

Congress of the United States
Washington, DC 20515

April 12, 2023

Ms. Annette Guarisco Fildes
Chief Executive Officer
ERISA Industry Committee
701 8th Street NW, Suite 610
Washington, DC 20001

Dear Ms. Fildes:

We write to you with serious concerns following the Northern District of Texas's decision in *Braidwood Management Inc. v. Becerra* striking down the Affordable Care Act's (ACA) requirement that most health insurance plans and issuers cover many recommended preventive services without cost-sharing. The Republican-appointed judge's decision to strike down the ACA's preventive services coverage requirement nationwide is inconsistent with the law and is of dubious legal merit. The decision will imperil access to lifesaving care, roll back the significant health care gains that have been made under the ACA, and worsen racial and ethnic inequities. While this case undergoes further judicial review, it is firmly within the control of your member organizations to save lives and continue zero cost-sharing for preventive services. We request information regarding your planned response to this decision, including whether consumers will experience interruptions in coverage and whether your member organizations will continue to cover recommended preventive services without cost-sharing until all appellate review is concluded, including review by the Supreme Court.

The ACA included historic consumer protections and significantly improved access to screenings and preventive care. The law reduced financial barriers to accessing preventive services by requiring most health plans and issuers to cover recommended preventive services without any cost to consumers.¹ Under the law, most health plans and issuers cannot charge consumers copayment, co-insurance, or deductible for four categories of preventive services: evidence-based services that have in effect a rating of A or B in the recommendations of the U.S. Preventive Services Task Force (USPSTF), routine vaccines that have in effect a recommendation from the Advisory Committee on Immunization Practices (ACIP), evidence-informed preventive services for infants, children, and adolescents recommended by the Health Resources and Services Administration's (HRSA) Bright Futures Project, and preventive services and screenings for women consistent with the guidelines supported by HRSA.² These four categories include more than 100 preventive services such as cancer screenings, well-child

¹ KFF, *Preventive Services Covered by Private Health Plans under the Affordable Care Act* (Oct. 26, 2022) (<https://www.kff.org/womens-health-policy/fact-sheet/preventive-services-covered-by-private-health-plans>).

² Pub. L. No. 111-148 (2010).

visits, mammograms, screenings for pregnant women and newborns, vaccinations, HIV pre-exposure prophylaxis (PrEP), and contraception.³

More than 150 million Americans with private coverage receive access to life-saving preventive services without out-of-pocket costs, including 58 million women and 37 million children.⁴ Preventive services have helped patients identify and treat chronic conditions and led to earlier detection or prevention of cancer.⁵ Studies have shown that access to zero cost preventive services has improved vaccination rates, increased screening rates for cancer, blood pressure, cholesterol and other chronic conditions, and resulted in improved uptake of contraception and HIV PrEP.⁶ Patients at high risk of certain medical conditions have been able to access preventive services and receive diagnosis and treatment early.⁷ Research also demonstrates access to preventive services without cost-sharing has led to earlier detection and treatment of chronic health conditions and improved health outcomes.⁸ Access to zero cost preventive services has also reduced racial and ethnic-based disparities and has had positive effects on women's access to care.⁹

The Republican-appointed judge's decision to invalidate the preventive services requirement nationwide puts lives at risk and will result in loss of access to lifesaving care. The decision targets many preventive services, including cancer screenings, screenings for pregnant women and newborns, screenings for depression, obesity, heart disease, and PrEP medication.¹⁰ Over a dozen patient advocacy groups have written that access to these preventive services without cost-sharing has led to early detection of diseases thus preventing premature deaths and "lessening the financial burdens of treating severe illnesses like cancer, heart, kidney and lung diseases, arthritis, cystic fibrosis, hemophilia, diabetes, HIV/AIDS, and MS."¹¹ More than 60 medical organizations warned that "rolling back this access would reverse important progress and make it harder for physicians to diagnose and treat diseases."¹²

Millions of Americans have benefitted from increased access to zero cost preventive services. Families cannot afford to lose access to this critical consumer protection. The decision to invalidate all the preventive services recommended by USPSTF since 2010 eliminates access to life-saving preventive services without cost-sharing for more than 150 million Americans. We

³ ASPE Office of Health Policy, *Access to Preventive Services without Cost-Sharing: Evidence from the Affordable Care Act* (Jan. 11, 2022).

⁴ *Id.*

⁵ *See Note 1 and 3.*

⁶ Urban Institute, *Free Preventive Services Improve Access to Care* (July 2022); Xuesong Han et al., *Has Recommended Preventive Service Use Increased After Elimination of Cost-Sharing as Part of the Affordable Care Act in the United States?*, *Preventive Medicine* (Sept. 2015).

⁷ *Id.*

⁸ *See Note 3.*

⁹ Cagdas Agirdas et al., *Effects of the ACA on Preventive Care Disparities* (Dec. 2018).

¹⁰ *Braidwood Management Inc. v. Becerra*, N.D. Tex., No. 20-cv-283 (Mar. 30, 2023).

¹¹ *Amici Curiae* brief of the American Cancer Society, et al., in *Braidwood Management Inc. v. Becerra* (Nov. 30, 2022).

¹² American Medical Association, *Physicians Sound Alarm on Lawsuit Threatening Preventive Care* (July 25, 2022).

are very concerned that the decision will unnecessarily cause confusion, force consumers to pay out-of-pocket, and result in patients foregoing preventive services screenings and treatment altogether. There is evidence that even modest cost-sharing deters patients from accessing care and exposure to cost-sharing reduces the use of preventive care.¹³ We are very concerned that the decision will roll back the significant health care gains that have been made under the ACA and will worsen racial and ethnic inequities.

We believe it is critical that consumers continue to have access to recommended preventive services without any cost-sharing. We request your written response, no later than April 19, 2023, regarding whether your member organizations plan to continue to cover all the preventive services recommended by USPSTF with an A or B rating at zero cost-sharing, and whether there will be any disruptions in coverage until all appellate review is concluded, including review by the Supreme Court. We appreciate your commitment in ensuring that all Americans have access to high-quality, affordable health care.

Sincerely,



Frank Pallone, Jr.
Ranking Member
House Committee on Energy and Commerce



Richard Neal
Ranking Member
House Committee on Ways and Means



Robert C. "Bobby" Scott
Ranking Member
House Committee on Education and the
Workforce



Ron Wyden
Chairman
Senate Committee on Finance



Bernie Sanders
Chairman
Senate Committee on Health, Education,
Labor and Pensions

¹³ Rajender Agarwal et al., *High-Deductible Health Plans Reduce Health Care Cost and Utilization, Including Use of Needed Preventive Services*, Health Affairs (October 2017); Hope Norris et al., *Utilization Impact of Cost-Sharing Elimination for Preventive Care Services: A Rapid Review*, Medical Care Research and Review (April 2022).