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# More on Braidwood: ACA Preventive Services Mandate Remains Mostly in Place (For the Time Being)

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At the end of June, the U.S. Court of Appeals for the Fifth Circuit affirmed a district court order invalidating the Affordable Care Act preventive services mandate for "A" or "B" items and services recommended by the United States Preventive Services Task Force (USPSTF) on or after March 23, 2010, on the basis that the USPSTF members were not constitutionally appointed. The case is *Braidwood Management Inc. v. Becerra* (No. 23-10326, 5th Cir. 2024).

In the same decision, the Fifth Circuit reversed the district court's nationwide injunction enjoining enforcement of the USPSTF preventive services mandate on procedural grounds. The Fifth Circuit also remanded the case to the district court to consider the constitutionality of the preventive services mandate with respect to Advisory Committee on Immunization Practices (ACIP) recommendations on immunizations for routine use and Health Resources and Services Administration (HRSA) recommendations on preventive care and screening for women and children. (For more background on the preventive services mandate litigation, see our prior blog here.)

**What does this mean for health plan sponsors and employers?** It's a wait-and-see game for the time being. The preventive services mandate for USPSTF-recommended services, as well as ACIP and HRSA recommendations, all remain in effect (subject to an exception for the named plaintiffs in the case with respect to the USPSTF mandate*). At the moment, it is unknown how the district court will rule regarding the constitutionality of the preventive services mandate for ACIP and HRSA recommendations, as that part of the case was remanded back to the district court. After the district court renders its decision, it is possible that the ruling will be appealed back to the Fifth Circuit for another round of analysis. Given all of the uncertainties, plan sponsors may decide to sit tight so they can avoid possibly having to make multiple changes to preventive services coverage over a relatively short period of time as this case (continues) to play out.

*Although not discussed in the opinion, the expected impact of the court's judgment is that the USPSTF preventive services mandate would not be enforced within the Fifth Circuit's jurisdiction (Texas, Louisiana, and Mississippi). However, it is unclear how this will play out practically in those states for plan sponsors.*

View original.

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