

June 1, 2023

***Braidwood Management v. Becerra* Decision Fact Sheet**

On March 30th, 2023, Northern Texas District Judge Reed O'Connor ruled that in the case *Braidwood v. Becerra*, Braidwood Management was not required to cover pre-exposure prophylaxis (PrEP), a medicine that prevents HIV (Human Immunodeficiency Virus) infection, due to religious beliefs. The ruling also stated that the United States Preventive Task Force (USPSTF) had no federal authority to mandate coverage of various preventive services. Judge O'Connor's decision overturned the Affordable Care Act (ACA) portion that makes preventive services, including some cancer screenings, free to enrollees. This case ruled that ACA-compliant plans, including employer-sponsored and Medicaid expansion plans, are no longer required to cover USPSTF preventive services. This decision allows employers and insurers nationwide to reinstate copayments or other cost-sharing measures for some of these preventive services.

The ruling for cost-sharing applies only to USPSTF A and B recommendations that have been issued since March 2010 when the ACA was enacted. The decision does not overturn coverage for preventive services approved outside the USPSTF, nor does the ruling apply to no-copay contraceptives or vaccines recommended by the CDC's Advisory Committee on Immunization Practices (ACIP) or the Health Resources and Services Administration (HRSA).

No-cost coverage for USPSTF A and B recommended preventive services are likely to be impacted. Some preventive services that may be affected:

- Lung cancer screenings
- Adult depression screening
- Skin cancer prevention
- Tobacco cessation in adults and children
- Hypertension screening in adults

The current A and B USPSTF recommendations can be found [here](#).

As mentioned above, some tests would remain free of cost-sharing for patients because other agencies have recommended them. Some services that would not be affected:

- Certain [vaccines](#) (recommended by the CDC's Advisory Committee on Immunization Practices)
- Certain women's [preventive services](#) and contraception (recommended by the Health Resources and Service Administration)
- Certain tests or treatments that were USPSTF-recommended prior to March 2010

Each insurer and self-insured employers will have to decide whether to reinstate cost sharing for enrollees. It is unlikely that beneficiaries will see changes to their coverage during their current plan year.

What Happens Next?

The Federal Department of Justice [filed a notice](#) on March 31, 2023, that it intended to appeal the decision. The appeals process could take several months or years.

The DOJ (Department of Justice) will seek to overturn the ruling. Still, the plaintiffs (Braidwood Management) will likely seek to expand the ruling beyond the USPSTF to include recommendations made by other agencies, including HRSA-recommended women's health services.

Congress could act to "give the task force recommendations approval by the secretary of the Department of Health and Human Services." However, making the necessary statutory changes to the ACA's language through the legislative process may be difficult in a divided Congress.

In the meantime, patients should continue to seek and get preventive services because their coverage will likely not change until January 2024 or the start of their next new plan year.

Updates

In April 2023, the Department of Justice requested a stay of the Braidwood decision to halt its implementation while the case goes through the appeals process. G02 for Lung Cancer [joined other leading health groups in an amicus brief](#) supporting the DOJ's stay request to the Fifth Circuit Court of Appeals.

To further support the ACA's preventive services coverage mandate, 14 states, including the District of Columbia, have filed state legislation protecting preventive services. Click [here](#) for current information on state legislation.

On May 15, 2023, a Fifth Circuit Court of Appeals judge granted the DOJ-requested administrative stay. **No-cost coverage for preventive services currently remains in effect.**

G02 for Lung Cancer joined the nation's leading health groups to [applaud this decision](#). G02 and the other dozens of health groups will "continue to work to make sure everyone in the U.S. has access to quality and affordable health care."

If you have any questions or concerns, please contact Sydney Burchell (sburchell@go2.org).