

Impact of the Changing Healthcare Policy Environment on State Cancer Programs

Intelligence Brief: *Braidwood v. Becerra* and Its Impact on Cancer Screening

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Background

On Sept. 7, 2022, Judge Reed O'Connor of the U.S. District Court, the Northern District of Texas ruled as unconstitutional the *Affordable Care Act* (ACA) requirement that preventive services recommended by the U.S. Preventive Services Task Force (USPSTF) be covered without cost-sharing. On Mar. 30, Judge O'Connor issued a final judgment that the federal government could not require health plans to cover preventive services recommended by the USPSTF on or after Mar. 23, 2010, when the ACA was enacted. The *Braidwood* case ruling also affects Medicaid expansion states that cover Essential Health Benefits (EHB).

Current Status

On May 15, 2023, the 5th Circuit Court of Appeals issued an administrative stay of Judge O'Connor's decision, meaning the ruling has not gone into effect. This stay has minimized any potential impact on healthcare stakeholders while the court receives briefs and hears oral arguments on the merits of the case. On Jun. 6, 2023, the 5th Circuit Court heard oral arguments about whether to impose a nationwide freeze on the ACA's preventive care mandate. The arguments focused on whether the O'Connor decision went too far. The Court's opinion will be released in the next few months.

Conclusion

The administrative stay prevents any changes to coverage, lending stability to plans for the current fiscal year. If upheld, self-insured employers—those who pay the direct cost of the health services their employees consume—will not be required to cover preventive services and may impose cost-sharing if they choose to provide coverage, but it also does not require employers to drop coverage of these services. Health plans that offer insurance in the fully insured group—employers who buy insurance plans—and individual insurance markets would be subject to [federal](#), [state](#), and contractual obligations outside of the ACA.

Implications for Cancer Programs

By issuing an administrative stay, any potential impact on access to cancer screenings has been minimized until the 5th Circuit comes out with a ruling.

- If upheld, the ruling blocks nationwide enforcement of the preventive care services requirement for commercial health plans. Preventive services affected includes cancer screenings.
- Any state, federal, and contractual obligations outside of the ACA are not affected. This includes the CARES Act, Medicaid, and CHIP.
- Given the advance time required to make benefit design changes to ACA marketplace plans, the court action has no demonstrable impact in the short term.
- States can take action to improve access to health insurance plans that cover preventive services, such as codifying these protections in state law or using their platform to call on employers to protect coverage.

Sources

- [Initial District Court ruling](#) finding that the preventive service requirement was a violation of the Appointments Clause, Sept. 7, 2022.
- [Subsequent District Court ruling](#) blocking enforcement, filed Mar. 30, 2023.
- [Department of Justice notice of appeal](#), Mar. 31, 2023.
- [Department of Labor clarifying guidance](#), Apr. 13, 2023.
- [State Health and Value Strategies brief](#) on State Options to Mitigate Harm to Consumers, Sept. 2022.

Since 1988, the National Association of Chronic Disease Directors and its more than 7,000 Members have worked to strengthen state-based leadership and expertise for chronic disease prevention and control in all states, territories, and nationally.

The “Impact of the Changing Health Policy Environment on State Cancer Programs” project is supported by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$180,000 with 100 percent funded by CDC/HHS.

The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by CDC/HHS, or the U.S. Government.

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