

September 22, 2022

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

Dear Leaders Schumer and McConnell,

The HR Policy Association and the American Health Policy Institute write to express our serious concerns with the Restore Protections for Dialysis Patients Act (S. 4750). Although the legislation may be well intended, it is unnecessary given existing federal protections and requirements and would in practice create a completely unworkable parity requirement for patients with end stage renal disease (ESRD).

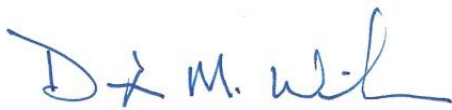
The HR Policy Association is the leading organization representing the chief human resource officers of over 400 of the largest employers in the United States. Collectively, their companies provide health care coverage to over 21 million employees and dependents in the United States. The American Health Policy Institute, which was created by the Association, serves to examine the challenges employers face in providing health care to their employees and recommends policy solutions to promote the provision of affordable, high-quality, employer-based health care. Our member companies are deeply committed to providing affordable, high-quality, comprehensive health care for employees and their families as well as to comply with the Medicare Secondary Payer Act (MSP) requirements for patients with end stage renal disease (ESRD).

The legislation is unnecessary because a variety of federal requirements already protect ESRD patients from losing their employer-provided health care benefits. For example, under the MSP, employer health plans that provide dialysis benefits cannot differentiate the benefits provided between individuals with and without ESRD on the basis of the existence of ESRD, the need for renal dialysis, or in any other manner. Employer plans also cannot take into account that an individual is entitled to or eligible for Medicare benefits due to ESRD during the coordination period. Moreover, the MSP implementing regulations specify that a health plan cannot impose longer waiting periods for benefits or set higher premiums only for individuals with ESRD. Besides the MSP, other federal laws also protect ESRD patients in employer health plans. For example, federal law prohibits employer health plans from basing coverage eligibility rules on certain health-related factors and medical conditions and a health plan may not require an individual to pay a higher premium or contribution than another similarly situated plan participant based on health-related factors.

The legislation also creates a completely unworkable parity requirement for patients with end stage renal disease (ESRD). Under S. 4750, employer health plans would violate the MSP statute if the plan limits, restricts, or conditions the benefits the plan provides for renal dialysis services compared to the benefits the plan provides for other chronic medical conditions. This vague parity requirement fails to provide any guidance for how to determine a compliant level of parity coverage or reimbursement. The bill fails to account for different medical practice standards, treatment needs, and value-based benefit designs for widely varying chronic medical conditions and incorrectly assumes or implies that, from a medical perspective, all chronic conditions are and should be treated exactly the same. There is no single universally appropriate treatment and medical practice standard for all chronic conditions and thus no parity benefit can be designed. Requiring employer plans to conduct such a parity analysis is unworkable, a waste of resources, and counterproductive to the goal of providing robust, high quality, cost-effective coverage for working Americans and their families.

We urge you to consider the potential adverse consequences of S. 4750 and require the legislation go through regular order, including committee hearings, before bringing the bill to the floor for a vote or including it in any other legislative vehicle.

Sincerely,



D. Mark Wilson
President and CEO, American Health Policy Institute
Vice President, Health & Employment Policy
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Margaret Faso
Director, Health Care Research and Policy
HR Policy Association, American Health Policy Institute