medicaid beneficiaries now *losing* coverage, and those with private insurance at risk for losing no-cost care covered by insurers due to *Braidwood*, access to care and health equity are facing attacks on two fronts.
  - i. This means that correcting this ruling through the judicial process, codifying these protections at the state level, and securing commitments from private employers and insurance companies that they will maintain no-cost coverage of preventive services is critical.

#### 7. A DANGEROUS PATH:

- a. Preventive care should be guided by evidence-based recommendations to ensure all have equitable access to these services. The recommendation status of these services should not be based on subjective criteria like 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.

#### 8. 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.