



## PRACTICE MANAGEMENT

# U.S. Supreme Court Upholds Marietta Memorial Hospital's Employee Plan's Lower Reimbursement Rates for Dialysis Services

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On June 21, 2022, the U.S. Supreme Court held that defendant Marietta Memorial Hospital's ("Marietta") employee health benefit plan did not violate the Medicare Secondary Payer Act ("MSPA") when it limited outpatient dialysis coverage benefits for all plan members.<sup>1</sup> Writing for a 7-2 majority, Justice Kavanaugh explained that the plan's reimbursement rates for outpatient kidney dialysis do not violate the MSPA's anti-discrimination provision that prohibits insurers from providing disparate coverage to plan members with end-stage renal disease ("ESRD") because the limited benefits applied to all plan members and did not differentiate between individuals with and without ESRD.

The MSPA requires private health plans to coordinate benefits with the Medicare program for all dual-eligible plan members (i.e., those members entitled to ESRD coverage under Medicare and a private health plan). The law generally requires private health plans to be the primary payer for the first 30 months following a plan member's ESRD diagnosis. During this period, Medicare only covers costs in limited circumstances, such as when an ESRD patient has exhausted plan benefits or needs services not covered by their employer-provided insurance. In addition, the MSPA prohibits private health plans from conditioning coverage based upon a plan member's Medicare coverage status and from differentiating in benefits "between individuals having [ESRD] and other individuals covered by such plan."

In its decision, the Supreme Court sided with Marietta and its plan and overturned the earlier decision of the U.S. Court of Appeals for the Sixth Circuit.<sup>2</sup> The Sixth Circuit previously ruled in favor of the plaintiff, DaVita, Inc. ("DaVita"), holding that limiting benefits for ESRD beneficiaries under Marietta's plan violated anti-discrimination provisions in the MSPA because the plan defined all outpatient dialysis providers as out-of-network and carved out dialysis services for lower reimbursement rates than other out-of-network services.

On appeal at the Supreme Court, Marietta argued that the Sixth Circuit's decision incorrectly interpreted the MSPA as an anti-discrimination statute designed to protect certain providers (e.g., DaVita), contrary to its original coordination-of-benefits intent. Justice Kavanaugh, writing for the majority, agreed with Marietta's position and stated that while Congress could mandate that health plans provide particular benefits, "[n]either the statute nor DaVita offer[ed] a basis for determining when coverage for outpatient dialysis could be considered inadequate." Justice Kavanaugh further stated that the MSPA does not dictate any particular level of dialysis coverage by a health plan.

Notably, the Supreme Court rejected DaVita's argument that the MSPA prohibits plans from placing a limit on a health benefit which disparately impacts beneficiaries with ESRD, even where such limitation is applied consistently across the plan. DaVita argued that since 99.5% of ESRD beneficiaries that receive outpatient dialysis need dialysis to survive, paying dialysis providers less than other types of medical providers has a discriminatory effect. Further, in its oral arguments, DaVita argued that the Marietta plan was designed to shift ESRD beneficiaries onto Medicare, and therefore shift the financial burden for care of those patients requiring expensive treatments onto the federal government. The majority on the Supreme Court dismissed these arguments and explained that the MSPA does not authorize disparate-impact liability.

Writing in dissent, Justice Kagan noted that outpatient dialysis is "an almost perfect proxy for end stage renal disease" given that the treatment is rarely used by other patients. Therefore, according to Justice Kagan, the majority's opinion "flies in the face of both common sense and the statutory text" of the MSPA because to disfavor outpatient dialysis services is functionally to differentiate based on the patient's ESRD diagnosis.

The Supreme Court's decision increases the possibility that private health plans may try to limit their outpatient dialysis benefits by shifting costs to Medicare. Shifting the cost of dialysis care from private healthcare insurers to federal and state governmental payers could jeopardize the integrity of the Medicare Trust Fund over time and, as a result, Congress may be poised to address this recent Supreme Court decision.

Benesch Healthcare+ team monitors the development of this area of the law and may provide additional updates as they become available. For additional questions about the import of the Supreme Court's decisions please contact the authors of this article, your Benesch attorney, or a member of the Benesch Healthcare+ team. ■

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<sup>1</sup> *Marietta Mem'l Hosp. Emp. Health Benefit Plan v. DaVita Inc.*, 142 S. Ct. 1968 (2022), available at [https://www.supremecourt.gov/opinions/21pdf/20-1641\\_3314.pdf](https://www.supremecourt.gov/opinions/21pdf/20-1641_3314.pdf).

<sup>2</sup> *DaVita Inc. v. Marietta Mem'l Hosp. Emp. Health Benefit Plan*, 978 F.3d 326 (6th Cir. 2020), available at <https://law.justia.com/cases/federal/appellate-courts/ca6/19-4039/19-4039-2020-10-14.html>.