

# LEGAL UPDATE



## 5th Circuit Reinstates ACA's Preventive Care Coverage Mandate

On May 15, 2023, the 5th U.S. Circuit Court of Appeals issued an administrative stay of enforcement of the District Court's ruling in [Braidwood Management Inc. v. Beccara](#). In *Braidwood*, the District Court issued a nationwide injunction for a key portion of the Affordable Care Act's (ACA) preventive care coverage requirement. The District Court's ruling was promptly appealed by President Joe Biden's administration.

Due to the enforcement stay, the ACA's preventive care coverage requirement once again applies in its entirety to non-grandfathered health plans and health insurance issuers. The future impact of the *Braidwood* litigation is unclear. The 5th Circuit is expected to issue a decision on the merits of the case by the end of 2023.

### ACA Preventive Care Coverage Requirements

The ACA requires most health plans and issuers to cover a set of preventive services without imposing cost-sharing requirements when the services are provided by in-network providers. Among these are evidence-based items or services that have, in effect, a rating of A or B in the [current recommendations](#) of the U.S. Preventive Services Task Force (USPSTF).

A specific mandate addressed by the District Court ruling was the requirement to cover preexposure prophylaxis (PrEP) drugs used by persons at high risk of getting HIV. On June 11, 2019, the USPSTF released a recommendation for HIV PrEP for high-risk individuals, which requires plans and issuers to cover HIV PrEP without cost sharing for plan years beginning on or after June 30, 2020.

### District Court Ruling

The District Court ruled that preventive care coverage requirements based on an A or B rating by the USPSTF on or after March 23, 2010, violate the U.S. Constitution. The court also ruled that the PrEP coverage mandate violates the plaintiffs' rights under Religious Freedom Restoration Act. Accordingly, the District Court granted an injunction against the enforcement of those requirements and vacated all related agency actions.

On April 13, 2023, federal agencies issued [FAQs](#) regarding the impact of the District Court's ruling on the ACA's preventive care coverage requirement. These FAQs were issued before the 5th Circuit's enforcement stay was issued.

### Current Status

It is uncertain whether the District Court's ruling in *Braidwood* will be reversed or upheld by the 5th Circuit. In the meantime, non-grandfathered health plans and issuers should continue to cover, without cost sharing, the full range of preventive care services required by the ACA, including items or services that have an A or B recommendation by the USPSTF.

## HIGHLIGHTS

- On March 30, 2023, U.S. District Court for the Northern District of Texas struck down the ACA's preventive care coverage requirements based on an A or B rating by the USPSTF on or after March 23, 2010.
- The District Court granted an injunction against the enforcement of those requirements.
- The Biden administration appealed the court's decision to the 5<sup>th</sup> Circuit Court of Appeals.
- On May 15, 2023, the 5<sup>th</sup> Circuit put enforcement of the District Court's ruling on hold pending a decision on the merits of the case.