

# Dialysis & Nephrology

A monthly report by Benesch on the  
Dialysis & Nephrology Industry **DIGEST**

## In This Issue

**PAGE 2**

### **Calendar of Events**

**PAGE 4**

### **CY 2024 Medicare Advantage Advance Notice: Potential Impact on KCC Model Benchmark Calculation**

**PAGE 6**

### **Nephrology and Dialysis Practices**

Fresenius begins process to change legal form of kidney dialysis unit; plans to retain stake in FMC

FMC hires former Satellite Health exec to lead company's home therapy initiatives

Baxter appoints interim head of kidney care global unit it's trying to sell off

**PAGE 7**

Interwell Health tapped for value-based care initiative involving Providence Health Plan members with CKD, ESRD

Cigna, Monogram Health partner on MA, expand VBC arrangement

Strive Health providing kidney care service to Loyola Physician Partners members following agreement with Trinity Health

**PAGE 8**

Dialyze Direct using WellSky technology to streamline care for dialysis patients

Plaintiff in wage dispute with FMC agrees to settlement; drops proposed class action

Circuit Court revives three Bard patents for medical injection technology

**PAGE 9**

NM legislators debate bills aimed at malpractice insurance issue for outpatient clinics

Signify Health joins federal AIP program to support rural ACOs

Kidney care coalition supports bipartisan political effort to continue federal funding for KidneyX innovation initiative

**PAGE 10**

NKF Innovation Fund invests in Relavo to drive accessibility of home dialysis

CA legislature considering \$25/hr minimum wage for healthcare workers

MA politician pledges to rework bill that would reduce sentences for prisoners who donate organs

**PAGE 11**

Duo Health hires Jay Shah to lead business development

AMA reports physician pay in real terms fell 22% between 2001-2022

CDC reports risk of bacterial infection in dialysis patients significantly higher for Black, Hispanic patients

**PAGE 12**

OJM Group: Changes to retirement savings include new catch-up contribution rules, increased RMD age

Benesch: FTC moves against non-competes not unexpected, but could negatively impact health sector

**PAGE 13**

### **VAC, ASC and Office-Based Labs**

Anesthesia business CEO lays out responsibilities of ASCs who receive CMS overpayments

AAFP calls on CMS to install Medicare add-on code for outpatient visits

Study finds African American patients on dialysis have higher risk for AV graft failure

**PAGE 14**

### **Tele-Nephrology - The Future is Now**

**March 6, 2023**

---

## Calendar of Events

MARCH 4-9, 2023

### **SIR Annual Conference**

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

MARCH 30-APRIL 2, 2023

### **RPA Annual Meeting 2023**

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

APRIL 26-27, 2023

### **Dialysis Facility Operations 201: Survey Readiness**

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

MAY 18-20, 2023

### **OEIS 2023 Annual Meeting - Third Day Added**

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

MAY 19-21, 2023

### **VASA 2023 Hands-On Practicum on Hemodialysis Access - Sponsor Prospectus Available**

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

MAY 30-JUNE 2, 2023

### **NCVH Annual Conference**

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

# Dialysis & Nephrology DIGEST

---

## Correction to our January 31, 2023 newsletter article, "Dialysis Provider Satellite Healthcare Reports Data Breach Affecting Nearly 100k Patients":

### **Media Statement, Satellite Healthcare**

In January 2023, Satellite Healthcare made its annual report, as required, of all potential inappropriate uses of protected health information. One such breach occurred in Texas when staff manually pulled and reported a list of patients to a Covered Entity Healthcare Provider. This report inadvertently included patients not affiliated with the provider. This breach occurred as a result of human error, not a cyber-attack. It was localized and the patient impact was less than 25.

SOURCE: Satellite Healthcare



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](mailto:sdowning@beneschlaw.com) | [jgreis@beneschlaw.com](mailto:jgreis@beneschlaw.com)


---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

# Dialysis & Nephrology DIGEST

SAVE THE DATE

## Benesch Healthcare+ Third Annual Dialysis and Nephrology Conference



**Thursday, June 15, 2023**  
8 a.m. to 4:30 p.m.  
Cocktail reception to follow

**Union League Club of Chicago**  
65 W Jackson Blvd | Chicago, IL 60604

Please join us for this full-day conference addressing business and legal issues facing nephrology and dialysis providers. Hear from industry leaders discussing current and future trends in care delivery, business and payment models and legal and regulatory issues.

Please contact MEGAN THOMAS ([mthomas@beneschlaw.com](mailto:mthomas@beneschlaw.com)) for more information about this event or if you require assistance.

Invitation to follow.

### Exhibitor and Sponsorship Opportunities

**Exhibitor Space**.....\$1000 Per Table

Exhibitor tables will be set up in a space with high foot traffic from the conference.

**Includes:**

- Logo placement on printed materials
- Company overview/contact information within handout
- Two free conference registrations
- List of attendees to be mailed out a week prior to conference

**Breakfast Sponsorship**.....\$3500 Per Table

**Includes:**

- Logo placement on printed materials
- Spotlight on company within printed handout
- Free plug/company overview before lunch break begins
- Eight free conference registrations
- List of attendees to be mailed out a week prior to conference

**For more information or to sign up for an exhibitor space or sponsorship, please contact:**

MEGAN THOMAS / [mthomas@beneschlaw.com](mailto:mthomas@beneschlaw.com)

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### CY 2024 Medicare Advantage Advance Notice: Potential Impact on KCC Model Benchmark Calculation

On February 1, 2023, the Centers for Medicare & Medicaid Services (“CMS”) released the Advance Notice of Methodological Changes for Calendar Year (“CY”) 2024 for Medicare Advantage (“MA”) Capitation Rates and Part C and D Payment Policies (the “Advance Notice”). The Advance Notice is released on an annual basis and includes proposed updates to the capitation and risk adjustment methodologies used to calculate payments to MA plans, as well as other payment policies that impact Part D. In addition, the Advance Notice provides an estimate for additional projection years, and updates its historical estimates of per capita Medicare costs based on recent data.

The Advance Notice is a capitation rates and payment policies proposal that is subject to a 30-day period for public comment with the final rates and policies expected to be published no later than April 3, 2023 (the “Final Notice”).

#### Updates To Certain United States Per Capita Costs

In the Advance Notice, CMS proposed updates to certain United States Per Capita Costs (“USPCC”) and lowered actual USPCCs below the projected USPCCs used by CMS to develop the financial benchmarks for the Kidney Care Choices (KCC) Model, including the Comprehensive Kidney Care Contracting (CKCC) Options (“CKCC Model”).

Two of the cost updates potentially impacting the KCC Model proposed by CMS in the Advance Notice include new projections for (i) the USPCC for Medicare Fee-for-Service (FFS) aged/disabled beneficiaries except those beneficiaries who are in End Stage Renal Disease (ESRD) status for payment purposes (“FFS USPCC”), and (ii) the USPCC for beneficiaries in FFS with ESRD who are in dialysis status. CMS’ estimates for the USPCCs reflect the projected costs impacts related to COVID-19 pandemic, including estimates for applicable costs related to COVID-19 vaccination and changes in utilization of health care services, as well as estimated cost impacts of changes in MA coverage created by legislation.

The preliminary updated USPCCs included in the Advance Notice considered in aggregate are lower by more than 1% from those used by CMS to develop the financial benchmarks for the CKCC program for calendar year 2022. As a reminder, for purposes of CKCC Model benchmark construction, the historical baseline expenditures are trended forward each performance year (“PY”) prospectively using the projected USPCCs. Accordingly, to the extent that the final USPCCs remain at lower levels of 1% or more than those used to calculate the benchmarks for PY2022, then CMS may (but is not obligated to) retroactively reduce the CKCC benchmarks for PY 2022 based on the difference between the amounts used to originally develop the PY2022 benchmarks and the USPCCs published in the Final Notice. We note that CMS has previously clarified that the impact of applying the adjusted MA Rate Book for purposes of calculating the CKCC Model benchmarks will be capped at 2% of the FFS USPCC for the PY for downward adjustments, and 5% of the FFS USPCC for the PY for overall upward adjustments.

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

March 6, 2023

---

**Dialysis &  
Nephrology**  
DIGEST

## CY 2024 Medicare Advantage Advance Notice: Potential Impact on KCC Model Benchmark Calculation (cont'd)

In the event the USPCCs stay at the estimated levels of the Advance Notice, and CMS applies them retroactively, the PY 2022 performance of all Kidney Contracting Entities ("KCEs") participating in the CKCC Model and the benchmarks provided by CMS to all KCEs participating in PY 2023 may have to be recalculated, and the ability for all KCEs to generate savings or incur losses will be impacted by the new USPCC levels.

### MA ESRD Rates Payment Adequacy

In the Advance Notice, CMS acknowledged stakeholder concerns that MA ESRD rates are not adequate to cover the cost of care for beneficiaries with ESRD, based on the increase in ESRD enrollment in MA plans as a result of the 21st Century Cures Act, CMS. CMS clarifies that the agency previously analyzed stakeholders' concerns and studied possible approaches to modifying MA ESRD rates and continues to do so. However, in the Advance Notice CMS is not proposing any changes to the MA ESRD rate methodology for 2024. CMS will continue to use statewide MA ESRD rates.

The Benesch Healthcare+ team monitors the development of this area of the law and may provide additional updates as they become available. For additional questions, please contact the authors of this article or your Benesch attorney.

Copy of the Advance Notice is available at <https://www.cms.gov/files/document/2024-advance-notice.pdf>, with stakeholder comments due on March 3, 2023. The Final Notice will be published no later than April 3, 2023.

**Authors:**

Nesko Radovich | [nradovich@beneschlaw.com](mailto:nradovich@beneschlaw.com)

Chris DeGrande | [cdegrande@beneschlaw.com](mailto:cdegrande@beneschlaw.com)

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis Practices

#### [Fresenius begins process to change legal form of kidney dialysis unit; plans to retain stake in FMC](#)

Faced with bleak [financial numbers](#) for 2022, the German healthcare company will transform its dialysis division, Fresenius Medical Care (FMC) from a limited partnership to a stock corporation, possibly by the end of the year. The move comes as pressure mounts on Fresenius to sell off FMC, with Bloomberg [reporting](#) CEO Michael Sen is discussing such a move with its dominant shareholder, which favors the plan. Another player is activist shareholder Elliott Investment Management, which is pushing for Fresenius to simplify its business, while disclosing it has a short position in FMC. The dialysis provider was hard-hit by the pandemic and rising costs, higher-than-expected patient mortality and staffing shortages. Despite wanting to give up operational control over its dialysis business, Fresenius plans to retain its 32% stake in FMC.

SOURCE: Fresenius Medical Care

---

#### [FMC hires former Satellite Health exec to lead company's home therapy initiatives](#)

[Brigitte Schiller](#) was CMO at San Jose-based [Satellite Healthcare](#) for the past 13 years. At Fresenius Medical Care, she's the SVP for home therapies and medical affairs. Schiller will focus on technological improvements that'll increase the uptake in home dialysis by patients with ESRD.

SOURCE: Healio (sub. rec.)

---

#### [Baxter appoints interim head of kidney care global unit it's trying to sell off](#)

The medtech company cited supply chain issues for its decision to sell off its kidney care division to focus on its medical product, healthcare system and pharmaceutical lines of business. It anticipates that process could bleed into next year, so in the meantime, [Cristiano Franzi](#), SVP and president for the EMEA region, will add the role of interim head of the kidney care global unit while the company searches for a permanent president.

Related: [Baxter reports fourth-quarter and full-year 2022 results](#) - Baxter

SOURCE: MedTech Dive

---

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis Practices (cont'd)

#### [Interwell Health tapped for value-based care initiative involving Providence Health Plan members with CKD, ESRD](#)

Through a collaboration with [Providence Health Plan](#) of Portland, OR, Interwell Health will provide early identification, educational and support services to Providence members on commercial or MA plans with late-stage CKD and ESRD. Interwell notes finding patients earlier in their disease progression improves outcomes and lowers costs, adding its multidisciplinary team of care providers aligns with Providence's strategies of personalized health coaching, embedded care management and telehealth to manage comorbidities.

Related: [Program promises to take a team approach to tackling severe kidney disease](#) – Fierce Healthcare

SOURCE: Interwell Health

---

#### [Cigna, Monogram Health partner on MA, expand VBC arrangement](#)

Cigna made services from [Monogram Health](#), a provider of in-home care and benefit management services for patients with polychronic conditions, available to its Medicare Advantage (MA) customers nationwide. Patients with CKD and ESRD, as well as comorbid metabolic disorders, will gain access to Monogram's national nephrology practice. They'll also be able to use resources such as in-home primary and specialty care visits, medication management, dialysis and transplant coordination and social services. In addition, Cigna and Monogram expanded their value-based care agreement, with Monogram assuming full financial risk for the Cigna MA customers it serves.

SOURCE: Monogram Health

---

#### [Strive Health providing kidney care service to Loyola Physician Partners members following agreement with Trinity Health](#)

[Trinity Health](#) is one of the largest not-for-profit Catholic health systems in the U.S. Its deal with Denver-based [Strive Health](#) will bring CKD- and ESRD-related healthcare to three hospitals and a large ambulatory network of clinics in Greater Chicago under the [Loyola Physician Partners](#) banner. Strive Health will pilot specialized population health programs with the aim of developing a new clinical care model for patients with kidney diseases.

SOURCE: Strive Health

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis Practices (cont'd)

#### [Dialyze Direct using WellSky technology to streamline care for dialysis patients](#)

This is the second collaboration between [WellSky](#) and a kidney care provider, building off an arrangement with Panoramic Health [announced](#) last month. With [Dialyze Direct](#), WellSky's care management and discharge platforms will be used to coordinate care at the leading provider of home hemodialysis services in skilled nursing facilities (SNF). WellSky claims its network of 2,000 hospitals and 130,000 post-acute and community providers means Dialyze Direct patients can continue to receive dialysis or rehabilitative services in the SNF.

SOURCE: WellSky

---

#### [Plaintiff in wage dispute with FMC agrees to settlement; drops proposed class action](#)

A patient care technician with Fresenius Medical Care took the company to court, alleging it violated NY labor laws by requiring him to schedule 30-minute meal breaks for every six hours he worked. The man contended that heavy workloads often prevented him from doing that but the company didn't compensate him for untaken breaks. A class action was proposed and a collective action was filed, however, a [proposed settlement](#) with FMC would close those out. If accepted by the court, the plaintiff would be awarded damages of \$18,000, far less than the maximum potential damages of \$111,609 but more than the amount of unpaid wages accrued.

SOURCE: Law360 (sub. rec.)

---

#### [Circuit Court revives three Bard patents for medical injection technology](#)

A Federal Circuit panel reversed in part, vacated in part and remanded a patent case involving three patents owned by C.R. Bard and Bard Peripheral Vascular. It reversed in part a UT federal court's decision invalidating Bard's patents and also directed the district court to reconsider its finding that defendant Medical Components' patent was also ineligible. The Circuit Court based its [decision](#) on a similar case which found the presence of non-functional printed matter didn't affect the eligibility of a patent claim.

SOURCE: Law360 (sub. rec.)

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---



March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis Practices (cont'd)

#### NM legislators debate bills aimed at malpractice insurance issue for outpatient clinics

The State Senate is [considering](#) defining independent providers, licensed to an outpatient facility but not majority-owned by a hospital, as healthcare facilities. That would keep outpatient clinics under a \$750,000 cap for injury or death due to malpractice. Smaller practices say lumping them in with hospitals means they'll have to carry enough malpractice insurance to cover a \$5-million cap set to go into effect next year. Many say they're unable to find an insurer willing to cover them at that level of risk, so they may have to close. A bill in the House [proposes](#) the NM government set up a \$70-million fund to pay malpractice premiums for independent providers. The reimbursement amount would be on a sliding scale, with providers practicing in the state for 12 years eligible to have 100% of their premiums paid through the fund. The House bill has the endorsement of NM's Governor. A separate House bill that would've [capped](#) malpractice awards at \$750,000 was tabled in committee and won't proceed.

SOURCE: Albuquerque Journal

---

#### Signify Health joins federal AIP program to support rural ACOs

The value-based care provider says it'll participate in CMS' Advance Investment Payments (AIP) incentive program to support health providers in rural and underserved communities. The AIP will begin next year and provides incentives for smaller health systems to band together to form ACOs and includes funding so those entities can participate in the Medicare Shared Savings Program (MSSP). ACOs new to the MSSP and deemed to be low revenue and inexperienced with performance-based risk Medicare ACO initiatives can receive:

- A one-time fixed payment of \$250,000; and
- Quarterly payments for the first two years of the five-year agreement period.

Dallas-based [Signify Health](#) says its role within the AIP program is to guide ACOs' population health management and value-based payment programs.

SOURCE: Signify Health

---

#### Kidney care coalition supports bipartisan political effort to continue federal funding for KidneyX innovation initiative

Sens. Ben Cardin (D.-MD) and Todd Young (R.-IN) and Reps. Larry Bucshon (R.-IN) and Suzan DelBene (D.-WA) are [calling on](#) the Biden Administration to increase funding for the KidneyX program, which provides grants to startups for innovations in kidney care. Kidney Care Partners, which represents over 30 organizations comprising various stakeholders applauds the bipartisan effort, which is seeking \$25 million from the federal budget for the program in FY2024, a 25% increase over this year's funding.

SOURCE: Kidney Care Partners

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis Practices (cont'd)

#### [NKF Innovation Fund invests in Relavo to drive accessibility of home dialysis](#)

The amount of the investment from the National Kidney Foundation's (NKF) innovation fund wasn't released but the recipient is a women-led startup, [Relavo](#) which developed technology designed to make home peritoneal dialysis (PD) safer for patients. The PeritoneX device attaches to PD systems and internally disinfects dialysis tubes to decrease the likelihood of peritonitis. Relavo notes home dialysis offers quality-of-life advantages but is under-utilized because the risks from infections are so high. Only 10% of patients on dialysis receive it at home and NKF says the technology could expand utilization of PD and lower costs.

SOURCE: National Kidney Foundation

---

#### [CA legislature considering \\$25/hr minimum wage for healthcare workers](#)

A bill in the committee stage at the CA Senate would raise the minimum wage for health workers to \$25 per hour. It's proposed by union-aligned Democratic lawmakers and would affect home health agencies and care facilities, including dialysis clinics. The bill's sponsor contends many of the 1.5 million employees make close to the state's minimum wage of \$15.50 per hour and are struggling to make ends meet. Last year, state lawmakers tried to negotiate a statewide minimum wage of \$25 per hour but that effort failed because it was tied to infrastructure improvements at hospitals and healthcare union leaders concerned about workers' safety backed out. That initiative was opposed by the California Dialysis Council. The legislation comes as unions ramp up their efforts to organize CA healthcare workers. The SEIU-UHW reports 11 facilities in the state voted to join its union in Jan.

Related: [California dialysis clinic workers push to unionize over short-staffing and low pay](#) – The Guardian

SOURCE: Los Angeles Times

---

#### [MA politician pledges to rework bill that would reduce sentences for prisoners who donate organs](#)

The [bill](#) was introduced into the MA legislature in Jan. and would reduce sentences for prisoners who donate organs or tissue by between 60 days and one year. However, the sponsor of the bill says criticism from prisoner's rights groups and advocates for organ donations led him to offer to amend the legislation. State Rep. Carlos Gonzalez states the bill was never meant as a quid pro quo for prisoners and that his intention was to reduce barriers for inmates who want to make voluntary organ and tissue donations to family members. He's engaging with stakeholders on a reworked version of the bill which he'll reintroduce to MA lawmakers.

SOURCE: ABC News

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis Practices (cont'd)

#### Duo Health hires Jay Shah to lead business development

Kidney care company [Duo Health](#) says Shah was most recently managing director of growth at Babylon Health. As Chief Growth Officer at Duo, he'll lead the organization's expansion initiatives in the value-based CKD- and ESRD-care space.

SOURCE: Duo Health

---

#### AMA reports physician pay in real terms fell 22% between 2001-2022

The AMA [claims](#) while Medicare payments for inpatient hospital, outpatient hospital and SNF services rose in line with inflation between 2001 and 2022, those for physicians fell in relative terms by 22%. Overall, Medicare payments for physician services barely moved in the first two decades plus of this century and the AMA is concerned its members will fall even further behind with cuts to Medicare reimbursements of 2% this year and 1.25% in 2024. With inflation driving up business costs, the association is [calling on](#) Congress to stop cutting Medicare payments to its members.

SOURCE: Becker's Hospital Review

---

#### CDC reports risk of bacterial infection in dialysis patients significantly higher for Black, Hispanic patients

Patients on dialysis are 100 times more likely to develop a staph infection than the general population, [according](#) to CDC research. Infection rates were highest among Black and Hispanic hemodialysis patients, with those in the Hispanic group registering a 40% higher risk of bloodstream infections than their white counterparts. The CDC also finds more than half of all adults receiving dialysis, one in every three Black patients and one in every five Hispanic patients, belong to an ethnic or racial minority group. On a positive note, overall bloodstream infections among dialysis patients are down from 2014, owing to efforts to prevent and control pathogens.

SOURCE: Centers for Disease Control and Prevention

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

## Nephrology and Dialysis Practices (cont'd)

### OJM Group: Changes to retirement savings include new catch-up contribution rules, increased RMD age

Included in the Consolidated Appropriations Act of 2023 was the [Secure 2.0 Act](#), covering topics like expanding coverage and increasing retirement savings. OJM Group says changes in the act will impact employees and employers and outlines some of the categories that could be most affected:

- The age for required minimum distributions (RMD) is raised to 73 for those born between 1951 and 1959 and to 75 for anyone born in 1960 or after. The penalty for a missed RMD was halved, to 25%;
- Next year, taxpayers with 529 plan balances can transfer them to Roth IRAs, provided the 529 plan was maintained for 15 years and the name of the beneficiary on both must be the same. As well, 529 plan balances from the previous five years can't be transferred and there's a lifetime maximum of \$35,000;
- Beginning in 2024, taxpayers with income above \$145,000 will be limited to a 401(k), a 403(b) and a governmental 457(b) Roth account for catch-up contributions, meaning these contributions will only be made with after-tax dollars; and
- In 2024, employee student loan payments will be treated as elective deferrals for employer matching contributions. As well, Starter 401(k) plans will be instituted for businesses without retirement plans.

SOURCE: OJM Group

---

### Benesch: FTC moves against non-competes not unexpected, but could negatively impact health sector

The FTC [proposes](#) banning all employers from imposing non-compete agreements on the workers, which it considers a "widespread and often exploitative practice" that artificially hampers innovation and the startup of new enterprises. This follows the agency's [decision](#) to take legal action against three companies to force them to drop non-compete restrictions on thousands of their workers. The companies targeted are relatively small, so it's thought the FTC is using the cases as templates for future enforcement actions against larger players. Benesch explains the FTC's proposed rule that would nullify non-competes could stifle investments and M&A activity around dialysis providers and other healthcare companies as those agreements are often an important factor in strategic transactions. The FTC invited public comment for its proposed rule and Benesch is part of a group which plans to make a submission on the issue.

SOURCE: Benesch Law

---

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### VAC, ASC and Office-Based Labs

#### Anesthesia business CEO lays out responsibilities of ASCs who receive CMS overpayments

Tony Mira, CEO of [Anesthesia Business Consultants](#) of Jackson, MI explains the steps required of ASCs which receive overpayments from Medicare. A provider has 60 days to refund an overpayment if it was identified by the provider or billing agent. Six months is considered a reasonable length of time for the provider to uncover the overpayment. If the overpayment is self-identified, Mira notes the amount must be returned to Medicare, along with an explanation as to why it occurred. If the overpayment is identified by CMS, a letter demanding repayment is issued to the provider, who has 15 days to rebut. However, Mira adds the process isn't halted by a provider's rebuttal, even though an appeal of the overpayment would temporarily stop recoupment.

SOURCE: Anesthesia Business Consultants

---

#### AAFP calls on CMS to install Medicare add-on code for outpatient visits

The American Academy of Family Physicians (AAFP) [contends](#) the add-on code would acknowledge the "complexity of primary care and other office and outpatient evaluation and management visits." The academy supported the G2211 code that CMS was going to implement as it addressed the issue of continuous, comprehensive, coordinated primary care in an outpatient setting, for which doctors say they are "historically underpaid." Congress didn't [approve](#) G2211, keeping it in bundled status and prohibiting members from billing separately for the service.

SOURCE: AAFP

---

#### Study finds African American patients on dialysis have higher risk for AV graft failure

In research led by Boston University Chobanian & Avedisian School of Medicine, data from VHA facilities show premature arteriovenous (AV) graft failure in the treatment of advanced kidney failure occurred in 11% of all cases. However, when controlled for factors like socioeconomic status or comorbidities, patients identified as African American were significantly more likely to suffer an AV graft failure than the general population. The study found no difference in outcomes across various ethnic or racial groups when the procedure was conducted in facilities with an interventional radiology resident training program. These facilities also had lower rates of AV graft failure overall.

SOURCE: Radiology (sub. rec.)

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---

## Tele-Nephrology – The Future is Now

In recent years, the healthcare industry has seen a surge in the use of telehealth services, and nephrology is no exception. Remote nephrology, or tele-nephrology, involves the use of telecommunication technologies to provide nephrology services to patients who are not physically present in the same location as their healthcare provider (e-visits).

This emergence has similarities to that of hospitalists 25 years ago. Hospitalists were specialists who provided care for patients in the hospital setting, allowing primary care physicians to focus on outpatient care. At first, primary care was skeptical about coordinating care with the inpatient specialist but more access, coordination with the primary care physician, and responsiveness to inpatient testing and results resulted in creating a new gold standard of care.

Remote Nephrology is a growing trend and an increasingly popular approach to providing specialized care to patients who live in rural or underserved areas or supporting busy nephrology practices due to increasing patient demand and decreasing nephrologist supply. Access to specialists for inpatient consults and acute program coordinate can elevate the services provided by hospitals and their hospitalists teams.

A significant number of patients with chronic kidney disease in the United States live more than an hour away from the nearest nephrology clinic. This can make it difficult for patients to receive regular care, which can lead to a decline in their health and an increased risk of hospitalization. Remote nephrology provides a solution to this problem by allowing patients to receive care from a specialist without having to travel long distances.

One of the main benefits of remote nephrology is improved access to specialized care (keeping care local). Patients who live in rural or underserved areas may not have access to a nephrologist in their local community. By providing care remotely, hospitals can work with nephrologists trained in remote care to reach patients who would otherwise have limited access to specialized care. This can lead to improved patient outcomes, reduced hospitalizations, new revenue streams, and enhanced patient satisfaction. Another significant benefit of remote nephrology is the potential for cost savings. Chronic kidney disease is a costly condition, and the annual cost of treatment for end-stage renal disease in the United States is estimated to be over \$50 billion (Medicare was over \$49B in 2018). By providing remote care, nephrologists can reduce the need for costly hospitalizations, costly transportation (approximately \$3 Billion per Year - not to mention uncomfortable and a significant time investment for patients) and improve the efficiency of care delivery.

Despite the many benefits of remote nephrology, there are also challenges associated with its adoption. Technology, high speed internet, secure communication and trained workforce are the most cited challenges associated with e-visits; however, advances over the last several years in equipment design and advances with technology vendors/partners has alleviated most, if not, all these concerns.

March 6, 2023

---

## Dialysis & Nephrology DIGEST

### Tele-Nephrology - The Future is Now (cont'd)

Working with companies like TeleNeph, LLC out of Denver Colorado can help minimize the stress, cost and time to successfully operationalize a quality program. Ron Kubit, TeleNeph CEO states, "working with rural hospitals in the development of the tele-nephrology program has been a win / win for the hospital, the community, the patients, and their caregivers. We have heard from our hospital clients that the transportation issues are very burdensome on the patient and their families".

Remote nephrology is an emerging field that has the potential to revolutionize the management of kidney disease and improve access to specialized care for patients across the country. Like hospitalists 25 years ago, remote nephrologists are specialized providers who can improve patient outcomes and enhance the efficiency of care delivery. While there are challenges to its adoption, remote nephrology is an exciting development that has the potential to transform the way nephrology services are delivered.

**Author:**

**David White** | [dwhite@askphc.com](mailto:dwhite@askphc.com)

*David White is a Partner with Pinnacle Healthcare Consulting and Co-Founder/Chairman of the Board of TeleNeph. Based in Denver, Colorado he has advised leaders in the kidney care industry for over 25 years.*

---

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

March 6, 2023

---

## Dialysis & Nephrology DIGEST

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

**Jake Cilek**

[jcilek@beneschlaw.com](mailto:jcilek@beneschlaw.com) | 312.624.6363

**Lauri Cooper**

[lcooper@beneschlaw.com](mailto:lcooper@beneschlaw.com) | 216.363.6174

**Christopher DeGrande**

[cdegrande@beneschlaw.com](mailto:cdegrande@beneschlaw.com) | 312.624.6364

**Scott Downing**

[sdowning@beneschlaw.com](mailto:sdowning@beneschlaw.com) | 312.624.6326

**Jason Greis**

[jgreis@beneschlaw.com](mailto:jgreis@beneschlaw.com) | 312.624.6412

**Juan Morado, Jr.**

[jmorado@beneschlaw.com](mailto:jmorado@beneschlaw.com) | 312.212.4967

**Nesko Radovic**

[nradovic@beneschlaw.com](mailto:nradovic@beneschlaw.com) | 312.506.3421

### Advertise with Us!

---

To advertise in Benesch's Dialysis & Nephrology Digest, contact Lauren Luna at  
[lluna@beneschlaw.com](mailto:lluna@beneschlaw.com) or (216) 363-6199.

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. ©2022 Benesch, Friedlander, Coplan & Aronoff LLP. All rights reserved.

---