



Dialysis & Nephrology

A monthly report by Benesch on the
Dialysis & Nephrology Industry **DIGEST**

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Calendar of Events

SEPTEMBER 28, 2022
Kidney Health Initiative: Ninth Annual Stakeholder's Meeting
For information, please click [here](#).

FEBRUARY 17-19, 2023
ASDIN 2023: Call for Sessions is Open
For information, please click [here](#).

OCTOBER 5-7, 2022
2022 RHA Annual Conference Registration is Now Open!
For information, please click [here](#).

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Please contact us if you would like to post information regarding your upcoming events or if you'd like to guest author an article for this newsletter.

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Nephrology and Dialysis Practices

JUNE 21, 2022

[SCOTUS sides with OH-based medical plan in dispute with DaVita over dialysis reimbursements](#)

In a 7-2 vote, the Supreme Court **ruled** in favor of the Marietta Memorial Hospital Employee Benefit Plan in a case that hinged on a Medicare rule prohibiting different levels of coverage for patients with ESRD and those without. DaVita accused the plan of discrimination, saying it was forcing members with ESRD off their private plan and onto Medicare by lowering reimbursements. SCOTUS rejected that argument, stating there's nothing in the Medicare Secondary Payer statute delineating how much dialysis coverage a private plan should provide. Fresenius **said** that to limit coverage isn't "an appropriate or ethical behavior" and that most of its payer partners are more interested in patient well-being. Meanwhile, the advocacy organization Dialysis Patient Citizens **expressed** its disappointment with the SCOTUS ruling, saying that forcing ESRD patients onto Medicare before the 30-month expiration of privately-insured benefits "represents immediate and profound risks for kidney patients."

Related: [High court kidney care ruling creates loophole for health plans](#)

- Bloomberg Law [Supreme Court overturns lower court ruling supporting higher dialysis payments to DaVita](#) - Healio (sub. rec.)

[High court allows insurers to limit dialysis, forcing patients to Medicare](#) - KHN
[SCOTUS sides with group health plan in dialysis reimbursement case](#) - Health Payer Intelligence

SOURCE: Law360 (sub. rec.)

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Nephrology and Dialysis Practices (cont'd)

JUNE 21, 2022

[Federal judge gives DaVita go-ahead to return confidential DOJ documents relating to no-poach acquittal](#)

The documents were produced for the DOJ's failed attempt at prosecuting DaVita and former CEO Kent Thiry in a federal no-poach case. After a two-week stalemate involving two federal district courts, an IL judge ruled that DaVita and Thiry could comply with an [order](#) from a CO judge to return the confidential information to the government without risk of penalty. However, the DOJ was ordered to keep a complete set of the original documents, plus whatever is returned by DaVita and Thiry, for possible follow-on civil cases.

Related: [Analysis: DaVita acquittal sets high bar for DOJ no-poach cases](#) - Law360 (sub. rec.)

SOURCE: Law360 (sub. rec.)

JUNE 22, 2022

[SCOTUS denies UnitedHealthcare's petition to appeal CMS rule concerning MA overpayments](#)

SCOTUS [declined](#) to hear a UnitedHealthcare (UHC) appeal of a District Court of Appeals [decision](#) which reversed an earlier court's ruling vacating a CMS rule implemented to recover MA overpayments from payers. The federal rule from 2014 requires CMS to be refunded within 60 days if it's found a diagnosis lacks medical record support. UHC argued that CMS should establish an actuarial equivalence between MA payments and Medicare reimbursements, but the appeals court disagreed, saying "actuarial equivalence does not apply to the overpayment rule or the statutory overpayment refund obligation."

SOURCE: Becker's Payers Issues

JUNE 15, 2022

[Proposed class action alleges Fresenius failed to pay OT; forced employees to log off even while working](#)

A former employee [filed](#) a proposed class and collective action in a Federal Court in NY, accusing Fresenius of not paying him and others for all the hours they worked. He claims the company forced care technicians to log off for a half-hour break every six hours, even if their workload demanded they remain on the job. When he complained to management about having time spent working being deducted from his paycheck, the man was allegedly told that if he didn't log out for an hour each day, the time would be automatically deducted, and he'd be disciplined. The suit claims Fresenius is in contravention of NY labor laws and the federal Fair Labor Standards Act and is seeking to represent a class and collective of all current and former patient care technicians who worked for the company over the last six years.

SOURCE: Law360 (sub. rec.)

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July 13, 2022

Nephrology and Dialysis Practices (cont'd)

JUNE 24, 2022

[Denver lawyer disbarred for defrauding DaVita \\$700K over undelivered N95 masks](#)

Steve Bachar and his company Empowerment Health took a \$2.4-million order from DaVita for N95 masks in the early days of the pandemic. The dialysis provider paid 25% of that amount upfront, \$605,000, in Apr. 2020, which were never delivered. They asked for the money back, and when it wasn't returned, successfully sued Bachar and won a judgment of over \$700,000 in Oct. 2020. DaVita claims it was never paid and sued Bachar again on June 15. The lawyer is being disbarred for conduct involving dishonesty, fraud, deceit or misrepresentation relating to the DaVita case, as well as a \$3.8-million judgment against him for failing to deliver three million hospital gowns for a healthcare company.

SOURCE: Business Den (sub. rec.)

JUNE 21, 2022

[CMS proposes 3.1% increase in payments to dialysis clinics in 2023 under ESRD PPS](#)

Under the ESRD Proposed Payment System, dialysis providers receive a bundled, per-treatment payment from Medicare that includes all dialysis services, including non-oral medications. For 2023, it's expected 7,800 dialysis facilities will share \$8.2 billion, at a base rate of \$264.09. CMS projects that hospital-based facilities will see a 3.7% increase in payments next year, compared with a 3.1% uptick for freestanding clinics. The rule also proposes an increase to the wage index floor and a permanent 5% cap on decreases to the wage index.

Related: [CMS proposes 3.1% increase in payments to dialysis providers in 2023](#) - Healio (sub. rec.)

SOURCE: CMS.gov

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Nephrology and Dialysis Practices (cont'd)

JUNE 13, 2022

HHS clarifies how care providers, health plans can provide HIPAA-compliant, audio-only telehealth

The HHS' Office for Civil Rights (OCR) issued guidance during the pandemic absolving care providers and health plans from penalties for HIPAA non-compliance for audio-only telehealth while the health emergency was in effect. With the end of pandemic-related restrictions, enforcement discretion is ending. The federal agency acknowledges that patients and providers both want telehealth to continue, so the new guidance stipulates that the HIPAA Security Rule won't cover traditional landlines as no electronic data is exchanged. However, entities using internet-enabled mobile technology will have to be compliant. Also, communications via a landline won't require covered entities to enter into a business associate agreement (BAA) with telecommunications companies, but a BAA will be needed if the service provider has a hand in creating, receiving or maintaining the information on behalf of the covered entity.

SOURCE: [HHS.gov](https://www.hhs.gov)

JUNE 13, 2022

A bipartisan, bicameral bill introduced in Congress would ensure ESRD patients have access to certain telehealth services introduced during the pandemic. Specifically, the Kidney Health Connect Act would allow dialysis centers to serve as originating sites for Medicare telehealth services and remove the 20% facility fee coinsurance obligation for patients. In addition, a second, bipartisan bill before the House would extend certain telehealth flexibilities until the end of 2024, giving Congress time to make telehealth in rural communities a permanent fixture.

SOURCE: Health Intelligence

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Nephrology and Dialysis Practices (cont'd)

JUNE 21, 2022

[Ballot measure on dialysis center staffing reform goes back before CA voters in fall](#)

For the third time, the SEIU-United Healthcare Workers West union is sponsoring a ballot measure in CA that would require a physician assistant, a physician or a nurse practitioner to monitor patients' dialysis treatments. Similar proposals were easily defeated in statewide votes in 2018 and 2020, and this year's measure will again face significant headwinds. In the past, ballot measures were opposed by the California Medical Association and dialysis providers like DaVita and Fresenius. This time, they could be joined by groups like the state's Dialysis Council, the California Taxpayer Protection Committee and the California Chamber of Commerce. Opponents to the measure say increased staffing would cost too much, while the union counters having healthcare professionals oversee dialysis care would improve patient safety.

SOURCE: Sacramento Bee

JUNE 7, 2022

[Fresenius CEO says no decision yet on sale of company's dialysis business](#)

Back in Feb., Stephan Sturm floated the idea that Fresenius might divest from its dialysis business as it was the unit most negatively affected by the pandemic. Sturm reiterated in June that no decision had been made yet to sell Fresenius Medical Care (FMC). Fresenius currently holds a 32% share in FMC, and last year, the CEO dismissed speculation that the group could cut its stake in the dialysis provider.

SOURCE: Reuters

JUNE 23, 2022

[Northwest Kidney Centers names VPs for legal affairs, IT](#)

Seattle-based Northwest Kidney Centers appointed Robin Larmer as VP of legal affairs and Chief Compliance Officer. She was formerly VP of compliance at Molina Healthcare of Washington and Chief Compliance and Regulatory Officer at Santa Clara Family Health Plan in CA. The kidney care provider also named John Rodgers as VP of Information Technology.

SOURCE: Northwest Kidney Centers

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Nephrology and Dialysis Practices (cont'd)

JUNE 10, 2022

OIG estimates provider-based facilities cost Medicare, beneficiaries \$1.6B more than freestanding facilities

The Office of the Inspector General [looked at](#) payments for evaluation and management (E/M) services between 2010 and 2017 in eight states (CA, CO, FL, LA, MI, MO, NY and TX). Based on outpatient and PFS claims, Medicare paid \$3.2 billion and beneficiaries \$794 million for E/M at provider-based facilities. Had those same services been performed at a freestanding facility, where physicians are reimbursed at the PFS facility rate and hospitals receive nothing under OPPS, Medicare would've paid \$1.8 billion and beneficiaries \$460 million. OIG estimates the total savings at just over \$1.6 billion. In addition, the study notes that had the [CY2018 OPPS](#) final rule and the [CY2019 PFS](#) final rule been in effect during the study period, savings to Medicare and beneficiaries would've been \$1.4 billion.

Related: [Medicare, beneficiaries saw higher prices at provider-based facilities](#) - Revcycle Intelligence

SOURCE: Office of the Inspector General

JUNE 14, 2022

Harvard study suggests indirect billing by NPs, PAs cost Medicare \$194M in 2018

[Research](#) (sub. rec.) led by Harvard University found that between 2010 and 2018, the number of fee-for-service nurse practitioner (NP) and physician assistant (PA) visits billed indirectly to Medicare grew by 181%, to 30.6 million. With indirect billing, Medicare and private payers reimburse the total cost of the visit as if it involved a physician. However, if NPs and PAs are billed directly for their services, practices would be reimbursed at 85% of the normal physician rate. The study estimates that reimbursements due to indirect billing for NP and PA services more than doubled between 2010 and 2018, to \$1.2 billion. Had those visits been directly billed, the data suggest the savings to Medicare to be \$194 million.

SOURCE: Revcycle Intelligence

July 13, 2022

Nephrology and Dialysis Practices (cont'd)

JUNE 6, 2022

Research finds significant savings to Medicare from CEC model vs. primary-care ACO model

In a [study](#) (sub. rec.) led by Lewin Group and with the participation of CMMI, a comparison was undertaken of Medicare's specialty-oriented CEC model for ESRD with primary care-based ACO models. It was found that hospitalizations for participants in the CEC model declined by roughly 5% per month (5.6 per 1,000) in the first year compared with those under the primary care group. In addition, data suggested readmission rates within 30 days of hospital discharge decreased in participants in the CEC model by 8%. Crucially, Medicare payments fell by \$126 per beneficiary per month in the CEC model compared with the previous model. Fistula use was higher under the CEC model but didn't reach the statistical significance threshold.

SOURCE: AJMC

MAY 2, 2022

Satellite Healthcare Affiliate National Nephrology Alliance and Nephrology Associates Medical Group Announce Collaboration to Form Strategic Alliance and Management Services Organization

National Nephrology Alliance (NNA) announced its strategic alliance with Nephrology Associates Medical Group (NAMG), a prominent provider of nephrology care with the largest nephrology clinical practice serving Riverside and San Bernardino Counties. This collaboration clinically and financially aligns the two organizations to advance individualized, patient-centered kidney care and keep patients with chronic kidney disease as healthy as possible. NNA, a management services organization (MSO), partners with nephrology practices such as NAMG to enhance practice growth, align practice groups for value-based care, and innovate treatment approaches customized for each specific patient. The collaboration additionally provides nephrology groups with advanced technologies, support and resources to manage their administrative "back office" needs, freeing up nephrologists to devote time to their highest priorities. Joining forces through combining provider assets and integrating their clinical expertise and experience is a significant development in the quest of NNA and its nephrology partners to provide the best possible care to a community of patients with chronic kidney disease as early as possible in their disease progression.

SOURCE: Satellite Healthcare

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VAC, ASC and Office-Based Labs

JUNE 28, 2022

[Atlas Healthcare Partners, MedAxiom combine forces on cardiology-based ASC](#)

Phoenix-based ASC developer [Atlas Healthcare Partners](#) is collaborating with [MedAxiom](#) of Neptune Beach, FL, on an ASC focused on cardiovascular procedures. The venture will reach out to health systems and physicians to expand access to cardiovascular care in an ASC setting. The two companies contend their model is a first-of-its-kind for cardiovascular care even as the cardiology specialty pivots to ASCs. Atlas president [Marc Toth](#) will lead strategy and business development of the ASC, while Atlas' VP of development, [Trey Domann](#), will lead development efforts with health systems and cardiology groups. MedAxiom will be responsible for clinical and operational outcomes.

SOURCE: Atlas Healthcare

JUNE 3, 2022

[DOJ partially joins case against Fresenius alleging it performed thousands of unnecessary vascular procedures](#)

Two nephrologists [filed](#) the original complaint in 2014, which claimed Fresenius Medical Care and its business unit, Azura Vascular Care, conducted thousands of fistulagrams on patients with ESRD that were unnecessary and/or performed without the treating physicians' consent. The whistleblower case also alleges Fresenius and Azura falsified medical records and submitted false claims for reimbursement. On Apr. 18, the federal government [petitioned](#) the U.S. District Court for the Eastern District of New York to partially intervene in the complaint, taking over that part of the case dealing with federal FCA fraud claims. On May 9, the court [unsealed](#) the case, and the federal government has 60 days to file its complaint. Up to 19 states could join the case, which could seek the recovery of hundreds of millions of dollars in government payments to Fresenius and its business units.

SOURCE: Fierce Healthcare

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Other Interesting Industry News

JUNE 5, 2022

[Dialyze Direct CMO suggests SNFs as next frontier for growth in dialysis sector](#)

It's estimated that 15% of dialysis patients will live in a skilled nursing facility (SNF) at some point during the year, and an aging demographic with multiple morbidities likely signals that trend will increase, says Dr. Allen Kaufman, Chief Medical Officer and Senior VP for Clinical and Scientific Affairs at [Dialyze Direct](#). CMS introduced guidance in 2021, permitting SNFs to provide dialysis on-site. Kaufman expects providers to see the cost and health benefits of not transporting residents to dialysis clinics, which should lead to a growth phase for SNF dialysis delivery. The key, he states, is modifying home hemodialysis technology - generally used by younger patients - for the much older and more frail SNF population. He suggests SNFs adopt a den model for delivery, whereby several residents are treated simultaneously to reduce staffing requirements.

Related: [Transitional care units help patients with modality choice, can improve outcomes](#) - Healio (sub. rec.)

SOURCE: MedCity News

JUNE 23, 2022

[Evergreen Nephrology launches value-based agreements with dialysis providers in Dallas, Baltimore](#)

Nashville-based [Evergreen Nephrology](#) is expanding its value-based kidney care footprint following a JV with [Dallas Nephrology Associates](#) of TX. The company has over 30 locations in 19 communities in the Dallas-Fort Worth metro area and offers vascular access management, dialysis and kidney transplant services. Evergreen also formed a JV with MD-based [Mid-Atlantic Nephrology Associates](#), which provides dialysis and vascular access services at eight locations in Greater Baltimore.

SOURCE: Evergreen Nephrology

JUNE 21, 2022

[Houston nephrology practice to employ value-based kidney care platform developed by Panoramic Health](#)

[Renal Specialists of Houston](#) (RSOH) provides nephrology consultations, transplant services, CKD management, ESRD care and vascular access services to nearly 12,000 patients at 12 office locations and 18 hospital sites in Greater Houston. It's employing the value-based kidney care platform developed by [Panoramic Health](#), saying it aligns with its holistic care strategy. RSOH believes Panoramic's technology, which uses predictive analytics, clinical decision workflows and patient engagement, will merge seamlessly with existing practices.

SOURCE: Panoramic Health

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Other Interesting Industry News (cont'd)

JUNE 7, 2022

[Somatus expands value-based nephrology network to TN with Regional Kidney Care deal](#)

[Regional Kidney Care](#) (RKC) has nephrology practices at two locations in TN and operates dialysis centers in five locations in TN and VA. Through the agreement with [Somatus](#), it'll have access to the latter's interdisciplinary team and its AI and machine learning capabilities to deliver in-home kidney care. RKC believes the value-based, holistic model offered by Somatus will improve the quality of care and drive outcomes for kidney patients in the Tri-cities area in TN's northeast.

SOURCE: Somatus

JUNE 7, 2022

[Value-based kidney care startup Duo Health building out leadership team with naming of CTO](#)

Chicago-based [Duo Health](#) named [Bryan Adams](#) as Chief Technology Officer, responsible for the company's Health Mobilization platform, an AI- and machine learning-enabled platform that predicts adverse events and engages with patients and providers to optimize care and outcomes. The technology is part of Duo's care model centered on interdisciplinary teams and a preference for home-based treatment. Adams was CTO at Healthsense from 2012-2016, where he led the roll-out of software for a passive patient monitoring system.

SOURCE: Duo Health

JUNE 16, 2022

[Study: Websites of largest U.S. dialysis companies substantially promote dialysis over other treatments](#)

Researchers don't name the companies whose websites were cited for the study, but it's generally agreed that Fresenius and DaVita have the greatest reach in the U.S. dialysis sector. The Center for IT Engagement at Mount St. Joseph University in Cincinnati used keyword searches on patient-facing webpages and found dialysis mentions outstripped mentions for transplantation. Also, conservative treatment options, including forgoing therapy altogether, weren't mentioned on one site and were barely mentioned on the other. The study also determined that both sites tended to term life on dialysis quite favorably, with dozens of mentions that patients can continue to engage in "work," "sex," or "travel" while on dialysis treatment. Meanwhile, an editorial from the University of Washington [discusses](#) what role dialysis providers should play in promoting non-dialytic treatment options.

Related: Study: [Some dialysis provider websites limit information on modality options for patients](#) - Healio (sub. rec.)

SOURCE: Duo Health

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