

November 15, 2022

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader Schumer, Republican Leader McConnell, Speaker Pelosi, and Republican Leader McCarthy:

The undersigned organizations, representing employers providing group health care coverage to over 150 million employees and their families, strongly oppose S. 4750/H.R. 8594, the *Restore Protections for Dialysis Patients Act (RPDPA)*.

This very broadly and vaguely worded bill would not “restore protections” or improve access for individuals with End Stage Renal Disease (ESRD), since individuals with ESRD already have access to these vital services. Instead, RPDPA would allow outpatient dialysis providers to capitalize on the below-average out of network reimbursement rates of one hospital system by increasing their reimbursement across all markets. The bill would further erode the ability of group health plans to negotiate health care provider reimbursement rates in the dysfunctional outpatient dialysis market. As a result, premiums would increase for Americans with employer-provided health insurance.

The *RPDPA* was introduced in response to a recent U.S. Supreme Court decision in *Marietta Memorial Hospital v. DaVita*. In a 7-2 opinion, the Justices ruled against DaVita’s complaint that a group health plan violated the law by offering low reimbursement rates for outpatient dialysis because the plan provides the same benefits to all individuals with or without ESRD.¹ The opinion did not change any protections for individuals with ESRD, but rather affirmed long-standing provisions of the Medicare Secondary Payer Act, which require group health plans to be the primary payer for dialysis for 30 months and prohibit employers from terminating coverage, imposing benefit limitations or charging higher premiums based on an ESRD diagnosis or taking into account that an individual is eligible for Medicare due to ESRD.

¹ *Marietta Memorial v. DaVita Inc.*, No. 20–1641 (June 21, 2022).
https://www.supremecourt.gov/opinions/21pdf/20-1641_3314.pdf

Additionally, the Court in no way altered protections for individuals with ESRD provided by the Affordable Care Act and the Public Health Service Act. Therefore, while this bill is claiming to increase protections for ESRD patients, it is nothing more than an attempt by dialysis companies to increase reimbursement to make greater profits at the expense of working families.

This bill would increase health insurance premiums for patients with or without ESRD and further exacerbate the power of a duopoly of providers in the highly concentrated outpatient dialysis market.^{2, 3} Employers are already paying inflated rates for dialysis treatment as evidenced by these statistics:

- In 2016, the rates paid by private insurers for dialysis were four times higher than the Medicare payment rate.⁴
- As a result, commercial payers accounted for 33 percent of revenue for dialysis providers, even though commercial payers only covered 10.5% of dialysis patient volume.⁵

Additionally, the bill language would effectively prohibit group health plans from designing their own benefit structure for dialysis treatment. This is an unprecedented intrusion by the federal government into the benefit design of group health plans.

We believe the current Medicare Secondary Payer statute as written by Congress and recently affirmed by the Supreme Court very importantly and appropriately protects access to dialysis for individuals with ESRD in group health plans. This bill would not provide any new protections for patients. Instead, families covered by employer-sponsored health plans would be forced to pay higher premiums and dialysis companies would pad their profits. We strongly oppose this bill and ask that it not receive consideration by the Senate and the House.

Sincerely,

American Benefits Council
Business Roundtable
H.R. Policy Association

² POLITICO, *DaVita Helped Craft New Bill to Fix "Loophole" Left by Supreme Court Ruling, Documents Show*, August 8, 2022. <https://www.politico.com/news/2022/08/09/davita-helped-craft-new-bill-to-fix-loophole-left-by-supreme-court-loss-documents-show-00050705>

³ "More than 80 percent of dialysis patients receive their treatments from either DaVita or Fresenius Medical Care...giving the two companies upwards of 80 percent of the \$24.7 billion American dialysis market — and significant influence over the prices charged to private insurers." Scientific American, *Kidney Dialysis Is a Booming Business—Is It Also a Rigged One?*, December 14, 2020 <https://www.scientificamerican.com/article/kidney-dialysis-is-a-booming-business-is-it-also-a-rigged-one1/>

⁴ <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2732689>

⁵ *JAMA Intern Med.* 2019;179(8):1136-1138. doi:10.1001/jamainternmed.2019.0431, <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2732689>

National Association of Health Underwriters (NAHU)
National Association of Wholesaler-Distributors (NAWD)
National Federation of Independent Business (NFIB)
National Retail Federation (NRF)
U.S. Chamber of Commerce