



**CENTER *for* HEALTH LAW
and POLICY INNOVATION**
HARVARD LAW SCHOOL

**Kennedy v. Braidwood Management:
Frequently Asked Questions for Health Care Advocates and Providers**

The FAQs below are intended to help health care advocates, providers, and individuals understand key issues at stake in *Kennedy v. Braidwood Management* (more commonly known as *Braidwood Management v. Becerra*), a case in which the plaintiffs seek to undermine a critical portion of the Affordable Care Act (ACA). This part of the ACA is intended to guarantee the accessibility and affordability of certain preventive services. Since this is active litigation and legal analysis is ongoing, these FAQs will be updated periodically to reflect new developments (last updated April 28, 2025).

Consumers who have been denied continued coverage of preventive services to which they believe they are entitled should review FAQ 8 below.

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1. What is the ACA's preventive services mandate and who does it cover?

The Affordable Care Act (ACA) requires most private health insurance plans and all Medicaid expansion programs to cover certain preventive services without cost sharing (meaning plan members do not need to pay a copay or coinsurance amount to receive these services). The specific services that must be covered without cost sharing are defined in formal recommendations or guidelines from government and independent bodies based on clinical evidence. These guidelines and recommendations cover four categories:

- **Services recommended by the U.S. Preventive Services Task Force (USPSTF):** The [USPSTF](#) is an independent group of experts in prevention, evidence-based medicine, and primary care. The USPSTF reviews the evidence in support of preventive services and, through a transparent process with opportunity for public comment, issues grades that indicate the degree to which the service provides a net benefit to patients. Preventive services with a USPSTF Grade A or B must be covered without cost sharing.
- **Services recommended by the Advisory Committee for Immunization Practices (ACIP) and adopted by the CDC:** [ACIP](#) is composed of subject matter experts and one consumer representative and makes recommendations to the Director of the Centers for Disease Control and Prevention (CDC) regarding vaccination to control the spread of diseases within the U.S. ACIP-recommended services adopted by the CDC must be covered without cost sharing.
- **Additional women's preventive health services recommended by the Health Resources and Services Administration (HRSA):** Through the Women's Preventive Services Initiative, HRSA convenes a body of experts to make evidence-based [recommendations](#) for preventive services for women that are not already covered by the USPSTF recommendations. Services recommended by HRSA must be covered without cost sharing.
- **Preventive services for children and youth recommended by HRSA:** HRSA also runs the [Bright Futures](#) Program, which makes evidence-based recommendations regarding preventive services for infants, children, and adolescents. These services must also be covered without cost sharing.

2. What were the arguments in *Braidwood Management v. Becerra*, and what did the federal district court decide?

In 2020, a Christian-owned business called Braidwood Management, Inc. (Braidwood) filed a lawsuit in a Texas federal court seeking to prevent the federal government from enforcing the ACA preventive services requirements. Braidwood is self-insured and provides health insurance to its employees. Braidwood, along with other plaintiffs, argued that the ACA preventive services requirements are unconstitutional for several reasons, including because they violate the [Appointments Clause](#) of the U.S. Constitution by empowering people who

are not properly appointed government officials to make rules regarding services that must be covered.

Braidwood also argued that the ACA's requirement to cover pre-exposure prophylaxis (PrEP) – a medication that prevents acquisition of HIV and that has a Grade A from the USPSTF – without cost sharing violates Braidwood's religious freedom under the Religious Freedom and Restoration Act (RFRA).

In September 2022, Judge Reed O'Connor [ruled](#) that the requirement to cover PrEP in contravention of Braidwood's owner's religious beliefs violated Braidwood's rights under RFRA. Judge O'Connor also ruled that the requirement that plans cover USPSTF Grade A or B recommended services without cost sharing was unconstitutional. The judge agreed with Braidwood's argument that Congress improperly delegated authority to issue coverage mandates to a body whose members were not appointed consistent with the Appointments Clause. Judge O'Connor, however, upheld the ACA's coverage and cost sharing requirements with regard to the ACIP- and HRSA-recommended services, since the CDC Director and HRSA Administrator—two officials who answer to the Secretary of Health and Human Services (HHS)—must sign off on those services before they become mandates. Judge O'Connor also rejected other constitutional arguments the plaintiffs had raised, including a different constitutional attack on the ACA's preventive services mandate arising from the way that Congress grants power to administrative agencies.

On March 30, 2023, Judge O'Connor issued an order vacating any federal agency action that has occurred since the ACA's passage to implement the USPSTF-related part of the preventive services mandate. This order, had it gone into effect, would have forbidden the federal government from enforcing no-cost coverage of USPSTF recommendations, with an A or B grade, published since March 23, 2010. However, private health plans and Medicaid expansion programs would have still been required [to cover preventive services with pre-existing USPSTF recommendations](#).

This ruling could have impacted coverage of a wide range of preventive services across the United States, caused widespread uncertainty, accelerated health disparities, and degraded public health efforts.

In addition, Judge O'Connor ruled that Braidwood and some of the other plaintiffs in the case need not comply with the mandate to cover PrEP based on their claim under RFRA that coverage of PrEP runs counter to their religious beliefs. This order was limited to certain parties in the *Braidwood* lawsuit, and the federal government chose not to appeal it. Because it is a district court decision, and not a decision by an appellate court, other courts are not required to follow it. However, it established legal authority that other plaintiffs will likely point to as justification for why they should also be allowed to discriminate in this way.

3. Appeal to the Fifth Circuit: What did the Fifth Circuit decide?

[The federal government appealed](#) the district court's Appointments Clause ruling to the United States Court of Appeals for the Fifth Circuit. Braidwood and its allies also filed a cross-appeal,

indicating that they planned to ask the higher court to issue even broader judgments than they had already received. On June 13, 2023, the Fifth Circuit issued a stay of enforcement of the district court's ruling while the Fifth Circuit considered the case. This meant that preventive care recommended by USPSTF remained covered without cost sharing by most private insurers as required by the ACA preventive care mandate throughout the appeal.

On June 21, 2024, the [Fifth Circuit ruled on the appeal](#), describing its own decision as a "mixed bag." The Fifth Circuit agreed with Judge O'Connor that the USPSTF's role in determining which services must be covered under the ACA preventive care mandate is unconstitutional under the Appointments Clause because of the limited authority that the Secretary of Health and Human Services (HHS) may exert over USPSTF and because USPSTF members are not appointed by the President and confirmed by the Senate. But the Fifth Circuit stopped short affirming Judge O'Connor's nationwide injunction, which would have made USPSTF's recommendations unenforceable under the preventive care mandate. Instead, the court cabined the remedy to the plaintiffs in the case and their employees. This outcome was due to a procedural error committed by the plaintiffs, who had not brought timely claims under the federal Administrative Procedure Act (APA). If they had, the Fifth Circuit indicated that it would have found a basis for a nationwide injunction.

The Fifth Circuit also held that, unlike USPSTF, the Secretary of HHS has sufficient authority over ACIP and HRSA that he may, at least in theory, cure any Appointments Clause defect with respect to those agencies by ratifying their recommendations. However, the Fifth Circuit remanded (meaning it sent back) the case to the district court to consider arguments that the parties had not yet briefed as to whether the Secretary has legally ratified ACIP's and HRSA's existing recommendations.

The end result of the Fifth Circuit's ruling is that, for the time being, all preventive services recommended by USPSTF, ACIP, and HRSA must still be covered without cost sharing for most people with private insurance.

4. Is the Supreme Court hearing this case?

Yes. The Department of Justice under the Biden administration filed for [certiorari](#) on September 19, 2024, meaning they asked the Supreme Court to review the Fifth Circuit's decision. CHLPI filed an [amicus brief](#) in support of the government emphasizing the importance of no cost preventive care particularly for chronic conditions.

The Supreme Court granted certiorari (agreed to hear the case) on January 10, 2025. The Court restricted the focus of the case to whether the Fifth Circuit erred in finding that the USPSTF structure violates the Appointments Clause. On February 18, 2025 the Department of Justice, under the Trump administration, filed a [brief](#) continuing to defend the constitutionality of the preventive services task force. Because of the change in administration, and the appointment of Robert F. Kennedy as Secretary of HHS, the case before the Supreme Court is now called *Kennedy v. Braidwood*. The case before the Supreme Court is narrowed in scope and is only

focused on the constitutionality of the appointment of preventive services task force members, at this time the recommendations made by HRSA and ACIP are not under threat. CHLPI filed an amicus brief in support of the DOJ which can be found [here](#).

The U.S. Supreme Court heard oral arguments in the *Kennedy v. Braidwood* case on April 21, 2025. The bulk of the questions from the Justices and the arguments made by both parties focused on whether or not the USPSTF was an independent body or whether the HHS Secretary had sufficient control over the task force and their recommendations thereby ensuring they were in compliance with the Appointments Clause of the Constitution. The DOJ argued that the USPSTF was not independent of the Secretary, because the Secretary had the power to not only hire and fire members of the task force, but also to review the recommendations they make and delay their coverage, without cost sharing, by most private insurers. Braidwood Management instead argued that the task force was created as an “[independent](#)” body that was protected from “[political pressure to the extent practicable](#)”. This level of independence, Braidwood argued, made it impossible for the Secretary to review their recommendations and potentially, if he disagreed with the recommendation, to prevent its coverage free of cost under the preventive care mandate. If the USPSTF is that independent, Braidwood argues, then it violates the Appointments Clause of the Constitution.

On April 25, 2025, the Supreme Court in an [order](#) directed at both parties in the case (the government and Braidwood) asked for supplemental briefs. The order asked for each party to submit a brief that expanded on whether Congress had properly given the HHS Secretary the power to appoint members of the USPSTF. The Court has asked both sides to address the Court’s past decisions on who would and would not be considered an officer of the United States under the Constitution. Both parties have until May 5, 2025, to file their supplemental briefs with the Court.

5. What will happen next?

The Supreme Court will likely announce a decision in the case at the end of the term in June or July of 2025. Regardless of which side wins this case, no-cost preventive care coverage as we currently know it will change. If the DOJ wins the case the Court will be agreeing that the HHS Secretary has greater power over USPSTF recommendations than has ever been exercised in the past. The Secretary will have the ability to reject a grade A or B recommendation for coverage by delaying its implementation and removing task force members that do not agree with him and replacing them with others who share his views. This would give the Secretary significant power to influence which recommendations will be required to be covered without cost-sharing, something which has not been the practice since the ACA was passed by Congress in 2010 and the preventive care mandate was created.

On the other hand, if Braidwood Management wins the result would be ending the federal requirement that private insurers cover USPSTF A and B recommendation without cost-sharing. This would mean that insurers would be able to decide which preventive services they will cover and if they will charge patients a copayment to receive these services. Some insurers

may keep no cost preventive care, at least for some critical services but others will not.

CHLPI will be closely monitoring this case for a decision from the Supreme Court and will update this FAQ once the Court releases their decision.

6. What preventive services could be impacted by this lawsuit?

Removing the mandate to cover all recommended preventive services that have been added since March 23, 2010, could ultimately have a big impact. These services include a range of important interventions with extensive clinical evidence indicating safety and efficacy. The following are some examples:

Examples of services with USPSTF Grade A or B since March 23, 2010
Lung cancer screening
Hepatitis C screenings
HIV pre-exposure prophylaxis (PrEP)
HIV screenings
Drugs that reduce the risk of breast cancer
Statins for individuals at risk for cardiovascular disease
Fluoride varnish for children provided in primary care offices
Examples of vaccines recommended by ACIP since March 23, 2010
COVID-19
Haemophilus Influenza Type b (HiB)
Human Papillomavirus (HPV)
Examples of services recommended by HRSA since March 23, 2010
Screening for Diabetes during pregnancy
Screening for Diabetes after pregnancy
Screening for urinary incontinence

The complete list of USPSTF published recommendations is available [here](#), HRSA's recommendations are here (women) and [here](#) (children), and ACIP's are [here](#). Note that for many services, even if the agency issued a recommendation for the service prior to March 23, 2010, the recommendation may have been updated to clarify specific aspects (such as to whom the service should be provided, how often, etc.) based on the most up-to-date medical evidence. Also, some services covered under the USPSTF recommendations, such as HIV screening, also have a similar recommendation from HRSA. CHLPI has also created a [table](#) that lays analyzes all preventive care services that have received an A or B rating from USPSTF (as of January 2025), what the current recommendation is, what the March 2010 recommendation was (before the ACA was enacted), the difference between the two recommendations and whether or not ACIP or HRSA has recommendations that are the same or similar that could stand in place of a USPSTF recommendation if the task force is found to be unconstitutional

7. What other laws protect access to preventive services?

At least [17 states](#) have passed laws that require private health plans sold to individuals to cover the same categories of preventive services that the ACA covers. Some of these state laws also cover the state-regulated, fully insured group market (although states do not have the power to regulate ERISA-governed plans). Other states are currently considering ACA-like legislation for state-regulated plans.

Some states also have statutes, regulations, or guidance to ensure coverage of specific preventive services without cost sharing. For example, [Colorado](#) has regulations requiring plans to cover PrEP without cost sharing. [New York](#) also has PrEP-specific legislation.

8. What should people do if they think someone with private health insurance has been wrongly denied coverage of a preventive service?

If someone with private health insurance has been wrongly denied coverage or charged for a preventive service, there are a number of ways to appeal. First, most plans have an internal appeals process to challenge the plan's coverage determinations. This is often the first step beneficiaries can take. If the internal appeals process does not correct the issue, there are different ways to elevate the complaint depending on what type of plan it is. For example:

- For individual health plans, and small and large group fully insured plans, consumers may file complaints with their state department of insurance. The National Association of Insurance Commissioners provides helpful resources about the complaint process along with links to [each state's complaint submission process](#).
- For self-insured plans, which are usually offered by larger employers and unions, the federal [Department of Labor is charged with accepting complaints](#). Direct advocacy with the employer or union may also be effective.

For concerns that a plan may have engaged in illegal discrimination against a consumer, the consumer may file a complaint with the [Department of Health and Human Services Office for Civil Rights](#).

As noted above, there are very few people whose insurance plans are allowed to change as a result of the Fifth Circuit's decision in *Braidwood* (only the plaintiffs, their families, and their employees). Advocates, providers, and consumers with questions about the above FAQs, or who believe that a consumer has been wrongly denied coverage of a preventive service, and the consumer's health plan has denied the appeal, are welcome to contact CHLPI at chlpi@law.harvard.edu.

9. If I do not have insurance or my insurance is not comprehensive, what options are there to help me access PrEP at low or no cost?

There are several programs that help uninsured or underinsured people afford PrEP. Individuals with insurance can apply for assistance through [private programs](#) that help cover cost sharing amounts for PrEP. In addition, some state health departments operate [PrEP assistance programs](#) that can help cover cost sharing amounts for PrEP medications and associated labs and clinic visits.

If you believe your health insurance plan has unlawfully dropped coverage for PrEP, please contact CHLPI at chlpi@law.harvard.edu.

10. I have Medicaid. Does the *Braidwood Management v. Becerra* decision affect my access to preventive services?

Not at this time. The ACA requires states to offer essential health benefits (EHB) to the ACA's Medicaid expansion group. (Medicaid expansion, in states that have adopted it, generally covers non-disabled, non-pregnant adults up to age 65 with incomes up to 138% of federal poverty level.) EHB includes preventive services, which has been defined to include coverage of USPSTF-, ACIP- and HRSA-recommended services without cost sharing. Although future iterations of this case may address the interplay between the EHB regulations and the constitutionality of the ACA's preventive care mandate for private insurers, nothing in the Fifth Circuit's 2024 decision undermines the requirement that states with Medicaid expansion offer preventive services for this group.

A separate provision of the ACA also offers states access to additional federal funding if they cover in Medicaid without cost sharing all adult preventive services recommended by USPSTF and ACIP. The Fifth Circuit's 2024 decision also does not impact interpretation or enforcement of this statute.

11. I have Medicare. Does the *Braidwood Management v. Becerra* decision affect my access to preventive services?

Not at this time. Since 2009, the Secretary of HHS has had the authority, through a process called a National Coverage Determination (NCD), to identify preventive services with a USPSTF Grade A or B recommendation that should be covered under Medicare. To make these services more affordable, the ACA added the requirement that USPSTF-recommended services with an NCD must be covered without cost sharing. However, the *Braidwood* litigation did not challenge any Medicare statutes or regulations, and the Fifth Circuit's decision does not touch on Medicare. Starting on September 30, 2024 CMS, through an [NCD](#), covers the following services for HIV prevention without cost-sharing: FDA approved PrEP using anti-retroviral drugs to prevent HIV for individuals at an increased risk of infection, administration of injectable PrEP, supplying and dispensing the

medication (both oral and injectable), counseling (including risk assessment, risk reduction and medication adherence), HIV screenings, and Hepatitis B screening (1 time only). The NCD applies to people with Medicare who are at increased risk of acquiring HIV.

[Check here](#) for information about the preventive services that Medicare covers.