

FACT SHEET

Braidwood Management Inc. v. Becerra threatens access to preventive services

A lawsuit challenging the Affordable Care Act's (ACA) requirement for plans to provide people access to free preventive services has been moving through the federal court system, threatening people's access to critically-important preventive care. The case, *Braidwood Management v. Becerra*, challenges the requirement for private health plans, including fully insured and self-insured plans, to provide free preventive services. This means people's access to critical preventive health services, including preexposure prophylaxis (PrEP), cancer screenings, and mental health evaluations, is at risk.

Case History

In March, the District Court ruled that requiring plans to cover services with an "A" or "B" recommendation by the United States Preventive Services Task Force (USPSTF) was unconstitutional, with the ruling applying nationwide. Notably, the judge's ruling did not extend to the preventive services recommended for women, infants, and kids authorized by the Health Resources and Services Administration (HRSA) or Advisory Committee on Immunization Practices (ACIP).

Following the March ruling, the Department of Justice appealed to the Fifth Circuit and received a "stay," which means the effect of the ruling is on pause while the case moves through the appeals process. Since then, the plaintiffs have also submitted an appeal, ultimately seeking the elimination of requirements for plans to provide free access to preventive services recommended by ACIP and HRSA as well, meaning access to all preventive services is ultimately at risk.

What's Next

While the March 30 ruling applied O'Connor's decision nationwide, the *Braidwood* case is far from settled. Regardless of the Fifth Circuit's decision on the merits of the case, legal experts believe the decision will be appealed to the Supreme Court.

Impact on People

The decision in this case introduces significant uncertainty to the more than 151 million people currently benefiting from access to free preventive services.

- ★ **People broadly support no-cost preventive care.** The ACA's preventive services mandate is widely popular, with 62 percent considering it "very important." By contrast, efforts to repeal this coverage through the courts is unpopular by a nearly a 2:1 margin.

- ★ **The ruling could reverse progress in screening rates.** Since the preventive services mandate took effect in 2010, utilization of services such as blood pressure screenings, cholesterol screenings, and colorectal cancer screenings has increased. Restrictions on these free services could lead some conditions to go undetected, worsen health outcomes, and increase costs.
- ★ **Plan could drop coverage of needed services.** Changes to the preventive services cost-free mandate could cause some insurers to revert to standards in place before 2010. Prior to the ACA, only two-thirds of plans covered some maternal care services, and only 6% of plans studied covered maternal care in full, oftentimes with cost-sharing.
- ★ **Improvements in health outcomes could be reversed.** In 2020, preventive health care was the primary reason for 33.4% of health center visits, and 60% of all health center visits included an examination, screening, or form of health counseling that would be considered preventive in nature. Decreased access to these preventive services could reverse the gains made over the past decade.
- ★ **Out of pocket costs could deter people from seeking preventive services or cause them to skip care entirely.** Approximately one-third of insured adults have delayed access to care due to costs. More than 40% of people indicated that they would forgo essential health care if they had to pay for 11 out of 12 listed preventive services.
- ★ **Removing free coverage for preventive services could have a disproportionate impact on communities of color and other marginalized communities.** Prior to the ACA, communities of color had low utilization of preventive services and approximately one-third of low-income Americans report having delayed preventive services due to cost.
- ★ **Restricted access to preventive services and medications could cause an increase in preventable diseases.** Decreased access to PrEP stemming from the decision could lead to more than 2,000 additional HIV infections in the next year.

Looking Ahead

States have jurisdiction over the individual and group plans offered in their states. As the lawsuit evolves, state policymakers may proactively review and evaluate whether existing laws adequately ensure protections for the critical services offered in these plans or whether additional state action can further protect these services at no-cost for people.