

October 3, 2022

Hon. Charles Schumer  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Hon. Mitch McConnell  
Republican Leader  
United States Senate  
Washington, D.C. 20510

Dear Leaders Schumer and McConnell,

On behalf of a broad coalition of organizations representing employers, labor groups, and State and Local governmental health plans, we write to you in strong opposition to S. 4750, the *Restore Protections for Dialysis Patients Act (RPDPA)*.

The *RPDPA* would eliminate the ability of employer-sponsored group health plans to build markets in health care and reduce costs for the highest-quality patient-dialysis treatment. At a time when Congress is focusing on lowering the cost of care, now is not the time to increase already-high dialysis costs. These cost increases would financially benefit dialysis providers who are seeking the specific legislative changes set forth in the *RPDA* to receive higher reimbursement rates from private-sector health plans.<sup>1</sup>

According to a 2020 report in the *Scientific American* titled “*Kidney Dialysis Is a Booming Business—Is It Also a Rigged One?*,” only two dialysis providers control more than 80 percent of the \$24.7 billion nationwide dialysis market, leading to significant influence over the cost of life-saving and necessary dialysis treatment, and leading to vast payment increases for private-sector patients.<sup>2</sup>

Earlier this year, the U.S. Supreme Court held in a 7-2 opinion that group health plans can utilize cost-control designs under the Medicare Secondary Payment Act (MSPA), so long as plans offer the same terms of coverage for outpatient dialysis services for *all* participants.<sup>3</sup>

The MSPA outlines coordination of benefits with Medicare for plan participants entitled to dual plan/Medicare coverage. Pursuant to the MSPA as it exists today, it is illegal for private-sector group health plans to force participants off of these health care arrangements and onto Medicare. In fact, numerous other laws – such as the Affordable Care Act (ACA) and Employee Retirement Income Security Act (ERISA) – similarly prohibit private-sector group health plans from shifting employees from the group health plan to Medicare.

The *RPDPA* would not only overturn the recent Supreme Court decision, the legislation would also create policies that would increase dialysis costs, while removing the flexibility for group health plans to manage appropriate levels of coverage for dialysis patients, as well as for employees with other chronic conditions. Specifically, the legislation would force employers to either reduce benefits for patients with other chronic conditions or pay prices the two dominant dialysis monopolies are

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<sup>1</sup> See [POLITICO, DaVita Helped Craft New Bill to Fix "Loophole" Left by Supreme Court Ruling, Documents Show, August 8, 2022.](#)

<sup>2</sup> See [Scientific American, Kidney Dialysis Is a Booming Business—Is It Also a Rigged One?, December 14, 2020.](#)

<sup>3</sup> [Marietta Memorial v. DaVita Inc., No. 20–1641 \(June 21, 2022\).](#)

demanding for dialysis services, the cost of which – according to a study published in the Journal of the American Medical Association (JAMA) – is often 7 to 10 times the price that Medicare pays.<sup>4</sup>

We believe Congress and the Supreme Court have already correctly concluded that the current MSPA protects both Medicare and patients. As such, patients, as well as employers and those employees and their dependents enrolled in group health plans, deserve access to appropriate, high-quality dialysis services that are *not* manipulated by dialysis providers for their own benefit.

Sincerely,

- [Alaska Laborers Trust Funds](#)
- [Alaska Pipe Trades U.A. Local 367 Health & Security Trust](#)
- [Alaska Public Employees Association \(APEA\) - Alaska Federation of Teachers \(AFT\) Health and Welfare Trust](#)
- [Alaska State Employees Association/AFSCME Local 52 Health Trust](#)
- [Council for Independent Agents and Broker \(CIAB\)](#)
- [Dallas-Fort Worth Business Group on Health](#)
- [Employers' Advanced Cooperative on Healthcare](#)
- [Employers Health Purchasing Coalition](#)
- [ERISA Industry Committee \(ERIC\)](#)
- [Greater Philadelphia Business Coalition on Health](#)
- [HealthCare 21 Business Coalition](#)
- [Inland Empire Electrical Workers Health & Welfare Trust](#)
- [Kansas Business Group on Health](#)
- [Local Union 598 Plumbing and Pipefitting Industry Health and Welfare Fund](#)
- [Louisiana Business Group on Health](#)
- [Massachusetts Coalition of Taft Hartley Trust Funds](#)
- [Memphis Business Group on Health](#)
- [MidAtlantic Business Group on Health](#)
- [Midwest Business Group on Health](#)
- [National Alliance of Healthcare Purchaser Coalitions](#)
- [National Association of Health Underwriters \(NAHU\)](#)
- [National Association of Wholesaler-Distributors \(NAW\)](#)
- [National Federation of Independent Business \(NFIB\)](#)
- [National Labor Alliance of Healthcare Coalitions](#)
- [Nevada Business Group on Health](#)
- [New Mexico Coalition for Healthcare Value](#)
- [North Carolina Business Group on Health](#)
- [Pacific Health Coalition](#)
- [Pittsburgh Business Group on Health](#)
- [Plumbers Union Local No. 12 Welfare Plan](#)
- [Public Employees Local 71 Health Trust](#)
- [Purchaser Business Group on Health \(PBGH\)](#)

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<sup>4</sup> See [Journal of the American Medical Association, A Comparison of Payments to a For-profit Dialysis Firm From Government and Commercial Insurers](#), May 13, 2019.

- [Rhode Island Business Group on Health](#)
- [Seattle Area Plumbing & Pipefitting Industry Health Trust](#)
- [Self-Insurance Institute of America, Inc. \(SIIA\)](#)
- [Silicon Valley Employers Forum](#)
- [St. Louis Area Business Health Coalition](#)
- [Texas Business Group on Health](#)
- [The Alliance](#)
- [U.A. Local 32 Plumbers Pipe Fitters Refrigeration & HVAC Union](#)
- [Washington Health Alliance](#)
- [Washington State Building and Construction Trades Council, AFL-CIO](#)
- [WellOK - The Oklahoma Business Coalition on Health](#)