



FAQ: *Braidwood v. Becerra* Preventive Services Case

Updated March 2024

SECTIONS:

- ★ [Background](#)
- ★ [Implications of the Ruling](#)
- ★ [What Should States Be Doing?](#)
- ★ [What Can We Expect Next?](#)

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.

Where do things stand now?

In September 2022, U.S. District Judge Reed O'Connor of the United States District Court for the Northern District of Texas issued a ruling that deemed a portion of the ACA's preventive services mandate unconstitutional. The case is [currently before](#) the Fifth Circuit Court of Appeals, which issued a stay, or pause, of the lower court's ruling as it considers the case following oral arguments on March 4, 2024.

What was the lower court's ruling?

The lower court's ruling blocked 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. It 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 Appointments Clause of the U.S. Constitution. 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 by this ruling. 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 would this ruling impact?

If the lower court's decision is upheld, this ruling would affect the more than [150 million](#) people with private health coverage, including people with plans through the individual, small, and large group markets. This includes nearly 37 million children.

- ★ 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 would 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?

Because the Fifth Circuit granted a partial stay as the case moves through the appeals process, *preventive services are still required to be covered cost-free.*

- ★ While Judge O'Connor's ruling – which is currently on hold – affects no-cost access to a significant number of USPSTF-recommended services for people with private health insurance, the ruling did not extend to the remainder of preventive services recommended by the USPSTF, nor to services recommended by HRSA or ACIP for women, infants, and kids. Since then, however, the plaintiffs have filed a [cross-appeal](#) to eliminate the requirement for plans to provide no-cost coverage for *all* preventive services. Ultimately, this case [effectively puts cost-free coverage for ALL recommended preventive services at risk.](#)

Which preventive services *could* be impacted by a ruling by the Fifth Circuit?

If the Fifth Circuit affirms Judge O'Connor's existing 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. It is also possible that the Fifth Circuit could decide to increase the number of services no longer required as the plaintiffs have sought in their

[cross-appeal](#) to include all preventive services as recommended by the USPSTF, ACIP, and HRSA, placing cost-free access to *all* these services at risk.

Judge O'Connor's ruling also allowed for employers to cite religious objections as grounds for not covering PrEP in their plans, despite its status as a USPSTF A grade recommended service. Should the Fifth Circuit uphold this decision as well, it could have devastating impacts on PrEP's affordability and access, given that over [80%](#) of PrEP users are covered by commercial insurers. The Fifth Circuit could also expand the scope of the religious freedom argument to include services such as contraception and forms of birth control which were not included in the lower court's ruling.

Why does this matter?

No-cost preventive services are one of the [most popular](#) aspects of health care coverage and have [improved](#) health outcomes and lowered costs for people. The ruling 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, if there were a cost. For example, [research](#) shows that introducing some form of cost-sharing for PrEP could increase HIV infections by 2,000 per 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?

People's access to coverage will not change while the Fifth Circuit's stay is in place. While we expect the 5th Circuit to rule on the appeal around mid-2024 and for the case to move to the Supreme Court, people can feel assured that the coverage they have now will not change.

Resources:

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

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

While awaiting a final decision in this case, it is important that state policymakers take action now to ensure these critical services remain available to people free of charge.

Among the actions states can 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 the courts do not reverse this decision.

How is the federal government responding?

- ★ The Department of Justice (DOJ) filed an [appeal](#) to the U.S. Court of Appeals for the Fifth Circuit following Judge O’Connor’s ruling in March 2023.
- ★ DOJ asked for and was granted a “partial stay” by the Fifth Circuit in May 2023, which prevents Judge O’Connor’s ruling from taking effect as the Fifth Circuit considers the case.
- ★ Following the Fifth Circuit’s oral arguments in March 2024, a decision is expected sometime in Spring 2024. As noted, the plaintiffs have filed a [cross-appeal](#) to eliminate the requirement for plans to cover *all* services recommended by the USPSTF, HRSA, and ACIP, which is larger in scope than the District Court decision.

Will this case go to the Supreme Court?

Regardless of the Fifth Circuit's ruling, we expect that this case will be appealed to the Supreme Court, which may or may not take up the case. Should the Supreme Court not accept the case, the Fifth Circuit's ruling would stand as the final decision. Should the Supreme Court take up *Braidwood*, the entire process will likely be lengthy, and it could be several years before a final verdict is reached.

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 courts, which you can find [here](#).