

March 15, 2024

Re: Support H.R. 6860; the Restore Protections for Dialysis Patients Act

Dear Representative:

On behalf of the undersigned organizations, we write to urge you to support H.R. 6860, the *Restore Protections for Dialysis Patients Act*, introduced by Reps. Mike Kelly (R-PA), Yvette Clark (D NY), Danny Davis (D-IL), Neal Dunn (R-FL), John Joyce (R-PA), and Raul Ruiz (D-CA). This bipartisan legislation would help restore long-standing health insurance protections for individuals with end-stage renal disease (“ESRD”), a life-threatening condition that requires kidney dialysis at least three times per week. Specifically, H.R. 6860 would restore the intent of the Medicare Secondary Payer Act (“MSPA”) by (1) preventing employer group plans from prematurely forcing such individuals on to the Medicare program, and (2) protecting such individuals from discriminatory practices that single out renal dialysis patients for disfavored insurance treatment compared to individuals with other conditions.

These discriminatory practices were illegal under the MSPA since 1981 until a recent Supreme Court decision, known as the *Marietta* holding, opened a loophole that could prematurely force the over 800,000 individuals with kidney failure off employer-sponsored health insurance and onto Medicare, despite the intended protections of the MSPA. For these reasons, *we ask you to cosponsor this important bipartisan legislation*, which is simply meant to return the protections of the MSPA to the “status quo” before the *Marietta* decision.

The undersigned organizations represent individuals with disabilities and chronic health conditions as well as health professionals who are deeply concerned with how this loophole could negatively impact access to care for individuals with kidney failure. The current interpretation of the MSPA may have potential long-term implications on protecting access for all patients to high quality, accessible and affordable health care. We are also concerned with how this decision to further restrict access to kidney dialysis will exacerbate longstanding health inequities, given that people of color disproportionately have kidney failure requiring dialysis to survive.

The MSPA has been in place for over 40 years to ensure that individuals who require kidney dialysis have continued and full access to the health services they need. Because individuals with ESRD are eligible for Medicare coverage below age 65, the MSPA was designed to ensure that employers did not limit kidney dialysis benefits, effectively forcing dialysis patients onto Medicare prematurely and off employer coverage. Without a legislative fix to reverse the impact of the loophole created by the Supreme Court’s *Marietta* holding, employer-sponsored plans are now—and will continue to be—able to disregard the “anti-differentiation” requirement of the MSPA. This will permit employer plans to openly discriminate in the dialysis benefits they provide to their enrollees, which could severely limit access to care for people with kidney failure. This also upends health insurance coverage for family members of those requiring dialysis covered by employer plans.

Because of this loophole, dialysis patients have already seen their insurance plans remove dialysis center providers from their networks, redesignate all providers as “out of network,” and severely restrict or “carve out” dialysis benefits altogether. In these situations, individuals with kidney failure are essentially forced onto Medicare earlier than necessary. During this transition, many

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individuals with ESRD lose access to their primary dialysis provider, risk spending large amounts of money out-of-pocket for their continued dialysis care, and no longer have the option of covering their families under their employer-provided coverage.

The *Restore Protections for Dialysis Patients Act* would simply reestablish the anti-differentiation provisions of the MSPA and close the loophole created by the Supreme Court's recent ruling. Discrimination in health insurance against individuals with one health condition should be considered discrimination against all individuals with health conditions. For these reasons, we strongly support this important bipartisan legislation to restore lifesaving and life-sustaining protections for dialysis patients and urge Congress to move forward with its swift passage and enactment in the second session of the 118th Congress.

Sincerely,

Access Ready
ACCSES
American Association of Nurse Practitioners
American Diabetes Association
American Medical Rehabilitation Providers
Association
American Music Therapy Association
American Nephrology Nurses Association
American Osteopathic Association
Autistic Self Advocacy Network
Autistic Women & Nonbinary Nonbinary
Network
Black Women's Health Imperative
Christopher & Dana Reeve Foundation
Disability Rights Education and Defense
Fund
Falling Forward Foundation
Family Voices
Hepatitis B Foundation
Justice in Aging
National Association for the Advancement of
Orthotics & Prosthetics
National Association of State Head Injury
Administrators
National Council of Asian Pacific Islander
Physicians
National Disability Rights Network
National Health Law Program
National Minority Health Association
Renal Physicians Association
RESNA
United Cerebral Palsy