

Navigating the Wild West of the New ACA Preventative Care Ruling

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On March 30, Judge Reed O'Connor of the U.S. District Court for the Northern District of Texas issued a [decision](#) in *Braidwood Management Inc. v. Becerra* (“*Braidwood*”), invalidating the Affordable Care Act’s (“ACA’s”) mandate requiring health plans and health insurers offering health insurance coverage to provide coverage for preventative care services recommended by the U.S. Preventive Services Task Force (“USPSTF”). The case was pursued by religious individuals and businesses that asserted that they were harmed by being required to pay for health insurance coverage which included services that they do not want to cover on religious grounds.

The ruling was bipartite: first, it invalidated USPSTF’s authority on the basis that the USPSTF does not have the constitutional authority to mandate that preventive medical care must be covered without patient cost-sharing (*i.e.*, copays, deductibles, and/or coinsurance). Second, it broadened Judge O’Connor’s prior decision that the ACA’s requiring religious employers to provide health insurance coverage for preexposure prophylaxis for HIV prevention (“PrEP”) violates the Religious Freedom Restoration Act. Together, these rulings essentially will permit employers and health care plans to again impose cost-sharing requirements on preventive medical care, and to drop coverage for HIV prevention drugs.

Broad Implications for Preventative Health Care

[Section 2713 of the ACA](#), requires health plans and health insurers to provide coverage for a range of “preventative care services” without patient cost-sharing. The ACA’s [definition](#) of “preventative care services” includes certain services recommended by the USPSTF, the U.S. Centers for Disease Control, and Prevention’s Advisory Committee on Immunization Practices (“ACIP”) and the Health Resources and Services Administration (“HRSA”). PrEP, the preventative service at issue in *Braidwood*, is just one of the preventative care services recommended by USPSTF, but USPSTF’s list of recommended preventative care services is extensive, including many services and screenings that are generally not opposed on religious grounds – services like breast, cervical, colorectal, lung and skin cancers, diabetes, depression, hepatitis and vision preventative screenings, as well as certain pregnancy and postpartum care services.

Judge O'Connor's decision asserted that the ACA's definition of mandatory preventative care services cannot include *any* of the services recommended by the USPSTF, because the USPSTF lacks constitutional authority to make such recommendations. Thus, the impact of the *Braidwood* decision extends to *all* preventative care services recommended by the USPSTF.

The breadth of this decision has garnered criticism from the White House, civil rights groups, patient advocacy groups, Democratic lawmakers and medical experts across multiple specialties. A coalition of leading medical groups – including the American Cancer Society Cancer Action Network, American Lung Association, Cystic Fibrosis Foundation, Leukemia & Lymphoma Society and AIDS Institute – issued a [statement](#) that this “overly broad ruling will have sweeping negative implications for millions of Americans by once again erecting barriers to lifesaving preventive care.” White House press secretary Karine Jean-Pierre also said during a briefing that “[t]he administration will continue to fight to improve health care and make it more affordable for working families, even in the face of these attacks.”

Current Status of ACA Preventative Care Ruling

In response to the ruling, the U.S. Department of Justice (the “DOJ”) filed a notice of appeal with the U.S. Court of Appeals for the Fifth Circuit on March 31, 2023. The DOJ also filed a motion for a stay on April 12, 2023.

On April 20, 2023, Judge O'Connor deferred ruling on the request for a stay on the nationwide injunction. The Court ordered Defendants — as soon as practical — to (1) address their commitment to the assertions that more than 150 million Americans' preventive care services coverage will be disrupted; and (2) explain what evidence they have that insureds will lose their coverage. The Court will consider this information when evaluating the merits of Defendants' request for emergency relief and exercising its discretion to impose a stay, pending the DOJ's appeal.

Implications for Health Plans and Employers

Given the appeal process that is underway, employers and health plans are generally **encouraged to wait to make any changes** to plan coverage for preventative services, at least until the Court issues its ruling with respect to the DOJ's request for a stay, if not also until a decision on the Fifth Circuit appeal is issued.

In response to the *Braidwood* decision, the Departments of Labor, Treasury, and HHS have issued [initial guidance](#) on how the ruling affects requirements to cover preventive services without cost-sharing under the ACA. In part, health plans and health insurers must:

- Continue to cover, without cost-sharing, items and services recommended with an “A” or “B” rating by the USPSTF *before* March 23, 2010;
- Continue to cover other services under PHS Act— for example, immunizations recommended by the ACIP, as well as contraceptive services, breastfeeding services and supplies, cervical cancer screening, and pediatric preventive care recommended by HRSA – without cost-sharing, since the *Braidwood* decision did not enjoin enforcement of those provisions of PHS Act Section 2713 or the respective implementing regulations and guidance;
- Continue to comply with any applicable state laws regarding coverage of preventative care services without cost-sharing; and

- Comply with any additional applicable notice requirements if they change terms of coverage of participants, beneficiaries and enrollees.

Additional guidance is anticipated in the future.

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