

Fifth Circuit Stay Means Preventive Services Mandate Remains in Effect

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On Tuesday, the U.S. Court of Appeals for the Fifth Circuit approved the parties' stipulated agreement to stay enforcement of the district court decision in *Braidwood Management Inc. v. Becerra* until the appeal is resolved (with a limited exception for the named plaintiffs). As readers [will recall from our prior blog](#), in *Braidwood*, a district court had enjoined enforcement of the preventive services mandate for "A" or "B" items and services recommended by the United States Preventive Services Task Force ("USPSTF") on or after March 23, 2010. If the district court decision stands, non-grandfathered health plans would not have to cover those particular preventive services without cost-sharing.

As both parties appealed the district court's ruling, health plan sponsors had questioned whether enforcement of the district court's order would be stayed while the appeal proceeded in the Fifth Circuit. Although the Fifth Circuit [previously issued](#) a temporary administrative stay of the district court decision, the court's order on Tuesday confirms that the stay will remain in place until the Fifth Circuit reaches a decision on the merits of the appeal.

Next steps for health plan sponsors and employers: As a result of the stay, non-grandfathered health plans will remain subject to the pre-*Braidwood* preventive services mandate until the appeal is resolved, as well as all other preventive care requirements. Plan sponsors considering changes to their preventive services coverage will need to sit tight until a final decision on the merits is released by the Fifth Circuit, which is expected to happen later this year.

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