



September 15, 2022

The Honorable Bob Menendez
528 Hart Senate Office Building
U.S. Senate
Washington, DC 20510

The Honorable Bill Cassidy
520 Hart Senate Office Building
U.S. Senate
Washington, DC 20510

Dear Senators Menendez and Cassidy:

On behalf of the undersigned members of the Consortium for Constituents with Disabilities (CCD) Health Task Force, we write to thank you for introducing S. 4750, the *Restore Protections for Dialysis Patients Act*, and to urge your colleagues in the Senate to support this bipartisan, bicameral bill. This legislation will help remedy the devastating impact that a recent U.S. Supreme Court ruling will have on individuals with disabilities, namely those with end-stage renal disease (ESRD), a life-threatening condition that requires kidney dialysis at least three times per week.

CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. The Health Task Force works to ensure access to high quality, accessible, affordable health care for people with disabilities and complex conditions of all ages that meets their individual needs and enables them to be healthy, live as independently as possible, and participate in the community.

In June, the Supreme Court weakened longstanding protections for individuals with ESRD, opening the door for health plans to circumvent “anti-differentiation” provisions by restricting dialysis benefits compared to the services covered for treatment for other chronic conditions. Without a legislative fix, more plans are likely to begin limiting their dialysis benefits, threatening patients’ access to these services and pushing individuals with ESRD, 97% of whom rely on kidney dialysis to survive, away from private coverage and prematurely onto Medicare, which covers ESRD patients at any age. Further, any reduction in access to dialysis will exacerbate longstanding health equity issues, given that the population of people with ESRD needing dialysis is disproportionately people of color. People who are Black, Latinx, Asian American, American Indian, Alaska Native, and Native Hawaiian or other Pacific Islander all have higher rates of kidney disease than white individuals.

The *Restoring Protections for Dialysis Patients Act* will restore the anti-differentiation provisions of the Medicare Secondary Payer Act (MSPA) and ensure that individuals with ESRD can continue to elect coverage that is most appropriate for them and their families, which has been their right since 1981 when Congress passed the MSPA. More

specifically, the bill would close the loophole created by the Supreme Court ruling that enables private plans to offer more restrictive benefits to patients who rely on dialysis services, which creates financial burdens that non-ESRD patients do not have to overcome to access appropriate care.

The bill makes it clear that a private health plan violates the MSPA protections if it “limits, restricts, or conditions” the benefits the plan provides for renal dialysis services as compared to the benefits the plan provides for other covered medical services necessary to treat other medical conditions. This includes, but is not limited to, plan provisions restricting in-network providers for outpatient dialysis services and other barriers that make it more difficult for dialysis patients to access needed care.

This legislation would also send a clear message that Congress will not tolerate circumventions of protections for individuals with all disabilities and/or chronic conditions, not just end stage renal disease.

We strongly support this important bipartisan legislation to restore lifesaving and life-sustaining protections for dialysis patients and urge Congress to move forward with its swift passage and enactment. If you have any further questions, please contact the Health Task Force co-chairs: Caroline Bergner (cbergner@asha.org), David Machledt (machledt@healthlaw.org), Greg Robinson (grobinson@autisticadvocacy.org), Cinnamon St. John (cstjohn@medicareadvocacy.org), and Peter Thomas (Peter.Thomas@powerslaw.com).

Sincerely,

The Undersigned Members of the CCD Health Task Force

Access Ready
Allies for Independence
American Academy of Physical Medicine and Rehabilitation
American Association on Health and Disability
American Medical Rehabilitation Providers Association
American Music Therapy Association
American Therapeutic Recreation Association
The Arc of the United States
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Brain Injury Association of America
Center for Medicare Advocacy
Christopher & Dana Reeve Foundation
Dialysis Patient Citizens
Disability Rights Education and Defense Fund
Easterseals
Family Voices

(continued on next page)

Justice in Aging
Muscular Dystrophy Association
National Association of Councils on Developmental Disabilities
National Association of State Head Injury Administrators
National Disability Rights Network
National Health Law Program
National Multiple Sclerosis Society
Spina Bifida Association
United Spinal Association