

***Braidwood* Litigation Continues: Trial Court to Consider Validity of ACIP and HRSA Preventive Service Recommendations**

EBIA Weekly (August 28, 2025)

Braidwood Mgmt., Inc. v. Becerra, 2025 WL 2452041 (5th Cir. 2025)

Available at <https://www.ca5.uscourts.gov/opinions/unpub/23/23-10326.0.pdf>

In response to the U.S. Supreme Court's June *Braidwood* ruling, the Fifth Circuit Court of Appeals has directed the federal trial court that initially heard the case to address whether the Health Resources and Services Administration (HRSA) and the Advisory Committee on Immunization Practices (ACIP) have proper authority to issue preventive health service recommendations. As background, the Affordable Care Act (ACA) requires group health plans and insurers to provide specified preventive services without cost-sharing, including certain evidence-based items and services recommended by the United States Preventive Services Task Force (USPSTF), HRSA, and ACIP. In 2019, the USPSTF released a recommendation about HIV PrEP, triggering a plan coverage requirement for plan years beginning on or after June 30, 2020, and a lawsuit by a group of objecting employers asserting that the preventive services mandate was unconstitutional. A primary argument was that the members of the USPSTF, HRSA, and ACIP were not constitutionally appointed, and, therefore, they had no authority to determine the preventive services that must be covered by private health plans.

The trial court held that the method of appointing members of the USPSTF—but not HRSA or ACIP—was indeed unconstitutional. On appeal, the Fifth Circuit affirmed as to the USPSTF, but the Supreme Court reversed, holding that the USPSTF operates under proper authority. The Fifth Circuit has now sent the case back to the trial court for further proceedings consistent with the Supreme Court's decision and the portions of the Fifth Circuit's prior opinion that remain unaffected. In so doing, the court specifically noted that its prior opinion directed the trial court to address the “compelling—and largely un rebutted—arguments” raised on appeal that HRSA and ACIP members were appointed in a manner that violated the Administrative Procedure Act.

EBIA Comment: Despite this continuing challenge to the HRSA and ACIP recommendations, the ACA preventive services mandate remains in full effect. For more information, see EBIA's Health Care Reform manual at Section XII.C (“Coverage of Preventive Health Services”) and EBIA's Group Health Plan Mandates manual at Section XIV.C (“Required Preventive Health Services Coverage”). See also EBIA's Self-Insured Health Plans manual at Section XIII.C.1 (“Preventive Health Services”).

Contributing Editors: EBIA Staff.