



Dialysis & Nephrology DIGEST

A biweekly report by Benesch on the
Dialysis & Nephrology Industry

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December 17, 2020

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Calendar of Events

FEBRUARY 17–21, 2021

ASDIN Goes Virtual!

Interesting cases–ASDIN Unmet/High Priority Needs in Vascular Access Research. For information, please click [here](#).

FEBRUARY 19–21, 2021

ASDIN 17th Annual Scientific Meeting

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

ASDIN Announces Micro Research Grants

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

ASDIN Accepting Applications Until December 31 for the \$25K Research Grant in Vascular Access

Click [here](#) for more information.



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

NOVEMBER 24, 2020

Proposed class action alleges DaVita subsidiaries withheld wage premium during declared COVID health emergency

According to a proposed class action filed in Washington state, an employee at Total Renal Care contends the company failed to provide employees with extra pay for working their normal hours during a declared emergency as stipulated in their employee manual. Thousands of employees who worked after the Trump Administration declared a public health emergency due to the COVID pandemic could be eligible to join the class. The manual purportedly provides for workers who continue to work normal hours during an emergency to receive time-and-a-half. The suit names Total Renal Care, plus other subsidiaries of DaVita.

SOURCE: Law 360 (sub. req.)

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Nephrology Practice and Dialysis (cont'd)

NOVEMBER 24, 2020

Federal circuit upholds dismissal of DaVita lawsuit relating to employee dialysis benefit coverage at private company

A [decision](#) by the U.S. Court of Appeals for the Ninth Circuit upheld a lower court's ruling to dismiss a lawsuit brought by DaVita over changes made to the benefits plan covering workers at Amy's Kitchen. DaVita alleged its client violated the Medicare as Secondary Payer (MSP) rule with regards to employees with end-stage renal disease (ESRD). However, the panel found that Amy's Kitchen's employee health plan, although it employed a third-party manager specializing in dialysis cost containment, didn't violate the MSP as it continued to reimburse at the same rate for all services.

SOURCE: Bloomberg Law (sub. req.)

NOVEMBER 21, 2020

CMS issues final rule to update coverage conditions for transplantable organs from deceased donors

The [final rule](#) from the Centers for Medicare & Medicaid Services (CMS) sets out the conditions for coverage that the nation's 58 organ procurement organizations (OPO) must meet to be eligible for payment. OPOs will be independently evaluated by CMS to determine how they procure donated organs and from whom. It's believed the organizations favor younger donors who can donate multiple organs and ignore cases where the individual may have only a single organ to donate or has less-than-optimal organs. It was noted that almost 109,000 people are on the waiting list for donor organs, including kidneys, and that 20 American die each day because not enough organs are available. With this new measure, HHS expects to collect up to 5,600 more transplantable organs annually.

Source: The Washington Post

NOVEMBER 29, 2020

CMS: Changes to Stark Law, AKS could boost value-based care for home health providers

Under previous Medicare rules, physicians were prohibited from making referrals to any entity with which they have a financial relationship, including home health providers. However, as more medical practices opt for interdisciplinary teams providing value-based care, the CMS acknowledged that the Stark Law, meant to prevent self-dealing by physicians, was outdated. The agency issued a [final rule](#) to give more flexibility to home health providers to formulate holistic care plans that can evolve as the patients' needs change. The American Medical Association (AMA) [applauds](#) to the Stark Law, particularly in regards to the value-based care exceptions, as well as the downside financial risk exception which lowers the

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Nephrology Practice and Dialysis (cont'd)

amount a physician would forego under a VBA from 25% to 10%. Other groups like the Healthcare Leadership Council [support](#) the modifications to the value-based care provisions of the Stark Law, but the Medical Group Management Association [says](#) the changes don't do enough to remove unnecessary complexity and regulations from care coordination arrangements. Meanwhile, an [analysis](#) of OIG's [changes](#) to the Anti-Kickback Statute (AKS) highlights the idea of a safe harbor, in which providers with a value-based arrangement can advance population health by distributing up to \$500 worth of tools and supports annually so patients can achieve their health goals. This protocol used to be only available to ACOs and others participating in Medicare demonstration programs but under the final rule can now be accessed by any value-based enterprise (VBE).

SOURCE: Home Health Care News

NOVEMBER 30, 2020

[**AFT acquires six dialysis clinics in Ala., Miss., for \\$15.8M**](#)

The six facilities, three each in Ala. and Miss., are fully-leased to Fresenius Medical Care. The properties all provide dialysis, hospital, and outpatient treatment. A spokesperson for Cushman & Wakefield, which brokered the deal on behalf of the portfolio's previous owner, says American Financial Trust's purchase shows that despite the pandemic, the demand for medical office properties remains robust.

SOURCE: Globe St. (sub. req.)

DECEMBER 2, 2020

[**Final rule raises Medicare outpatient rates in 2021, phases out inpatients only list**](#)

A [final rule](#) issued by the Centers for Medicare and Medicaid Services (CMS) will increase the Outpatient Prospective Payment System (OPPS) rate by 2.4% next year. Other provisions include:

- The elimination of the inpatient only list over the next three years. The first to be removed will be close to 300 mostly musculoskeletal-related services, followed by the rest of the inpatient only list by 2024. Procedures cut from the inpatient only list will be exempt from site-of-service claims denials under Medicare Part A;
- The continuation of the policy of paying hospitals 22.5% less than the average sales price for 340B-acquired drugs;
- The implementation of a prior authorization process for the following hospital outpatient department services: cervical fusion with disc removal and implanted spinal neurostimulators, beginning July 1, 2021; and
- A requirement that hospitals report information about their inventory of therapeutics to treat COVID-19.

SOURCE: MedAxiom

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Nephrology Practice and Dialysis (cont'd)

DECEMBER 2, 2020

CMS says fee schedule final rule addresses Medicare payments, quality provisions for physicians

The CMS [final rule](#) lowers the physician fee schedule conversion by 10% in 2021 to \$32.41 as a result of the budget neutrality adjustment to account for changes in relative value units. It also adds over 60 more services to Medicare's telehealth list to continue coverage for certain types of ED visits, therapy services, and critical care services after the COVID-19 public health emergency ends. It also extends direct medical supervision by the supervising physician or practitioner via real-time, interactive audio and video technology through the end of next year. The final rule also:

- Changes evaluation and management services and codes, including increasing the relative value of several services, such as maternity care bundles and end-stage renal disease (ESRD) capitated payment bundles;
- Updates Medicare Shared Savings Program quality performance standards and reporting requirements for the performance year beginning Jan. 1 and provides automatic full credit for the Consumer Assessment of Healthcare Providers and Systems patient experience care surveys for performance year 2020; and
- Permits certain non-physician practitioners, such as physician assistants and nurse practitioners, to supervise diagnostic testing if state law allows.

Related: [Final Medicare physician fee schedule includes 2021 QPP provisions](#) —
MedAxiom

SOURCE: MedAxiom

DECEMBER 9, 2020

Opposition to HHS final rule cutting Medicare payments to physicians finding bipartisan support in Congress

In an effort to overturn the Trump Administration's plan to cut Medicare payments to care providers, two bipartisan bills, [H.R. 8505](#) and [H.R. 8702](#), are before the House of Representatives. Meanwhile, a group of Republican Senators [sponsored](#) their own legislation that resembles H.R. 8702, plus 50 Senators from both sides of the aisle signed a [letter](#) against the proposed reductions. The Health and Human Services (HHS) budget neutrality [final rule](#) requires any increases in fees for certain medical practices to be offset by cuts elsewhere. For example, payments for radiology, many surgeries, critical care, and infectious disease would drop by between 4% and 10% in 2021. On the flip side, reimbursement for endocrinology, rheumatology, hematology/oncology, family practice, obstetrics/gynecology, and pediatrics would increase by between 6% and 16% next year. Politicians of both stripes

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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

Nephrology Practice and Dialysis (cont'd)

contend that reduced revenues that are difficult enough for medical practices to bear in normal times are even more profound this year as a result of the COVID-19 pandemic. H.R. 8505, sponsored by Rep. Michael Burgess (R-Tex.), would delay the implementation of budget neutrality by one year, while H.R. 8702, sponsored by Rep. Ami Beri (D-Calif.), would extend the moratorium on the final rule by two years. It's unclear whether any legislation can pass before the final rule is scheduled to go into effect on January 1.

SOURCE: Bloomberg Government (sub. req.)

VAC, ASC and Office-Based Labs

NOVEMBER 18, 2020

Flagship Healthcare Properties obtains building housing ASC in S.C. capital

Terms weren't released but Charlotte-based Flagship Healthcare Properties obtained the building in Columbia, S.C., that houses an ASC. The facility is leased to kidney specialty practice Columbia Nephrology, as well as Fresenius Medical Care and dialysis provider Fresenius Vascular Care. The medical office building is located in the Park Central Medical Office Park near one of the most comprehensive medical facilities in the center of the state.

SOURCE: HC+O News

Other Interesting Industry News

DECEMBER 1, 2020

Zimmer Biomet \$250M takeover of rival surgical device developer A&E Medical finalized

Warsaw, Ind.-based Zimmer Biomet will acquire A&E Medical of Farmingdale, N.J., for \$150 million in cash at closing and \$100 million in cash payable in 2021. A&E Medical develops sternal closure devices, which Zimmer Biomet considers complementary to its suite of orthopedic reconstruction products and that A&E's technologies will provide opportunities for revenue growth globally.

SOURCE: Zimmer Biomet

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