

Health Care in Motion

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Fifth Circuit's Decision in *Braidwood v. Becerra*: A 'Mixed Bag'

Last week, the U.S. Court of Appeals for the Fifth Circuit issued its much-anticipated decision in [Braidwood v. Becerra](#), a case challenging the constitutionality of the ACA preventive care mandate. The mandate, discussed in more detail in a recent [Health Care in Motion](#), guarantees most people with private insurance access to coverage without copayments or cost-sharing of four sets of preventive services: wide-ranging preventive care services for everyone rated “A” or “B” by the United States Preventive Services Task Force (USPSTF); vaccines recommended by the federal Advisory Committee for Immunization Practices (ACIP) and adopted by the CDC; women’s preventive health services recommended by the federal Health Resources and Services Administration (HRSA); and preventive services recommended by HRSA for children and youth. The Fifth Circuit’s decision preserves access to most of these services for most people for now—but could lead to dramatic reductions in access to care down the road. Read on for a brief digest of the decision and its short- and long-term implications.

The Fifth Circuit's Ruling

The Fifth Circuit aptly described its own decision as “something of a mixed bag.” The Court agreed with the district court that the members of USPSTF were not properly appointed, so their recommendations for preventive services cannot be constitutionally enforced as a no-cost insurance mandate. But the Fifth Circuit limited its decision to only the plaintiffs in this case—and not the more than [150 million](#) other people who rely on private insurance for access to care. This aspect of the decision keeps the ACA preventive care mandate almost entirely intact—for now—ensuring that [life-saving preventive care](#) remains accessible and affordable to most people with private insurance.

For more details regarding the ACA Preventive Care Mandate and *Braidwood*, see [CHLPI's FAQ on Braidwood](#) for health care advocates, consumers, and providers.

However, CHLPI remains very concerned about the long-term potential impacts of the Fifth Circuit’s decision. Although the Court ruled that, for procedural reasons, the current decision only affects the plaintiffs’ insurance coverage, the Court left the door open for a future, broader ruling that could undermine the ACA preventive services mandate nationwide. The Court did this in two ways. First, even though it held that the

plaintiffs had crafted their case in such a way that the ruling could only apply to them, the Court acknowledged that if the plaintiffs had pleaded their case differently, the remedy could have been universal. Second, the Court remanded (meaning it sent the case back) to the district court to consider additional legal arguments as to why ACIP’s and HRSA’s recommendations *also* could not be enforced. As a result, the ACA preventive services mandate could eventually be undercut as to *all three* sources of preventive services—those recommended by USPSTF, ACIP, and HRSA. This could threaten access to a host of preventive services that are important for maintaining health, including many types of cancer screenings, drugs to prevent HIV, vaccines, and services recommended specifically for women and children.

What’s Next

Now that the case has been remanded to the district court, the parties will likely submit briefs to that court on the remaining legal issues that the Fifth Circuit identified regarding whether ACIP’s and HRSA’s recommendations for preventive services can be enforced. The plaintiffs may also try to amend their complaint to allow them to continue to seek a universal injunction—meaning a court order that would affect the ACA preventive services mandate nationwide. Even if they don’t do this, or the district court doesn’t let them amend, other conservative plaintiffs likely will come forward to pursue a universal injunction.

CHLPI will continue to monitor and analyze this decision and its implications, and plans to release additional materials to help patients, providers, advocates, and others understand and navigate the potential outcomes. Continue to watch this space for further updates.

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