



The Restore Protections for Dialysis Patients Act (H.R. 6860 and S. 5018)

The American Nephrology Nurses Association (ANNA) is a nonprofit organization with a membership of more than 6,000 registered nurses and other health care professionals at all levels of practice. ANNA members work in settings such as chronic kidney disease management, peritoneal dialysis, hemodialysis, continuous kidney replacement therapy, transplantation, industry, and government/regulatory agencies.

Background on the Issue

In 1980, Congress passed the landmark *Medicare Secondary Payer Act* (MSPA) to prohibit discrimination against individuals living with end-stage kidney disease (ESKD) and kidney failure by group health plans. Specifically, the bill ensured that Medicare was not responsible for paying for services that certain group health plans were primarily responsible for covering, such as kidney care services.

In 2022, the Supreme Court struck down this provision in *Marietta v. DaVita*. As a result, employer group health plans were allowed to eliminate kidney care services like dialysis from coverage, which individuals living with ESKD need to survive. Consequently, many individuals living with ESKD were forced off their private health insurance plan and into the Medicare End Stage Renal Disease (ESRD) benefit. This has led many to lose the 30 month coordination period, loss of family health care coverage, additional supplemental benefits such as vision and dental coverage, and face increased out-of-pocket costs, all while a strained Medicare picks up the tab.

Overview of the Legislation

On December 19th, 2023, Representatives Mike Kelly (R-PA-16), Yvette Clarke (D-NY-9), Neal Dunn (R-FL-2), Danny Davis (D-IL-7), John Joyce (R-PA-13), and Raul Ruiz (D-CA-25) introduced the *Restore Protections for Dialysis Patients Act* (H.R. 6860). On September 11, 2024, Senators Bill Cassidy (R-LA) and Cory Booker (D-NJ) introduced the Senate version of the bill (S. 5018).

The legislation aims to uphold the original intent of Congress outlined in the 1980 MSPA by prohibiting discrimination against individuals with kidney failure in the group health insurance market. In addition, the bill guarantees that individuals living with ESKD can maintain access to vital dialysis care through their private insurance during the mandated 30-month coordination period.

Importantly, the legislation helps to preserve the solvency of the Medicare program by giving primary coverage responsibility of the 40 million Americans living with kidney disease to the private insurance market.

Recommendation: ANNA supports the Restore Protections for Dialysis Patients Act (H.R. 6860 and S. 5018) and encourages Members of Congress to cosponsor legislation.