



## **American Society of Transplantation Opposes Dialysis PATIENTS Demonstration Act**

### **S. 2065 & H.R. 4143 Compromises Patient Access & Referral to Organ Transplantation and Limits Patient-Physician Healthcare Decision-Making**

As introduced, H.R. 4143 and S. 2065, the Dialysis PATIENTS Demonstration Act seeks to promote innovation, efficiency and the improvement of the quality of care for patients receiving kidney dialysis. Stakeholders in support of the legislation have stated that they believe patient care will be improved through the fostering of greater integrative and coordinated care for the end-stage renal disease (ESRD) population.

The stated goals and spirit of the Dialysis PATIENTS Demonstration Act are laudable and of interest to most stakeholders within the kidney care community. However, as introduced and pending before the 115th Congress, the Dialysis PATIENTS Demonstration Act ***is poised to significantly compromise patient access and referral to organ transplantation.***

Many kidney patients are potential candidates for organ transplantation. If passed and enacted, this legislation will serve ***to establish financial and public policy disincentives for dialysis patients that would benefit from kidney transplantation.***

#### **Goals of the Proposed Legislation Already Being Tested by HHS & CMS**

The goals of the Dialysis PATIENTS Act are nearly identical to those of existing ESRD models developed by the Center for Medicare and Medicaid Innovation (CMMI), including ESRD Seamless Care Organizations (ESCOs). In 2015, CMMI introduced the Comprehensive ESRD Care (CEC) model to allow providers of various sizes to participate, while placing geographic limitations on ESCOs to avoid fostering market advantages of large dialysis organizations. Early results from these models have been impressive, yet the jury is out regarding the long-term implications for kidney patients.

The 21<sup>st</sup> Century Cures legislation, which will make ESRD patients eligible for Medicare Advantage Programs, will also help determine the viability of capitated care of the ESRD population.

#### **Why Is H.R. 4143 & S. 2065 Being Aggressively Advanced in the 115th Congress?**

The Dialysis PATIENTS Demonstration Act allows for-profit companies (large dialysis organizations) to bear full risk for the care of the ESRD population. For the first time, it will allow dialysis providers to acquire or create insurance companies with little or no effort, allowing them to be the at-risk entity (Medicare Advantage Plans).

Given the substantial capital and regulatory requirements required to assume risk, the Dialysis PATIENTS Demonstration Act will likely create an exclusive policy landscape and opportunity for the two large dialysis organizations: Fresenius Medical Care and DaVita Health.

#### **Dialysis PATIENTS Demonstration Act Restricts Access & Choice**

Provisions within the proposed legislation allow for patients residing in the service area of an "Integrated Care Organization" to be involuntarily enrolled in the program with the opportunity for patients to opt out within 75 days or annually. Hence, all Medicare covered services, including transplantation (Part A and B are covered) will be covered by the insurance product.

Restricting the freedom of patients to choose their dialysis provider could be viewed as an impingement on the rights of a vulnerable population. The ability to choose providers serves as an incentive for innovation

and improvement in the quality of care delivered regionally. This patient choice must be preserved....and not relinquished to for-profit entities focused largely and primarily on the business of administering dialysis.

### **Legislation Diminishes Patient Voice & Input into Care**

Patients need to be able to promote quality and innovation with their own voice and experience. Do patients, physicians and the nephrology community wish to entrust the identification, referral and approval/access for kidney transplantation to for-profit dialysis organizations?

How do these organizations disentangle themselves from the strong financial incentives (contained in S. 2065 & H.R. 4143) not to transplant?

There is no inclusion of the transplant community in the multi-disciplinary oversight committees as proposed in the Dialysis PATIENTS Demonstration Act.

### **Alternative Payment Models Are the Future - But Must Be Thoughtful and Patient-Centered**

Alternative payment models (hospital ACOs) are the future of medicine, including the care of ESRD patients. These models are based on caring for a population, cradle to grave.

However, as currently introduced, S. 2065 & H.R. 4143, the Dialysis PATIENTS Demonstration Act relinquishes this care to for-profit private sector companies.

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