

EMPLOYEE BENEFITS

Federal Court's Ruling May Impact ACA Preventive Services Coverage Mandate

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](#), which if the ruling stands would invalidate a key provision of the Affordable Care Act's (ACA) preventive care mandate. The Department of Health and Human Services has announced that it intends to appeal the District Court's ruling.

The 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 cost-sharing. There are four categories of mandated preventive services:

- (1) evidence-based items or services that have in effect a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force ("USPSTF");
- (2) immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices ("ACIP") of the Centers for Disease Control and Prevention with respect to the individual involved;
- (3) with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration ("HRSA"); and
- (4) with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the HRSA.

The Braidwood decision would apply only to the first category of mandated preventive services. The order in its current form vacates 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 include heart disease, lung cancer and depression screenings, among other services. The ruling does not apply to preventive services recommended by the USPSTF before March 23, 2010, or to mandated preventive services included in the other three categories, including services such as mammograms for women over 50.

The effect of this court decision if upheld on appeal is that health plans could exclude coverage for, or apply cost-sharing requirements to, the preventive care services identified above unless applicable state law mandates such coverage (e.g., for fully insured plans).

Before taking any action, plan sponsors wishing to explore changing health plan coverage for the affected preventive care services should speak to their legal counsel to determine what options are available and advisable for their plans. They should also 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.

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