



## **FAQ: *Kennedy v. Braidwood* Preventive Services Case**

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### **Background**

#### **What is *Kennedy v. Braidwood Management Inc.*?**

The *Kennedy v. Braidwood Management Inc.* (formerly *Braidwood Management Inc. v. Becerra*) case challenges 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.

#### **Where do things stand now?**

In June 2024, the U.S. Court of Appeals for the Fifth Circuit partially upheld a lower court's ruling in *Braidwood* that overturned part of the ACA's no-cost preventive services requirement. Earlier this year, the U.S. Supreme Court decided to take up the case, with oral arguments scheduled for April 21 ahead of an expected decision in either late June or early July. In February 2025, the Trump administration filed a [brief in support](#) of the no-cost preventive services mandate, continuing the position adopted by the previous Biden administration.

#### **What was the Fifth Circuit's ruling?**

The Fifth Circuit agreed in part with a lower court's [ruling](#) that found the way in which members of the U.S. Preventive Services Task Force (USPSTF), one of the expert bodies responsible for identifying cost-free preventive services, was unconstitutional. Because the USPSTF's members are not appointed by the President, nor confirmed by the Senate, the Court ruled that the requirement to cover the services USPSTF recommends with no cost-sharing violated the U.S. Constitution's Appointments Clause. In effect, this would block the federal government from requiring health plans to cover USPSTF-recommended [preventive services](#) at no cost. Despite this, the Fifth Circuit limited its decision to the plaintiffs, thus preserving access to cost-free preventive care for more than 150 million people with private coverage for now.

The Fifth Circuit ruling did not affect coverage requirements for USPSTF-recommended services recommended prior to the passage of the ACA in March 2010. It also did not affect cost-free access to preventive services for women and children as recommended by Health Resources and Services Administration (HRSA) or vaccines recommended by the CDC's Advisory Committee on Immunization Practices (ACIP), although the Court did provide a roadmap for the plaintiffs to challenge cost-free access to these services on the district court level in the future.

## How does the decision affect other parts of the ACA?

Aside from the preventive services mandate, the ACA remains unaffected by this ruling. The ACA's essential health benefit (EHB) requirements, which require coverage – although not cost-free coverage – of preventive services, are still in effect.

### Resources:

- ★ RULING: [Fifth Circuit decision in \*Braidwood v. Becerra\*](#)
- ★ BRIEF: [USofCare-led amicus brief in support of the preventive services mandate](#)
- ★ BRIEF: [Government brief in support of the preventive services mandate](#)

## Implications of the Ruling

### Who would this ruling impact?

If the Supreme Court upholds the Fifth Circuit's decision, more than [150 million](#) people, including 37 million children, with private health coverage on the individual, small, and large group markets could lose cost-free access to critical preventive care services.

- ★ The ruling may also impact more than [21 million](#) people with incomes below 138% of the federal poverty level (FPL) who qualify for Medicaid as a part of the Medicaid expansion population. 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 could be left up to the state and its state private insurance benchmark plan, which may or may not include all services currently recommended by the USPSTF, HRSA, and ACIP.
- ★ The Secretary of Health and Human Services (HHS), and not the three advisory committees, determines coverage for preventive services for Medicare beneficiaries. Therefore, Medicare beneficiaries would likely not be affected by any ruling on the current litigation.

### Are preventive services still covered without cost-sharing right now?

While the Fifth Circuit's decision effectively challenged the USPSTF's authority to require certain preventive care services to be covered for free, *insurers are still required to cover preventive services without cost, including those recommended by the USPSTF*, as the Supreme Court considers the case. Only the plaintiffs in the *Braidwood* case are exempt from this requirement. Preventive services recommended by ACIP and HRSA continue to be required to be covered cost-free.

### Which preventive services *could* be impacted in the future?

If the Supreme Court affirms the Fifth Circuit's decision, insurers would no longer be 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. While the Supreme Court will likely limit its upcoming decision to USPSTF-recommended services, ACIP- and HRSA-recommended services may also be at risk in the future. In its ruling last year, the Fifth Circuit remanded, or returned, the parts of the case related to ACIP and HRSA back to the district court level for further consideration. It is possible, depending on how the case is argued, that the ACA's preventive services mandate could be at risk for all three bodies, placing cost-free access to *all* services at risk.

### **Why does this matter?**

No-cost access to preventive care is one of the [most popular](#) provisions of the ACA and people are [strongly opposed](#) to efforts to reintroduce cost-sharing for these services. A Supreme Court ruling that removes parts of the no-cost mandate could reverse important progress on screening rates and access to other treatments:

- ★ [More](#) Americans receive blood pressure, cholesterol, and colon cancer screenings since the ACA was passed. Moreover, [more](#) adults and children receive recommended immunizations, 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, currently offered for free. The effects of this would be devastating; introducing some form of cost-sharing could [increase HIV infections](#) and [colorectal cancer deaths](#).
- ★ Changes to coverage would 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?**

*People's access to coverage will not change ahead of an expected Supreme Court decision in late June or early July.* Even if the Supreme Court removes the no-cost mandate in part, immediate changes to coverage or cost-sharing would be unlikely. People who buy their health insurance through their state's health insurance marketplace would not likely notice any changes to their benefits because health insurance companies are not allowed to change benefits mid-plan year. People covered by their or a family member's employer health plan should check with their employer. Some employers will continue offering these benefits to their employees, and some insurance companies have said they do not plan on making changes immediately when a final decision is released.

### **What Should Policymakers Be Doing?**

#### **Should Congress take action?**

Congress should continue to monitor this case closely and be prepared to restore access to no-cost preventive services if the Supreme Court does not reverse the Fifth Circuit's decision.

#### **What can and should states do to protect free access to 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. Nationwide, [18 states](#) already require individual market insurers to cover, in full or in part, the same categories of preventive services listed under Section 2713 of the Affordable Care Act (ACA) with no cost-sharing.

Among the actions states can take:

- ★ **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 cover preventive services without cost-sharing.
- ★ **Update state regulations.** If the Supreme Court agrees with the Fifth Court's decision to invalidate part of the ACA's preventive services requirement, states should update their own regulations to ensure people have continued access to these services free of charge to the insured through Minimum Essential Coverage requirements or by updating their EHB benchmark requirements. Many states already require insurers to cover some preventive services, although most do not have the no cost-sharing requirement.

**Resources:**

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

While the final decision in 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. USofCare has compiled a list of [resources](#) to help our partners navigate the decision as we await further action from the Supreme Court.