



May 2, 2022

Senate Chair Paul R. Feeney
Joint Committee on Financial Services
Massachusetts State House, Room 112
Boston, MA 02133

House Chair James M. Murphy
Joint Committee on Financial Services
Massachusetts State House, Room 254
Boston, MA 02133

Senate Vice Chair Michael O. Moore
Joint Committee on Financial Services
Massachusetts State House, Room 109-B
Boston, MA 02133

House Vice Chair Bruce J. Ayers
Joint Committee on Financial Services
Massachusetts State House, Room 254
Boston, MA 02133

Re: An Act relative to preserving preventative services without cost sharing (H.1081/S.647)

Dear Senate Chair Paul R. Feeney, House Chair James M. Murphy, Senate Vice Chair Michael O. Moore, and House Vice Chair Bruce J. Ayers:

On behalf of the Center for Health Law & Policy Innovation of Harvard Law School (CHLPI), thank you for the opportunity to express support for House Bill 1081 and Senate Bill 647, *An Act relative to preserving preventative services without cost sharing*.

CHLPI advocates for legal, regulatory, and policy reforms to improve the health of underserved populations with a focus on the health and public health needs of systemically marginalized individuals, including people living with chronic illnesses. In Massachusetts, chronic diseases (including cancer, diabetes, and cardiovascular disease) contribute to 56% of mortality.¹ One of the most important tools we have in addressing chronic illness is early access to and wide utilization of evidence-based preventive care.

However, the recent legal decision in *Braidwood Management v. Becerra* has undermined a critical provision of the Affordable Care Act (ACA) that requires most insurance to cover key preventive care.² This provision used topline recommendations from the United States Preventive Services Task Force (USPSTF), an independent panel of experts in disease prevention and

¹ Mass.gov, Chronic Diseases (last accessed May 2, 2023), <https://perma.cc/4BYE-GF3W>.

² *Braidwood Management, Inc. v. Becerra*, No. 4:20-cv-00283, Slip op. (N.D. Texas March 30, 2023).

evidence-based medicine,³ along with recommendations from other federal health agencies to determine what preventive services insurers should cover at no additional cost beyond a consumer’s monthly premium.⁴ Since its implementation in 2010, this provision has standardized coverage of important services such as cancer and hepatitis C screenings, HIV prevention, and breast cancer risk-reducing medications, and has made preventive care accessible to more than 150 million people.⁵

In March 2023, a federal district court in Texas issued a ruling in *Braidwood Management v. Becerra* that vacated all federal agency action implementing the USPSTF coverage requirement for services with recommendations issued within the past 13 years.⁶ While several issuers have committed to maintaining the status quo while the decision is appealed, many consumers, advocates, and policymakers remain concerned about the long-term potential of sliding back into a pre-ACA world where plans did not uniformly cover the most important evidence-based preventive care. In particular, even if issuers commit to cover preventive services that are currently recommended by the USPSTF, the USPSTF regularly reviews and updates its recommendations to reflect the most recent scientific evidence regarding the effectiveness of preventive services. Insurance coverage may not keep pace with these advances in the absence of rules that require coverage of all services with topline USPSTF recommendations.

CHLPI supports H.1081/S.647 as we believe it will ensure that issuers continue to cover key evidence-based preventive services that address a wide variety of chronic illnesses impacting Massachusetts residents. We believe the bills will also help maintain stability and predictability in the Massachusetts insurance marketplace for consumers and the health care providers who treat them.

H.101/S.647 will ensure that state-regulated issuers in Massachusetts maintain access to evidence-based preventive services at no additional cost.

H.1081/S.647 would require state-regulated issuers providing health care plans in Massachusetts to cover recommended preventive services at no additional cost, including those with a USPSTF grade of “A” or “B”. The bills not only address the gap left by the most recent ruling in *Braidwood*

³ U.S. Preventive Services Task Force, About the USPSTF (last accessed May 2, 2023), <https://perma.cc/3ZM6-CVHT>.

⁴ See 42 U.S.C. § 300gg-13(a).

⁵ U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Access to Preventive Services without Cost Sharing: Evidence from the Affordable Care Act (Jan. 11, 2022), <https://perma.cc/86UA-8WFN>.

⁶ *Braidwood Management, Inc. v. Becerra*, No. 4:20-cv-00283, Slip op. (N.D. Texas March 30, 2023). For additional information and analysis regarding the litigation, see *Braidwood Management v. Becerra*: Frequently Asked Questions for Health Care Advocates and Providers (last updated April 14, 2023), https://chlpi.org/wp-content/uploads/2023/04/CHLPI-Braidwood-FAQs_Final-Circulated-4.14.23.pdf.

Management v. Becerra, but also protect against future rulings that might adversely impact other federal preventive service coverage requirements.⁷

Standardized coverage of preventive services is an important tool in supporting health and wellness. Preventive services can aid in the early detection of chronic illness and can increase a patient's chances of survival and life expectancy due to early treatment.⁸ The USPSTF-recommended preventive services address a wide variety of chronic illnesses that impact Massachusetts residents. Of the six leading causes of death for Massachusetts residents, five (cancer, heart disease, stroke, diabetes, and chronic lower respiratory disease) are chronic illnesses, all with relevant USPSTF preventive service recommendations.⁹

While preventive care can help lower the risk of developing or delaying the diagnosis of chronic illnesses, associated costs have discouraged many consumers from obtaining life-saving preventive care.¹⁰ The ACA provision at issue in *Braidwood Management v. Becerra* addresses this problem by requiring most private insurers to cover preventive services recommended by the USPSTF, the Centers for Disease Control and Prevention, and the Health Resources & Services Administration with zero cost sharing.¹¹ This provision has changed the health care landscape and vastly improved access to life-saving preventive services, with approximately 6 in 10 privately insured individuals receiving some form of ACA-related preventive care in 2018.¹²

The *Braidwood Management v. Becerra* decision has undermined the requirement to cover USPSTF-recommended preventive services specifically by limiting the federal government's authority to force insurance companies to cover services that the USPSTF recommended before

⁷ The district court determined that preventive services recommendations supported by the Health Resources & Services Administration and the Advisory Committee on Immunization Practices were constitutional. *Braidwood Management, Inc. v. Becerra*, No. 4:20-cv-00283, Slip op. at 1 (N.D. Texas March 30, 2023). However, this ruling may be reversed upon appeal.

⁸ See, e.g., Brief for the American Cancer Society, American Kidney Fund, et al. as Amici Curiae Supporting Defendants, *Braidwood Management, Inc. v. Becerra* (N.D. Texas) (No. 4:20-cv-00283).

⁹ MA.gov, Mortality (last accessed May 2, 2023), <https://perma.cc/83XP-SFM6>. See U.S. Preventive Services Task Force, Recommendations (last visited May 2, 2023) (including recommendations for services such as breast cancer risk-reducing medications, statins, and tobacco smoking cessation counseling), https://www.uspreventiveservicestaskforce.org/uspstf/topic_search_results?topic_status=P.

¹⁰ While plan benefit design can help steer consumers to specific services, consumers "tend to cut high-value care as well as low-value care" when limiting health care expenditures. Brief for 20 health policy experts, the American Public Health Association, et al. as Amici Curiae Supporting Defendants, *Braidwood Management, Inc. v. Becerra* (N.D. Texas) (No. 4:20-cv-00283). The Preventive Services Provision of the Affordable Care Act (which includes in part, the requirement to cover USPSTF recommended services) "is intended to promote high-value preventive services, which ultimately will improve health and will lower health care costs." *Id.*

¹¹ See 42 U.S.C. § 300gg-13(a).

¹² Krutika Amin, Brett Lissenden, et al., Preventive services use among people with private insurance coverage, March 20, 2023, <https://perma.cc/42GC-4Y4T>.

March 23, 2010.¹³ In the past 13 years, however, medical research and therapeutic interventions have advanced greatly. We have not only seen the discovery of life-saving preventive care, but we also have a better understanding of how preventive medicine can be delivered more effectively.

For example, in July 2012, Truvada (emtricitabine/tenofovir disoproxil fumarate) was approved as pre-exposure prophylaxis (PrEP) that is extraordinarily effective at preventing HIV transmission.¹⁴ This groundbreaking development received the USPSTF's highest recommendation and subsequently uniform coverage among most private health insurance plans.¹⁵ USPSTF is currently considering expanding its recommendation for PrEP to include coverage of Apretude, a recently approved, long-acting injectable form of PrEP that can provide a more effective prevention method for individuals unable to regularly take an oral PrEP regimen.¹⁶ Under the court's current ruling, the federal government would only be able to require issuers to comply with pre-2010 medical recommendations—which do not include PrEP.

As another example, the USPSTF currently recommends hepatitis C virus (HCV) screening for all adults aged 18 to 79 years old.¹⁷ This 2020 recommendation “incorporate[d] new evidence and replace[d] the 2013 USPSTF recommendation, which recommended screening for HCV infection in . . . adults born between 1945 and 1965.”¹⁸ The 2013 recommendation had updated a 2004 statement which recommended against routine screening for asymptomatic adults not at “increased risk for infection” and found insufficient evidence to recommend for or against regular screenings for “adults at high risk of infection.”¹⁹ Notably, when the USPSTF issued its 2004 recommendation against routine screening, HCV treatment options were less effective and more difficult to tolerate than treatments that are available and commonly prescribed today.²⁰ Under the court's current ruling, the federal government would have to ignore the 2013 and 2020

¹³ The final order in *Braidwood Management v. Becerra* forbids the federal government from enforcing no-cost coverage of USPSTF recommendations issued on or after March 23, 2010. Issuers are thus still required to cover services with pre-existing USPSTF recommendations that were in place when Congress passed the Affordable Care Act.

¹⁴ See Food & Drug Administration, Truvada for PrEP Fact Sheet: Ensuring Safe and Proper Use (July 2012), <https://perma.cc/H37G-2WXH>; Centers for Disease Control and Prevention, PrEP Effectiveness (June 2022), <https://perma.cc/E365-CYWW>.

¹⁵ While most private insurance plans are supposed to uniformly cover PrEP and ancillary services at no additional cost, some consumers have continued to face billing errors. See, e.g., Jessica Bartlett, Despite Federal Rules, HIV Prevention Drug Still Comes With Costs, *Boston Globe*, Jan. 8, 2023.

¹⁶ U.S. Preventive Services Task Force, Final Research Plan: Prevention of HIV Infection: Pre-Exposure Prophylaxis, Jan. 13, 2022, <https://perma.cc/39XW-GCPF>.

¹⁷ U.S. Preventive Services Task Force, Screening for Hepatitis C Virus Infection in Adolescents and Adults US Preventive Services Task Force Recommendation Statement at E3 (March 2, 2020), DOI: 10.1001/jama.2020.1123.

¹⁸ *Id.*

¹⁹ U.S. Preventive Services Task Force, Final Recommendation Statement: Hepatitis C Virus Infection: Screening (March 2004), <https://perma.cc/9G26-UVY8>.

²⁰ See U.S. Preventive Services Task Force, Screening for Hepatitis C Virus Infection in Adolescents and Adults US Preventive Services Task Force Recommendation Statement at 972 (March 2, 2020), DOI: 10.1001/jama.2020.1123.

recommendations for HCV screening and instead look to a 19-year-old out-of-date recommendation as the enforcement standard. Tying insurance coverage standards to recommendations that ignore decades of medical research and advances is irresponsible and dangerous to the residents of Massachusetts.

Moreover, allowing Massachusetts issuers to decline to add or expand coverage of preventive services as the USPSTF continues to update its recommendations could set Massachusetts back in its efforts to address persistent health disparities. In recent years, the USPSTF has begun to review its processes with an eye towards developing recommendations in ways that better promote health equity in preventive care.²¹ While issuers could of course continue to voluntarily provide coverage of existing and newly recommended preventive services, issuers may apply significant cost sharing to these services²² or may decline to cover certain preventive services to avoid enrolling individuals with a particular health risk profile.²³ These choices could impede efforts to improve preventive care, particularly for systemically marginalized groups.

H.1081/S.647 will encourage stability and predictability in the insurance marketplace for Massachusetts consumers and the health care providers who treat them.

For nearly 13 years, issuers in Massachusetts and across the country have had to comply with the federal requirement to cover key preventive services, including those recommended by the USPSTF, at no additional cost to consumers. This standardization has not only brought certainty to consumers shopping for health care plans, but it has also helped health care providers ensure that their patients can receive evidence-based preventive care appropriate for their medical needs. These services are covered even if an individual has not met their deductible, and patients will not be charged co-pays or coinsurance for the care.

Braidwood Management v. Becerra disrupts this stability. Federal officials have stated that the court's decision "will likely lead to individuals losing access to services, either because their plans or issuers drop coverage of certain preventive services or because the plans or issuers impose cost sharing on such services, leading to individuals forgoing preventive care out of concern about paying for these services."²⁴ Furthermore, while the ruling is appealed, "the *Braidwood* decision could generate enough confusion that consumers may be concerned they will face cost sharing even when they will not, which could further lead to a decrease in utilization of preventive services."²⁵

²¹ U.S. Preventive Services Task Force et al., *Actions to Transform US Preventive Services Task Force Methods to Mitigate Systemic Racism in Clinical Preventive Services* (Dec. 21, 2021), DOI: 10.1001/jama.2021.17594.

²² See, e.g., Emma Sophia Kay & Rogério M. Pinto, *Is Insurance a Barrier to HIV Preexposure Prophylaxis? Clarifying the Issue*, 110 *AJPH* 61 (Jan. 2020).

²³ Decl. of Jeff Wu, *Braidwood Management, Inc. v. Becerra* (N.D. Texas) (No. 4:20-cv-00283) ("For example, employers may decide to drop PrEP coverage (and related ancillary services) because it is a relatively expensive service to cover, it is a newer recommendation, and individuals eligible for PrEP may not be a risk profile that plans and issuers want to attract.").

²⁴ *Id.* (emphasis added).

²⁵ *Id.*

H.1081/S.647 helps resolve this confusion by ensuring that issuers selling health care plans in the Commonwealth do not change their current practices of covering evidence-based, federally recommended preventive services without cost sharing. The bills would protect Massachusetts residents from uncertainty and insulate the Commonwealth from the impact of a legal battle not likely to be resolved soon.

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Thank you for the opportunity to provide comments on H.1081/S.647. For the reasons included here, the Center for Health Law and Policy Innovation stands in support of these bills. Should you have questions, please feel free to contact me at mtomazic@law.harvard.edu.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Tomazic', written in a cursive style.

Maryanne Tomazic JD, MPH
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