

EMPLOYEE BENEFITS

Fifth Circuit Overturns *Braidwood* Court's Nationwide Injunction Aimed at Limiting ACA Preventive Services Coverage Mandate

July 2024

On June 21, 2024, the Fifth Circuit reversed the District Court's order in *Braidwood v. U.S. Department of Health and Human Services* that previously imposed a nationwide injunction that would have made a portion of the Affordable Care Act's preventive care services coverage mandate (as recommended by the U.S. Preventive Services Task Force) unenforceable. Ultimately, the Fifth Circuit's decision means that plan sponsors of non-grandfathered group health plans should continue to provide preventive care services with no cost-sharing to plan participants as required under the Affordable Care Act, including those preventive care services recommended by the U.S. Preventive Services Task Force.

Background

For health plan years beginning on or after September 23, 2010, the Affordable Care Act ("ACA") requires non-grandfathered group health plans (not including plans that qualify as HIPAA-excepted benefits) to provide coverage for certain categories of preventive services without any cost-sharing.

There are four categories of mandated preventive services.

- 1 U.S. Preventive Services Task Force ("USPSTF") recommended preventive services that are rated "A" or "B"
- 2 Centers for Disease Control and Prevention Advisory Committee on Immunization Practices ("ACIP") recommended immunizations
- 3 Additional preventive care and screenings for women not recommended by the USPSTF but provided for in the Health Resources and Services Administration's ("HRSA") guidelines
- 4 Preventive screenings and care for infants, children and adolescents that are provided for in the HSRA guidelines.



DISCLAIMER: *Brown & Brown, Inc. and all its affiliates, do not provide legal, regulatory or tax guidance, or advice. If legal advice counsel or representation is needed, the services of a legal professional should be sought. The information in this document is intended to provide a general overview of the topics and services contained herein. Brown & Brown, Inc. and all its affiliates, make no representation or warranty as to the accuracy or completeness of the document and undertakes no obligation to update or revise the document based upon new information or future changes.*

On March 30, 2023, the Federal District Court for the Northern District of Texas issued an order in *Braidwood v. U.S. Department of Health and Human Services* making the ACA mandate that health plans cover certain preventive care services as recommended by the USPSTF without cost-sharing to the plan participant unenforceable, by way of a nationwide injunction. The *Braidwood* decision applied only to the first category of mandated preventive services listed above (i.e., USPSTF recommended preventive services). Therefore, the District Court vacated all “agency action taken to implement or enforce the preventive care coverage requirements in response to an “A” or “B” recommendation by the U.S. Preventive Services Task Force on or after March 23, 2010, and made compulsory under [the ACA].”

The affected preventive care services included heart disease, lung cancer and depression screenings, among other services. The ruling did not apply with respect to preventive services recommended by the USPSTF prior to March 23, 2010, nor to mandated preventive services included in the other three categories, including services such as mammograms for women over the age of 50. The District Court’s nationwide injunction order applied to the plaintiffs in the case, as well as to plan sponsors of non-grandfathered health plans. The Department of Health and Human Services (“HHS”) appealed the District Court’s decision. On May 15, 2023, the U.S. Court of Appeals for the Fifth Circuit granted a stay on the District Court’s decision, meaning the nationwide injunction and legal proceedings were frozen, and the ACA mandate to cover certain preventive care services without cost-sharing to plan participants would continue to be a requirement for health plans, pending future court action on the appeal.



Fifth Circuit’s Decision

On June 21, 2024, the Fifth Circuit reversed the District Court’s nationwide injunction on enforcement of the preventive services coverage mandate as recommended by the USPSTF, meaning the ACA preventive coverage mandates would continue to apply to those preventive care services recommended by the USPSTF. However, the plaintiffs who filed the original lawsuit are not required to comply with this preventive care mandate, and this outcome could potentially apply to future plaintiffs who file similar claims.

The Fifth Circuit declined to review other challenges to the authority of the ACIP and HRSA (other governmental agencies that issue preventive care recommendations) and left those decisions to the lower District Court to review. This could potentially result in other preventive care service recommendations issued by other agencies to be non-enforceable against the plaintiffs, in addition to potentially allowing future plaintiffs to bring similar claims against these agencies.

Impacts and Considerations

The effect of the Fifth Circuit’s reversal of the nationwide injunction is that plan sponsors should continue to comply with the ACA preventive services coverage mandate under all four categories mentioned above until future guidance is provided. Given the Fifth Circuit’s almost immediate stay on the District Court’s *Braidwood* decision, it is unlikely that plan sponsors amended their plans to exclude coverage for, or apply cost-sharing requirements to, the preventive care services recommended by the USPSTF. However, plan sponsors should review their plans with legal counsel to ensure they comply with the ACA preventive services coverage mandate. If changes are necessary, plan sponsors should seek legal advice regarding what actions are necessary to make any desired changes, including whether advance notice of the changes would be required pursuant to the SBC notice of material modification rules.

Plan sponsors should be aware that the District Court in *Braidwood* may determine that additional agencies do not have the authority to issue preventive care service recommendations. Although it is unlikely that another nationwide injunction would be enforceable, plan sponsors should be prepared to discuss with legal counsel how the *Braidwood* court’s upcoming decisions and any future challenges to the preventive services coverage mandates may affect their health plans.



How Brown & Brown Can Help

Connect with your Brown & Brown service team to learn more about how we can help find solutions to fit your unique needs.



Find Your Solution at [BBrown.com](https://www.BBrown.com)

DISCLAIMER: *Brown & Brown, Inc. and all its affiliates, do not provide legal, regulatory or tax guidance, or advice. If legal advice counsel or representation is needed, the services of a legal professional should be sought. The information in this document is intended to provide a general overview of the topics and services contained herein. Brown & Brown, Inc. and all its affiliates, make no representation or warranty as to the accuracy or completeness of the document and undertakes no obligation to update or revise the document based upon new information or future changes.*