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## ACA's No-Cost Preventive Care Mandate Is Before the Supreme Court

April 9, 2025 | [Allen Smith, J.D.](#)



Certain [no-cost preventive services](https://www.shrm.org/topics-tools/news/benefits-compensation/agencies-clarify-coverage-preventive-care-without-cost-sharing) - ( <https://www.shrm.org/topics-tools/news/benefits-compensation/agencies-clarify-coverage-preventive-care-without-cost-sharing> ) — such as cancer screenings, pregnancy care, testing for sexually transmitted diseases, and [pre-exposure prophylaxis \(“PrEP”\) antiretroviral medication](https://www.shrm.org/topics-tools/news/benefits-compensation/agencies-no-cost-sharing-prep-related-hiv-prevention-services) - ( <https://www.shrm.org/topics-tools/news/benefits-compensation/agencies-no-cost-sharing-prep-related-hiv-prevention-services> ) to prevent the spread of HIV — offered by group health care plans might eventually become subject to cost-sharing due to an upcoming benefits case before the U.S. Supreme Court.

The [Affordable Care Act](https://www.shrm.org/topics-tools/tools/toolkits/complying-affordable-care-act) - ( <https://www.shrm.org/topics-tools/tools/toolkits/complying-affordable-care-act> ) (ACA) requires that employer health plans and individual health plans cover certain preventive services without imposing any cost-sharing obligation on the covered person. The U.S. Preventive Services Task Force and the Health Resources and Services Administration determine which services are considered preventive.

### Opposition to Mandate

Some employers think that it violates their religious liberty rights to be forced to cover birth control or HIV preventive services, said Marcia Wagner, an attorney with The Wagner Law Group in Boston.

In addition, the preventive care requirement has been challenged because the members of the agencies defining the preventive services are not appointed by the president or confirmed by the Senate, she noted.

“It is contended that they are making policy decisions that should be reserved to individuals who are so appointed and confirmed,” Wagner said.

### Lower Court Rulings

In this case, a district court voided the mandate to cover contraception and anti-HIV treatment in 2022.

On appeal, the 5th U.S. Circuit Court of Appeals **held - ( <https://www.shrm.org/topics-tools/news/benefits-compensation/-mixed-bag--for-preventive-care-in-appeals-court-ruling> )** on June 21, 2024, that members of the U.S. Preventive Services Task Force were not constitutionally appointed and, therefore, any of their preventive care recommendations made after the ACA was enacted on March 23, 2010, would not be required to be covered without cost share. The recommendation for PrEP coverage to be no-cost was made well after this date.

The 5th Circuit applied the ruling only to the plaintiffs in the case, noted Lisa Campbell, an attorney with Groom Law Group in Washington, D.C.

### **Review Granted**

On Jan. 10, the U.S. Supreme Court granted the Biden administration's request for review of the 5th Circuit decision.

The parties could settle the case (*Kennedy v. Braidwood Management*). Or the U.S. Department of Justice could drop the appeal at any time before the date of oral argument — currently scheduled for April 21 — Campbell said.

### **Possible Effect of Upcoming Decision**

If the parties continue to litigate the case and the Supreme Court affirms the 5th Circuit's decision, any updates to the task force's recommendations after the ACA was enacted would not have the force of law, Campbell said.

However, if the high court strikes down the preventive care mandate, "we do not think plans and issuers can simply stop offering the updated preventive service without cost-sharing," Campbell said.

For insured plans, those policies have been filed with their states, and the policy provides the terms under which preventive services must be provided, she explained. "Those contractual terms likely cannot be unilaterally and immediately changed," she said. But depending on the state and the contractual language, some changes to benefits midyear may be possible, she added.

In addition, states have their own preventive care mandates, and some states may have adopted the ACA preventive services as a state requirement, Campbell cautioned.

"For self-funded group health plans, materially changing benefits — such as eliminating coverage without cost-sharing for certain bene would likely require advance notice to participants," she said.

If the Supreme Court upholds the preventive care mandate, plans will continue to be required to cover the preventive services without cost sharing, Wagner noted.

Feedback

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