
Departments Issue Guidance on Preventive Care After *Braidwood*

April 2023

On April 13, 2023, the Departments of Labor, Health and Human Services, and Treasury (the Departments) issued Frequently Asked Questions (FAQs) Part 59 in light of the district court decision in *Braidwood Management v. Becerra* (*Braidwood*). The FAQs are designed to provide additional guidance and clarification to plan sponsors on how the *Braidwood* decision affects the requirement to provide preventive services without cost-sharing under the Affordable Care Act (ACA).

Background

The ACA requires most group health plans to cover certain preventive care services without participant cost-sharing. The preventive services that must be covered under the ACA have been developed by three government agencies:

- The Advisory Committee on Immunization Practices (ACIP) for immunizations;
- The Health Resources and Services Administration (HRSA) for women, infants, children, and adolescents; and
- The U.S. Preventive Services Task Force (USPSTF) for specific evidence-based items and services with an “A” or “B” rating, such as colorectal, diabetes, depression, and breast cancer screenings.

In 2022, the District Court ruled in *Braidwood* that the ACA’s designation of the USPSTF violated the Appointments Clause of Article II of the Constitution. As a result, the District Court held that any ACA requirements based on USPSTF recommendations were not valid. In March 2023, the District Court applied the order nationwide, which prevents the Departments from implementing or enforcing the ACA preventive care requirements that were developed by the USPSTF. The Biden Administration is appealing the decision.

Department Guidance

In light of the *Braidwood* decision, the Departments issued the following guidance.

- Only USPSTF-recommended items and services with an “A” or “B” rating since March 23, 2010, are impacted by the *Braidwood* decision. In light of the district court decision, plans are not required to continue to provide coverage without cost-sharing for those items and services. However, plans may continue to cover them without cost-sharing, and the Departments encourage plans to continue to do so.

- *Braidwood* does not affect the requirement for plans to provide coverage for items and services recommended by the ACIP or HRSA as required by the ACA. Plans must continue to cover those items and services without cost-sharing.
- Fully insured plans must still comply with any state laws that require carriers to provide coverage without cost-sharing for items and service with an “A” or “B” rating from the USPSTF.
- If plans are considering making changes to these benefits mid-year, other provisions of state or federal law may apply, as well as any legal or contractual requirements (e.g., collective bargaining agreements). Plans must notify participants and beneficiaries in accordance with ERISA and the rules regarding Summary of Benefits and Coverage requirements of any reduction in benefits.
- High-Deductible Health Plans may continue to cover these USPSTF items and services before the deductible has been met until further guidance.
- Because *Braidwood* does not impact the recommendations by the ACIP, plans must still cover COVID-19 vaccines and their administration.

Resources

The *FAQs about Affordable Care Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 59*, are available [here](#).



About Aon:

[Aon plc](#) (NYSE: AON) exists to shape decisions for the better — to protect and enrich the lives of people around the world. Our colleagues provide our clients in over 120 countries and sovereignties with advice and solutions that give them the clarity and confidence to make better decisions to protect and grow their business.

Follow Aon on [LinkedIn](#), [Twitter](#), [Facebook](#) and [Instagram](#). Stay up-to-date by visiting the [Aon Newsroom](#) and sign up for News Alerts [here](#).