



October 17, 2024

The Honorable Mike Johnson  
Speaker  
U.S. House of Representatives  
H-232, The Capitol  
Washington, DC 20515

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
S-221, The Capitol  
Washington, DC 20510

The Honorable Hakeem Jeffries  
Minority Leader  
H-204, The Capitol  
Washington, DC 20515

The Honorable Mitch McConnell  
Minority Leader  
S-230, The Capitol  
Washington, DC 20510

Dear House and Senate Leaders:

The Partnership for Employer-Sponsored Coverage (P4ESC) writes to express our continuing concern regarding H.R. 6860/S. 5018, the *Restore Protections for Dialysis Patients Act*. We oppose this legislation and strongly urge Congress not to consider either of these bills during the post-election, lame duck session. The same protections<sup>1</sup> for dialysis patients that existed before the U.S. Supreme Court decision in *Marietta Memorial Health Plan v. Davita, Inc.* still protect dialysis patients today. There are no additional protections after *Marietta* that this legislation would restore.

These bills would increase costs for employers and employees without improving the quality of dialysis services. We believe the proposed bills would create overly broad parity requirements comparing dialysis services to all other covered benefits. This new parity analysis would create confusion, spur wasteful spending and disputes, reduce quality, and increase costs to employees and employer plans.

P4ESC is a nonpartisan advocacy alliance of employer-based and oriented organizations and trade associations representing businesses of all sizes and sectors, and the millions of Americans and their families who rely upon employer-sponsored coverage every day. Employer-sponsored coverage has been the backbone of our nation's health system for nearly eight decades.

Employers are committed to our obligations under the Medicare Secondary Payer (MSP) Act for end-stage renal disease (ESRD) patients and other patients requiring dialysis services. Employer

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<sup>1</sup> Dialysis patients are protected under the Medicare Secondary Payer Act, ERISA, HIPAA, and the Affordable Care Act. These statutes prohibit discriminatory plan designs and actions.

plan sponsors strive to establish in-network arrangements with a variety of medical, mental health, and other providers to provide robust health benefit programs to employees and families.

In addition, we are greatly concerned that this bill has not been the subject of a hearing on either side of the Capitol. Committee review and debate are needed to discuss the fundamental dispute surrounding the U.S. Supreme Court's decision in *Marietta*. We believe the *Marietta* decision did not change the relationship between patients, employer-sponsored coverage, and dialysis providers. Instead, the decision merely reaffirmed that the MSP Act is a coordination of benefits statute – determining the dividing line between employer-sponsored coverage and Medicare as payers for health benefits.

Under the MSP Act, an individual who is determined to have ESRD becomes eligible for Medicare. Employers provide primary coverage (and Medicare secondary coverage) for the first 30 months after the determination is made. Once this 30-month period ends, or an individual is no longer employed or eligible for employer-sponsored coverage, then Medicare becomes primary.

Employees with ESRD or otherwise requiring dialysis services are already well protected under existing law. The MSP Act, together with ERISA, HIPAA, and the ACA, protects patients by prohibiting discriminatory plan designs and actions, making this legislation unnecessary.<sup>2</sup>

While we recognize the concerns expressed by dialysis providers regarding shortfalls in their Medicare payments, it is inappropriate to shift any Medicare underpayments further onto employers and the millions of employees who receive employer-sponsored health insurance coverage. We ask instead that Congress consider how to better, more transparently reimburse dialysis providers under Medicare to address their financial concerns.

Employers have a significant stake in developing and implementing health care policies that will benefit employees and their families. We look forward to discussing this and other health care reform proposals with you. If you or your staff would like to meet with members of P4ESC, please contact P4ESC's Executive Director Neil Trautwein.

Sincerely,

**The Partnership for Employer-Sponsored Coverage**

[www.p4esc.org](http://www.p4esc.org)

cc: Members, U.S. House of Representatives  
Members, U.S. Senate

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<sup>2</sup> P4ESC joined 11 other employer organizations in a February 2024 letter (<https://bit.ly/3TMW1C>) to the House Chairs and Ranking Members of the Energy and Commerce and Ways and Means Committees opposing H.R. 6860.