



September 28, 2022

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

The Honorable Charles Schumer
Majority Leader
U.S. Senate
Washington, DC 20510

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

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

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

On behalf of Kidney Care Partners (KCP), we ask that you include the *Restore Protections for Dialysis Patients Act* (H.R. 8594/S. 4750) into the end-of-year legislative package Congress will consider in the lame-duck session. This bipartisan, bicameral legislation will restore protections for individuals with kidney failure that were recently upended by the U.S. Supreme Court. This legislation will also create additional savings which will allow Congress to avoid unnecessary and harmful cuts to the End-Stage Renal Disease (ESRD) Prospective Payment System which would further hinder patient access to care and quality. As Congress continues to look for savings, KCP also supports further delaying or permanently excluding oral-only drugs that are furnished for the treatment of end-stage renal disease (ESRD) from the ESRD Prospective Payment System (PPS) bundle.

KCP is a non-profit, non-partisan coalition of more than 30 organizations comprising patients, physicians, nurses, dialysis professionals, researchers, therapeutic innovators, transplant coordinators, and manufacturers dedicated to working together to improve the quality of care for individuals living with kidney disease. Over the past two years, people with kidney disease and those that treat and care for them have faced unprecedented challenges because of the COVID-19 pandemic. These challenges have been made worse by the recent U.S. Supreme Court ruling issued this summer that effectively eliminated crucial statutory protections Congress put in place 40 years ago to protect individuals with kidney disease from discrimination.

The U.S. Supreme Court applied a very narrow statutory interpretation which creates a loophole for private health plans to discourage those with kidney failure from enrolling in private coverage. While Medicare coverage is both a valuable option and important safety net for patients with ESRD, it can expose individuals with kidney failure to higher out-of-pocket costs

and does not cover certain benefits, including those important to securing and maintaining a spot on a kidney transplant waitlist. It also could jeopardize the health coverage of dependent family members on private health plans. This straightforward, bipartisan, bicameral legislation will restore the status quo and clarify the statutory provisions for which both the majority and dissent recognized the need for this clarity.

Additionally, failing to close the loophole has significant implications for the Medicare Trust Fund, which Congress also sought to protect in adopting the statutory provisions four decades ago. Specifically, Congress recognized that the availability of Medicare coverage for all individuals with kidney failure creates strong incentives for private health plans to avoid serving them. With no other option, individuals with kidney failure may now elect Medicare before they otherwise would prefer, resulting in higher Medicare expenditures and greater stress on the Trust Fund.

By restoring Congress' intent, the *Restore Protections for Dialysis Patients Act* would protect the Medicare Trust Fund and provide additional revenue to protect the ESRD PPS from any unnecessary cuts and provide Congress with the opportunity to undertake other crucial policy changes to improve access to care and quality for individuals living with kidney disease.

Additionally, Congress can also find savings by excluding oral-only drugs that are furnished for the treatment of ESRD from the ESRD PPS bundle. These drugs have yet to be added to the ESRD PPS either because the Centers for Medicare & Medicaid Services delayed their inclusion or Congress enacted legislation delaying it. These delays indicate that there are both regulatory and legislative concerns with adding these products to the bundle. Permitting these therapies to remain in Part D will alleviate the pressure on the ESRD PPS bundled payment. KCP believes a further delay or permanent exclusion will benefit beneficiaries who require these drugs, relieve the burden on providers, and benefit the Medicare program by resulting in additional savings to the Medicare program.

KCP would prefer that any savings achieved through these policy changes would support other policies such as physician relief, screening for Chronic Kidney Disease (CKD), promoting kidney disease education, providing guaranteed availability of Medigap for ESRD patients and incentivizing innovation for new drugs, biologics, devices, or other technology for the treatment of kidney disease. However, first and foremost, Congress must extend patient protections threatened by the U.S. Supreme Court decision and avoid any cuts to the ESRD PPS. Any cuts to the ESRD PPS would harm access to quality care for individuals with kidney failure as the community continues to struggle with COVID-19 and a labor workforce crisis.

KCP appreciates the challenges Congress faces in weighing various priorities. However, we believe it is imperative that Congress include the *Restore Protections for Dialysis Patients Act* (H.R. 8594/S. 4750), delay the inclusion of oral-only drugs in the ESRD PPS bundle, and other kidney related policies mentioned above into the end-of-year legislative package to protect both individuals with kidney failure and the Medicare Trust Fund.

Sincerely,

A handwritten signature in black ink, appearing to be 'J.P. Butler', with a long horizontal flourish extending to the right.

John P. Butler
Chair

CC: Senate Finance Committee Chair Ron Wyden
Senate Finance Committee Ranking Member Mike Crapo
House Ways and Means Committee Chair Richard Neal
House Ways and Means Committee Ranking Member Kevin Brady
House Energy and Commerce Chair Frank Pallone
House Energy and Commerce Ranking Member Cathy McMorris Rodgers