



Dialysis & Nephrology DIGEST

A biweekly report by Benesch on the
Dialysis & Nephrology Industry

In This Issue

PAGE 2

Calendar of Events

Nephrology Practice and Dialysis

ARA agrees to be acquired by Nautic in deal which values company at \$835M

PAGE 3

CMS: ESRD ETC Model encourages increased home dialysis, kidney transplants

Bill introduced in U.S. Senate to establish ESRD integrated care demonstration for Medicare beneficiaries

PAGE 4

U.S. government to appeal \$30M award to patient who suffered kidney failure at federally-funded facility

DaVita settles lawsuit brought by investors who claimed company pressured patients into enrolling in private health plans for \$135M

PAGE 5

Preliminary approval of settlement in stockholder derivative action won't impact financial condition: American Renal Associates

Baxter to distribute French-made AKI diagnostic technology

VAC, ASC and Office-Based Labs

AI-enabled diagnostic company gets green light to test Californians for early-stage DKD

PAGE 6

Other Interesting Industry Facts

Illumina acquires fellow cancer diagnostics company Grail for \$8B

Traditions Health acquires two hospice care companies to strengthen market share in Okla., Southeast

DaVita self-tender offer to cost \$702M

PAGE 7

Fresenius initiates \$1B bond issue to pay down old debts

Satellite Healthcare CEO to retire by end of year

PAGE 8

Benesch Healthcare+ Nephrology and Dialysis Webinar Agenda and Registration

October 6, 2020

Calendar of Events

OCTOBER 9-10, 2020

Vascular Access Society of the Americas (VASA) - 2020 Virtual Vascular Access for Hemodialysis Symposium

Click [here](#) for more information.

OCTOBER 21, 2020

Forum MAC (Medical Advisory Council) Annual Meeting

Click [here](#) for more information.

OCTOBER 31, 2020

American Society of Diagnostic and Interventional Nephrology (ASDIN)

Call for Interesting Cases for the 17th Annual ASDIN Scientific Meeting due 10/31. See [here](#) for details.

FEBRUARY 19–21, 2021

ASDIN 17th Annual Scientific Meeting

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

ASDIN Announces Micro Research Grants

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

Dialysis & Nephrology DIGEST



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.

sdowning@beneschlaw.com | jgreis@beneschlaw.com | cdegrande@beneschlaw.com

Nephrology Practice and Dialysis

OCTOBER 2, 2020

[ARA agrees to be acquired by Nautic in deal which values company at \\$853M](#)

Under the terms of the purchasing agreement between [American Renal Associates](#) (ARA) and mid-market PE firm [Nautic](#), ARA can take advantage of a 40-day “go-shop” period, during which its board can solicit alternative offers and terminate the agreement with Nautic if a superior proposal is put forward. ARA shareholders will receive \$11.50 per share, which represents a 66% premium over the company’s closing price on Oct. 1. The deal is expected to close in Q1 of 2021. ARA CEO Joe Carlucci will delay his retirement to facilitate the transaction and guide it through “its next stage.”

Related: [American Renal Associates shares skyrocket 70% premarket on news of take-private bid](#)—MarketWatch

American Renal Associates

(continued)

Nephrology Practice and Dialysis (cont'd)

SEPTEMBER 18, 2020

CMS: ESRD ETC model encourages increased home dialysis, kidney transplants

CMS claims that when implemented in the new year, the ETC model of care for patients with CKD will impact 30% of kidney care providers and provide savings of \$23 million over the proposal's five-and-a-half-year lifespan. CMS administrator Seema Verma claims the payment model focuses on prevention and providing an enhanced quality of life for Medicare recipients with CKD. She notes the current Medicare payment system encourages in-center hemodialysis as the default treatment for patients on dialysis, which potentially exposes those with ESRD to illnesses like COVID-19. Under the ETC model, Medicare payments will shift from fee-for-service to a value-based model in which providers are encouraged to offer home dialysis and kidney transplants as treatment options. ESRD facilities and clinicians will have payments based on their transplant rate which is calculated as the sum of the transplant waitlist rate and the living donor transplant rate. The American Society of Nephrologists commended CMS for the payment model, saying it'll improve patient access and choice by focusing on slowing the progression of kidney disease, encouraging access to and use of home dialysis and increasing preemptive transplants and the overall transplant rate.

Related: At-Home kidney care encouraged under new HHS payment system

— **Bloomberg Law**

Trump admin unveils final mandatory kidney care payment model

— **Healthcare Dive**

CMS announces chronic kidney disease care model for Medicare beneficiaries

— **Healthcare Finance**

Medicare will test pay models for radiation oncology, dialysis— **Medscape**

Source: CMS.gov

SEPTEMBER 16, 2020

Bill introduced in U.S. Senate to establish ESRD integrated care demonstration for Medicare beneficiaries

The bipartisan Bringing Enhanced Treatments and Therapies to ESRD Recipients (BETTER) Kidney Care Act would create an ESRD Integrated Care Demonstration to provide dialysis for Medicare ESRD beneficiaries and those who transition to transplant or hospice care. The aim is to reduce hospitalizations and re-admissions, increase quality of life for ESRD patients and save money by offering integrated care. Co-sponsor Sen. Todd Young (R-Ind.) notes one out of every five dollars spent by Medicare, \$114 billion annually, goes to patients with kidney disease. The group Dialysis Patient Citizens has come out in favor of the bill but the American Association of Kidney Patients opposes the proposed legislation, saying it would limit patient consumer choice and compromise patient consumer access and referral to kidney transplantation.

Source: Senator Todd Young

Nephrology Practice and Dialysis (cont'd)

SEPTEMBER 10, 2020

U.S. government to appeal \$30M award to patient who suffered kidney failure at federally-funded facility

The federal government is asking the Seventh Circuit to reconsider a ruling granting a \$29.7-million judgment in favor of a man who suffered kidney failure following long-term treatment for hypertension at a federally-funded clinic in Ill. The Department of Justice (DOJ) contends a U.S. District judge failed to use the proper legal standard in finding for the patient, saying she didn't cite the state's "reasonable person" standard for comparative negligence, even after an initial Seventh Circuit appeal decision to remand the case until the judge applied the standard. The judge issued an order in Apr. to comply with the appellate court's ruling but DOJ isn't satisfied that it fulfills the legal standard requirement.

Source: Law 360 (sub. req.)

SEPTEMBER 18, 2020

DaVita settles lawsuit brought by investors who claimed company pressured patients into enrolling in private health plans for \$135M

The case was filed with the United States District Court for the District of Colorado. A group of investors led by the Peace Officers' Annuity and Benefit Fund of Georgia and the Jacksonville Police and Fire Pension Fund alleged DaVita was steering patients toward commercial insurance plans and thereby inflating the company's profits by hundreds of millions of dollars. The investors claimed DaVita reported all of its dialysis profits were the result of patients with ESRD with private insurance, rather than those using government-subsidized programs but that the company engaged in a "variety of illicit and improper practices that violated regulations implemented by the Centers for Medicare and Medicaid Services and federal anti-kickback laws." If approved, the \$135-million settlement would represent a recovery of between 31% and 43% of maximum likely recoverable damages for the members of the class.

Related: Stipulation and Agreement of Settlement—United States District Court for the District of Colorado

Source: Law 360 (sub. req.)

October 6, 2020

Dialysis & Nephrology DIGEST

Nephrology Practice and Dialysis (cont'd)

SEPTEMBER 18, 2020

Preliminary approval of settlement in stockholder derivative action won't impact financial condition: American Renal Associates

American Renal Associates confirms preliminary approval of a settlement in a stockholder derivative case that was to be argued before the United States District Court for the District of New Jersey. The settlement would release all claims asserted against the defendants in the action without any liability or wrongdoing attributed to them. American Renal Associates notes the proposal wouldn't include a payment and would have no impact on the company's finances or operations.

Related: Stipulation and Agreement of Settlement—United States District Court for the District of New Jersey

Source: American Renal Associates

SEPTEMBER 16, 2020

Baxter to distribute French-made AKI diagnostic technology

No financial terms were released but the deal enables Baxter to distribute bioMérieux's Nephroclear CCL14 test in the U.S. and Europe, pending regulatory approval in both markets. Baxter says the technology is designed to assess the risk of developing persistent severe AKI. Baxter and bioMérieux will share in-country commercialization, while bioMérieux will retain control over the regulatory approval process.

Source: Baxter

VAC, ASC and Office-Based Labs

SEPTEMBER 22, 2020

AI-enabled diagnostic company gets green light to test Californians for early-stage DKD

Utah-based RenalytixAI uses AI to conduct in vitro diagnoses for early-stage diabetic kidney disease. With the issuance of a California Clinical Laboratory License from the state's Department of Health for its clinical laboratory in Salt Lake City, the company can provide its KidneyIntelX testing services in 49 states. RenalytixAI adds it filed a submission seeking clearance of its AI-enabled testing technology with the FDA.

Source: RenalytixAI

Other Interesting Industry News

SEPTEMBER 21, 2020

Illumina acquires fellow cancer diagnostics company Grail for \$8B

Illumina founded the startup Grail in 2016 as a standalone company to use Illumina's NGS technology to develop data science and machine learning platforms in the area of cancer tumor detection. With that expertise, Grail introduced Galleri, a blood-based multi-cancer screening test, set for a commercial launch in 2021. Illumina says the acquisition will enable it to: Increase its share in the directly-accessible, total-addressable market; Accelerate adoption of NGS-based early multi-cancer detection tests globally; and Enhance its position in clinical genomics.

Source: Illumina

SEPTEMBER 17, 2020

Traditions Health acquires two hospice care companies to strengthen market share in Okla., Southeast

Traditions Health of College Station, Tex., acquired the five locations of Physician's Choice in Okla., as well as six facilities in S.C. and two in Miss. operated by Palladium Hospice. The company is also increasing its presence in Ga. Traditions says the moves makes it one of the largest hospice care providers in Okla., as well as bolstering its footprint in the Southeast. No financial terms were released.

Source: Traditions Health

SEPTEMBER 24, 2020

DaVita self-tender offer to cost \$702M

DaVita says the modified "Dutch auction" of its common stock resulted in the acceptance of nearly eight million shares for purchase at a total cost of \$702.3 million, plus fees and expenses related to the tender offer. DaVita will finance the share purchases in the tender offer with cash on hand. The shares involved in the scheme represent 6.5% of DaVita's total shares.

Source: DaVita

October 6, 2020

Other Interesting Industry News (cont'd)

SEPTEMBER 10, 2020

Fresenius initiates \$1B bond issue to pay down old debts

Fresenius says the \$1 billion in bonds will mature in Feb. 2031 at a rate of 2.375%. The funds are for general corporate purposes and to refinance outstanding debt.

Source: Fresenius Medical Care

SEPTEMBER 11, 2020

Satellite Healthcare CEO to retire by end of year

Richard Barnett was named CEO of the non-profit dialysis provider in 2014, following a long career as a healthcare executive in Calif. and Tex. The company's board initiated a search committee, with an eye to having Barnett's replacement installed by Jan. 2021. He'll remain as CEO through the end of the year to facilitate the transition.

Source: Satellite Healthcare

Dialysis & Nephrology DIGEST

The content of the Benesch, Friedlander, Coplan & Aronoff LLP *Dialysis & Nephrology Digest* is for general information purposes only. It does not constitute legal advice or create an attorney-client relationship. Any use of this newsletter is for personal use only. All other uses are prohibited. ©2020 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

October 6, 2020

Dialysis & Nephrology DIGEST

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

Scott P. Downing

sdowning@beneschlaw.com

312.624.6326

Jason Greis

jgreis@beneschlaw.com

312.624.6412

Christopher DeGrande

cdegrande@beneschlaw.com

312.624.6364

Benesch Healthcare+ Nephrology and Dialysis Webinar

Thursday, October 15, 2020
10:00 A.M. CST—1:00 P.M. CST

The business and regulatory landscape for dialysis and nephrology care is dynamic and evolving more rapidly than ever. Please join us for a half day complimentary webinar exploring how changes in care delivery are impacting the long-term strategies of the renal industry. To register now, please click [HERE](#).

AGENDA

10:00am - 10:10am

Welcome and Introduction

Presenters:

SCOTT DOWNING and JASON GREIS, Partners,
Benesch Healthcare+

10:10am - 10:30am

Population Health Management Models: Alternative Kidney Care Payment Models and Value-Based Contracting

Moderator:

CHRISTOPHER DEGRANDE, Attorney,
Benesch Healthcare+

Presenters:

SCOTT DOWNING, Partner, *Benesch Healthcare+*
ERIC MAASKE, COO, *Associates in Nephrology, SC*
DAVID MAHVI, M.D., CEO, *Carolina Kidney Partners*

10:35am - 11:00am

Telehealth: Today and Beyond

Moderator:

LAURI COOPER, Of Counsel, *Benesch Healthcare+*

Presenters:

LAURA PONE, Attorney, *Benesch Healthcare+*
CHRIS FETE, Vice President, *TeleNeph*
BRUCE THOMPSON, President, *Gaia Software*

11:05am-11:30am

Fundamentals of Converting Your Dialysis Vascular Access Center to an ASC or "Hybrid" Model and CON Considerations

Moderator:

VANESSA RICHMOND, Attorney,
Benesch Healthcare+

Presenters:

JUAN MORADO JR., Partner,
Benesch Healthcare+
JANET DEES, President, *American Vascular
Associates*

11:35am-12:00pm

Providing Dialysis to Skilled Nursing Patients

Moderator

ALAN SCHABES, Partner, *Benesch Healthcare+*

Presenters:

CURT ANLIKER, President, *National Dialysis
Accreditation Commission*
MORTON KLEINER, MD, President, *Island
Rehabilitative Services*
KYLE STONE, General Counsel, *Concerto Renal
Services*

12:05pm - 12:30pm

Preparing for Private Equity Investments in Nephrology

Moderator:

FRANK CARSONIE, Partner and Chair,
Benesch Healthcare+

Presenters:

JASON GREIS, Partner, *Benesch Healthcare+*
BRIAN O'DEA, COO, *Nephrology Associates of
Northern Illinois and Indiana*
RAFAEL ORTIZ, Managing Director
MoonSail Capital
MATTHEW PHILLIPS, Managing Director,
City Capital Advisors

12:35pm-1:00pm

Planning for COVID-19 Litigation

Presenters:

MARK SILBERMAN, Partner and Vice-Chair,
Benesch Healthcare+
CHARLES LEUIN, Partner, *Benesch Labor &
Employment Practice Group*

**Benesch
Healthcare+**