

November 18, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Request for CMS Technical Assistance on H.R.6860/S.5018, the Restore Protections for Dialysis Patients Act

Dear Administrator Brooks-LaSure:

On behalf of the undersigned organizations, we write to request that the Centers for Medicare and Medicaid Services (“CMS”) issue long-awaited technical assistance on H.R.6860/S.5018, the *Restore Protections for Dialysis Patients Act* as expeditiously as possible. This technical assistance is critically important in order to accurately inform the United States Congressional Budget Office (“CBO”) on how to properly score this legislation to determine how much the bill will cost the federal government to implement. The CBO is unable to provide a score without receipt of the CMS technical assistance, which is why we implore you to please issue the technical assistance as soon as possible so that the bill can be considered prior to the end of the 118th Congress.

The *Restore Protections for Dialysis Patients Act* is a bipartisan and bicameral bill that seeks to 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. More specifically, the bill would restore the intent of the Medicare Secondary Payer Act (“MSPA”) and protect individuals with ESRD 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 U.S. Supreme Court decision, known as the Marietta holding, opened a loophole that could prematurely force the over 800,000 individuals in the United States with kidney failure off employer-sponsored health insurance and onto Medicare, despite the intended protections of the MSPA.

The undersigned organizations represent individuals, organizations, and health professionals who are deeply concerned with how this loophole could negatively impact access to care for individuals with kidney failure. We are concerned that without the protections of the MSPA, longstanding health inequities will be exacerbated, especially as providers are now allowed to implement discriminatory practices.

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 *Marietta* holding, employer-sponsored plans are not – and will continue to be – able to disregard the “anti-differentiation” requirement under 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 private employer plans.

The *Restore Protections for Dialysis Patients Act* would reestablish protections for individuals with ESRD and prevent discriminatory practices by private health plans. 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 ask that you work with your team at CMS to issue technical assistance on the bill as soon as possible so that CBO can weigh in and the bill can be considered in both the House and Senate prior to the end of the 118th Congress.

Sincerely,

The Undersigned National Organizations in Support of Passage of the Restore Act:

Access Ready, Inc.

ACCSES

American Academy of Physical Medicine and Rehabilitation

American Association of Nurse Practitioners

American Association on Health and Disability

American Medical Rehabilitation Providers Association

American Music Therapy Association

American Nephrology Nurses Association

American Society of Nephrology

American Therapeutic Recreation Association

Amputee Coalition

Autistic Self Advocacy Network

Autistic Women and Nonbinary Network

Black Women’s Health Imperative

Brain Injury Association of America

Christopher and Dana Reeve Foundation

Disability Rights Education and Defense Fund

Falling Forward Foundation

Family Voices

Justice in Aging

Lakeshore Foundation

Lupus and Allied Diseases Association, Inc

Minority Health Institute

Muscular Dystrophy Association

National Association of Councils on Developmental Disabilities

National Association for the Advancement of Orthotics and Prosthetics

National Association of Hispanic Nurses

National Association of State Head Injury Administrators
National Black Nurses Association
National Council of Asian Pacific Islander Physicians
National Disability Rights Network
National Health Law Program
National Minority Health Association
National Patient Advocate Foundation
RESNA
Spina Bifida Association
The Arc
United Cerebral Palsy