



Dialysis & Nephrology DIGEST

A monthly report by Benesch on the Dialysis & Nephrology Industry

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January 16, 2024

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Calendar of Events

OCTOBER 1–JANUARY 31, 2024

Peritoneal Dialysis University

For information, please click [here](#).

JANUARY 22–25, 2024

ISET Annual Meeting

Miami Beach, FL

For information, please click [here](#).

FEBRUARY 6, 2024

OEIS Legal Webinar: Putting a Stethoscope to the Heart of Your Practice and Remediating Compliance Concerns

For more information, please click [here](#).

FEBRUARY 23–25, 2024

ASDIN: 20th Annual Scientific Meeting

New Orleans, LA

(Online registration ends February 23)

For more information, please click [here](#).

MARCH 23–28, 2024

SIR Annual Meeting

Salt Lake City, Utah

For information, please click [here](#).

APRIL 11, 2024

RPA Seminar: 2024 Nephrology Coding and Billing Workshop

For more information, please click [here](#).

APRIL 11–14, 2024

RPA: 50th Annual Meeting

Baltimore, MD

For more information, please click [here](#).

APRIL 14–17, 2024

ANNA: National Symposium

Orlando, FL

For more information, please click [here](#).

APRIL 25, 2024

OEIS Marketing Strategy Workshop

Las Vegas, NV (Concurrent with 2024 OEIS Annual Meeting)

For more information, please click [here](#).

APRIL 25, 2024

2024 OEIS Technology Forum

Las Vegas, NV (Concurrent with OEIS Annual Meeting)

For more information, please click [here](#).

APRIL 25–27, 2024

OEIS: 11th Annual National Scientific Meeting

Las Vegas, NV (Annual Meeting Agenda)

For information, please click [here](#).

SEPTEMBER 20–24, 2024

ANNA: Nephrology Nursing Summit

Atlanta, GA

For more information, please click [here](#).



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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**Dialysis &
Nephrology**
DIGEST



**Benesch Healthcare+ Fourth Annual
Nephrology and Dialysis Conference**

**We want to hear from you as we begin to plan our
Fourth Annual Nephrology & Dialysis Conference
set to take place in June, 2024.**

Please click [HERE](#) to take a short survey



Trade Secrets/Non-Compete YEAR IN REVIEW

Welcome to our 2023 Trade Secret and Restrictive Covenant Year in Review. 2023 was a busy year in this space, but not as busy as many expected. Specifically, although multiple states introduced restrictive covenant legislation, the most significant shock waves through the legal and business community concerned legislative and administrative activity that never materialized. Still, there were plenty of significant jury verdicts and court decisions to keep us "noncompete and trade secret geeks" entertained, and we can expect 2024 to be more active than 2023 as the FTC and other federal agencies, as well as several state legislatures, continue their assault on restrictive covenants.

2023

1. Two significant pieces of legislation and two major legislative actions fail to happen (for now).

Approximately 93 restrictive covenant bills were introduced in 37 states in 2023. Most of the bills did not make it out of committee and terminated when the 2023 state legislative session ended. Of the bills that were enacted, Minnesota's noncompetition statute and two California statutes reinforcing and imposing new requirements regarding California's ban on restrictive covenants were the most significant. As discussed below, the Minnesota statute, which took effect on July 1st, bars all noncompetition agreements with Minnesota residents but does allow for the enforcement of customer and employee non-solicitation agreements. The statute also allows for the enforcement of noncompetition agreements involving the sale of a business so long as the noncompetition restriction(s) is "reasonable." Notably, the statute does not define what is a "reasonable" restriction.

New California Business and Professions Code Section 16600.5, which took effect Jan. 1, 2024, reinforces California's prohibition on restrictive covenant agreements by declaring "any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed. . . . [and] regardless of whether the contract was signed and the employment was maintained outside of California." In other words, an employee who signs a restrictive covenant agreement in another state, performs services for his/her employer in another state and then takes residence in California will not be subject to the restrictive covenant agreement. Section 16600.5 also creates a private right of action that allows an employee to obtain injunctive relief, actual damages and attorneys' fees if the employee seeks to have the restrictive covenant agreement declared void and unenforceable under California law. Approximately one month after passing Section 16600.5, California further amended California Business and Professions Code Section 16600 by requiring employers to notify current and former employees, in writing and by **Feb. 14, 2024**, that any noncompetition clause or agreement signed by the California employee is void.

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continued on next page

**“Trade Secrets/Non-Compete
YEAR IN REVIEW” is now
available [here](#).**

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Nephrology and Dialysis

DECEMBER 22, 2023

[NY Governor vetoes noncompete ban bill after opposition from health, business groups](#)

Kathy Hochul vetoed a [bill](#) passed by both houses of the NY legislature in June that would've imposed bans of non-compete clauses in employment contracts. The measure faced significant push back from Wall Street and business groups, as well as from the healthcare sector, who say noncompete agreements prevent rivals from poaching top talent. The governor says the bill went too far in that it included all employees, adding she favors a more limited law that covers lower-wage workers. Last-minute negotiations to agree on a wage threshold for the bill failed, leading to Hochul's veto. It's expected the measure will be reintroduced by the Democrat-led state legislature this year.

Related: [NY noncompete ban needs salary cap deal to recover from veto](#)—Bloomberg Law (sub. rec.)

SOURCE: The New York Times (sub. rec.)

NOVEMBER 29, 2023

[Audio: DaVita exec says implementing value-based kidney care models requires buy-ins from payers, providers](#)

Misha Palecek, who leads DaVita's strategic value-based care partnerships and care delivery innovations, [says](#) changing from a fee-for-service to a value-based care model will take time to be done correctly. He echoes comments from the Center for Medicare and Medicaid Innovation that the timeline may need to be stretched to 10 years from the original five-year estimate due to the complexity of bringing together payers (both public and private), providers, physician groups and health systems. Palecek identifies some of the challenges in value-based kidney care implementation, including:

- Financial alignment: Ensuring physicians who meet quality metrics are properly rewarded;
- Data and technology: Giving physicians the tools they need to make sound value-based care decisions; and
- Collaborating with physician teams to develop workflows and quality metrics.

SOURCE: Fierce Healthcare

January 16, 2024

Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

DECEMBER 19, 2023

DaVita co-develops program to keep nursing students in school; makes \$1M commitment

Through the DaVita Giving Foundation, \$1 million will be donated to [Western Governors University](#), an online college based in UT, over the next three years. The partners developed the [Start Early](#) program, which will provide scholarships to nursing students with financial barriers to completing their degrees. Applicants will be eligible to share in:

- \$400,000 for pre-licensure support;
- \$360,000 for pre-licensure non-tuition supports like childcare and scrubs; and
- \$240,000 for non-tuition wrap-around costs such as out-of-pocket travel expenses associated with clinical simulation learning labs.

Additionally, students from underserved populations such as people of color, students with comparatively lower incomes, students in geographically remote areas and/or students who are the first in their families to attend a university will be eligible for financial support. DaVita says the effort is meant to address the chronic shortage of nurses in all healthcare disciplines, including nephrology.

SOURCE: DaVita

DECEMBER 12, 2023

DaVita unit asks OH's highest court to rule tax assessment over out-of-state work

Total Renal Care is appealing a [decision](#) from the Ohio Board of Tax Appeals denying its petition to overturn a \$393,671 assessment by the state's tax commissioner. The commissioner said lab work and administrative services performed on behalf of Total Renal Care clinics in OH were performed out-of-state and were therefore subject to a commercial activity tax. The company is taking the case to the Ohio Supreme Court, arguing its parent company, DaVita, centralizes those services through other states.

SOURCE: Bloomberg Tax (sub. rec.)

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Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

NOVEMBER 30, 2023

Fresenius Medical Care completes transition to German stock corporation

Fresenius Medical Care (FMC) contends the change from a partnership limited by shares to a German stock corporation enables it to simplify the governance structure and creates a more flexible and autonomous company. Fresenius, which holds just under one-third of FMC's shares, appointed CEO Michael Sen and CFO Sara Hennicken as two of the six shareholder members of FMC's supervisory board. Sen will serve as chair of the body. Six employee representatives will be named to the board as well, with the first member expected to be appointed in Q1.

SOURCE: Fresenius Medical Care

DECEMBER 8, 2023

Fresenius' divestment of non-core business continues with plans to unload rehab business

In Nov., Fresenius agreed to sell its fertility services business Eugin to a consortium led by KKR's reproductive medicine group IVI RMA for up to \$548 million. The rehabilitation business, attached to its hospital project development business, Vamed, could be worth up to \$858 million. Fresenius' plan is to focus on its pharmaceutical unit as well as its hospital operations sections while treating Vamed and its dialysis provider, Fresenius Medical Care, as financial investments.

SOURCE: Reuters

DECEMBER 11, 2023

FMC's sustainability efforts recognized with inclusion to Dow Jones index in Europe

Fresenius Medical Care (FMC) states it's the 14th consecutive year it was named to the [Dow Jones Sustainability Europe Index](#). The index comprises European sustainability leaders identified by S&P Global. FMC was cited for improvements in customer relationship management and scored highly on its focus on diversity and inclusion labor practices.

SOURCE: Fresenius Medical Care

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Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

DECEMBER 6, 2023

FMC reports medical records for half-million U.S. patients stolen

[Cardiovascular Consultants](#), a Fresenius Medical Care (FMC) subsidiary, [revealed](#) a security incident in which information stored at a data warehouse was stolen. Approximately 500,000 patients, former patients, guarantors and staff in the U.S. and four other countries were impacted by the breach. FMC doesn't anticipate the theft will have a material impact on finances, but acknowledged there may be costs associated with future litigation over the matter.

SOURCE: Reuters

NOVEMBER 30, 2023

GAO study recommending coverage for dialysis drug class by 2025 has industry worried

The Biden Administration intends to cover oral-only drugs called phosphate binders with the bundled payment under Medicare Part B by 2025. The medication is a bone density therapy for patients with ESRD and would join injectable drugs and oral drugs with injectable equivalents in the bundled payment. CMS plans to begin paying for this class of drugs via an add-on payment during a transition period of at least two years beginning in 2025, after which the bundled payment will be modified to include phosphate binders. The Government Accountability Office (GAO) [reports](#) the dialysis industry is concerned the addition of the medications will require extensive staffing and infrastructure overhauls.

SOURCE: Bloomberg Law (sub. rec.)

DECEMBER 14, 2023

Bipartisan bill to support awareness, education about ESRD introduced in House

Reps. Gus Bilirakis (R.-FL) and Terri Sewell (D.-AL) are co-sponsoring the [bill](#), which would allow the establishment of centers of excellence on rare kidney disease research under the auspices of the [National Institute of Diabetes and Digestive and Kidney Diseases](#). The centers will conduct studies on the origins, causes, symptoms, identification, progression and treatment of rare kidney diseases. As well, they'll provide increased public awareness of those conditions, particularly in rural and underserved communities.

SOURCE: U.S. Congressman Gus Bilirakis

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Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

DECEMBER 15, 2023

Physician groups not giving up effort to overturn Medicare fee cuts

With members of Congress expected back in Washington the week of Jan. 8, the American Medical Association is hopeful the 3.34% Medicare physician fee cut that took effect Jan. 1 is discussed by federal lawmakers. The association wants a [bill](#) introduced in the House that would eliminate the cuts taken up. As well, the 2024 National Defense Authorization [bill](#), awaiting the President's signature, includes \$2.2 billion in sequester cuts for physicians in a Medicare Improvement Fund which the AMA states would cover the fee cuts in their entirety. Meanwhile, the newly created [American Independent Medical Practice Association](#) is [urging](#) Congress to reject the cuts, saying they'll accelerate consolidation in the healthcare market.

SOURCE: Becker's Hospital Review

JANUARY 1, 2024

Healthcare associations plan lobbying for return of remote supervision of residents

CMS is maintaining a program implemented during the pandemic permitting clinicians to bill Medicare for three-way telehealth sessions involving residents and patients. However, the agency ended another initiative in which clinicians remotely supervise residents in the delivery of in-person care to Medicare patients. Groups such as the Association of American Medical Colleges and the American Hospital Association are urging CMS to reconsider the decision. They point to the utility of allowing supervising physicians to virtually oversee residents providing care to patients in rural areas to improve access in those localities.

SOURCE: Law360 (sub. rec.)

DECEMBER 1, 2023

HHS recovered \$3.4B in fraudulent payments in FY2023

The Office of Inspector General at HHS (HHS-OIG) [projects](#) over \$3.44 billion in recoveries between Oct. 2022 and Sept. 2023, with over \$283 million returned after audits and \$3.16 billion recoup following investigations. Over that 12-month period, HHS-OIG reported 707 criminal enforcement actions against individuals and entities suspected of crimes targeting HHS programs. It also reported 746 civil actions, which included false claims and unjust-enrichment lawsuits, monetary penalty settlements and recoveries following provider self-disclosures. The agency also excluded 2,112 individuals and entities from federal healthcare programs.

SOURCE: U.S. Department of Health and Human Services

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January 16, 2024

Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

DECEMBER 13, 2023

[U.S. Renal Care reports VBC unit poised for growth; manages \\$1B in annual spend](#)

[Kidneylink](#) states since its founding in 2021, over 600 nephrologists across 20 U.S. markets joined its network, caring for over 16,000 patients with kidney diseases. It claims its value-based care model resulted in double-digit percentage reductions in hospitalizations and medical costs. Kidneylink adds patients under its care aren't required to undergo dialysis at U.S. Renal Care (USRC) clinics, noting over half of its ESKD patients are treated outside of USRC's facilities.

SOURCE: [Kidneylink](#)

DECEMBER 6, 2023

[Renal Care 360 expanding TX reach with partnership with San Antonio-based practice](#)

TN-based polychronic care management company, [Renal Care 360](#), is joining forces with [Kidney and Primary Care of Texas](#) (KPCTX). Renal Care 360 claims it's providing services to over 30,000 patients nationwide through its Connected Care Program and SPARK education platform. It says the deal with KPCTX will enable it to build out its capacity in the state. KPCTX operates a clinic in San Antonio and in rural Pearsall, TX.

SOURCE: [Renal Care 360](#)

DECEMBER 6, 2023

[Outset Medical signs national distribution agreement for Tablo home dialysis system](#)

[Trace Medical](#), based in the Detroit suburbs, will leverage its national network to rent [Outset Medical's Tablo Hemodialysis System](#) to home medical equipment providers. To assist in the initiative, Trace established a dialysis advisory board consisting of nephrologists, GPO leaders and C-suite executives. It'll educate the industry about the benefits of home hemodialysis while initiating discussions with commercial payers about the clinical and financial rewards associated with the treatment modality.

SOURCE: [Medical Product Outsourcing](#)

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January 16, 2024

Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

NOVEMBER 30, 2023

AKF report identifies screening, value-based care to better support early diagnosis, treatment of CKD

The American Kidney Fund (AKF) hosted a summit in Apr. with stakeholders to address issues for patients with or at-risk of kidney diseases. That initiative **birthed** a set of actions the AKF wants policymakers and advocates to take up to improve renal care outcomes. Among the solutions discussed are:

- Make screening and testing more accessible and with clearer guidelines. In addition, the AKF proposes calling on the U.S. Preventive Services Task Force to make recommendations on CKD screening and support legislative action for direct Medicare reimbursement to genetic counselors;
- Expand education about kidney disease treatment options. Allies may consider partnering with community organizations to develop culturally competent education and navigation resources for healthcare providers and patients;
- Pursue improvements to FDA review and approval, such as adding nephrology-focused professionals to advisory committees, and amplify patient voices; and
- Call for comprehensive coverage and value-based payment models for commercial insurers, including approaches such as value-based payment models.

SOURCE: American Kidney Fund

JANUARY 4, 2024

Baxter: Successful pilot for IV bag made from recyclable plastic completed in Chicago

Baxter says the pilot program at Northwestern Memorial Hospital involved input from the nursing department, as well as supply chain specialists and those in environmental services. They formulated a process to incorporate the recycling of IV bags into nursing workflows while ensuring materials were transported to facilities equipped to repurpose the plastic. Northwestern Medicine's chief sustainability executive says 170,000 IV bags were recycled during the pilot, diverting six tons of plastic from landfills. Even with the end of the pilot, the hospital will continue its program, while Baxter seeks other health system partners in Chicago to validate the economic and environmental potential of the recycling initiative.

SOURCE: Baxter

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Dialysis & Nephrology DIGEST

Nephrology and Dialysis (cont'd)

DECEMBER 1, 2023

RHA names industry veteran William Poirier as executive director

William Poirier spent the past 34 years at Greenfield Health Systems, the dialysis division of the Henry Ford Health System in Detroit, where he rose to the position of regional administrator. Poirier will also serve as executive director of RHA's subsidiary, Renal Services Exchange, a provider of support services for independent CKD care providers.

SOURCE: Renal Healthcare Association

For more information regarding our nephrology, dialysis
and office-based lab experience, or
if you would like to contribute to the newsletter, please contact:

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