

## **Resolution of Legal Battle Provides Opportunity to Get Reform Right**

With the recent announcement that the challenges to the constitutionality of the Affordable Care Act (ACA) will be considered by the U.S. Supreme Court, many issues that arose during the original reform debate are again being thrust into the spotlight. As this high court legal showdown emerges, it also presents an opportunity for the Administration and Congress to work together to ensure that, should health care reform move forward, its provisions are implemented properly and fairly, and in a manner that best protects the very people the law was created to assist.

In the case of the health insurance exchanges, there lies great promise for these marketplaces created under the ACA to help individuals purchase quality, affordable coverage that could otherwise be unattainable. However, due to the reform law's legislative process and lack of a conference report, many provisions related to the exchanges were unintentionally left unclear, including provisions related to Medicare's End Stage Renal Disease (ESRD) population and Medicare Secondary Payer (MSP) law.

Each year in the United States, more than 100,000 Americans are diagnosed with ESRD, an irreversible condition that is fatal without regular lifesaving dialysis treatments or a kidney transplant. Currently, MSP enables ESRD patients with private insurance to keep their preferred coverage for a 30-month window before transitioning to Medicare, giving them time to learn more about their condition, take advantage of plan offerings for care management, and explore how Medicare will handle their coverage moving forward.

However, the ACA does not specify whether the MSP law – which dictates that Medicare step in as primary insurer 30 months after a diagnosis of kidney failure – applies to patients covered by private plans sold through the exchanges. Unless this matter is clarified within the ACA, it will result in Medicare becoming the primary insurer for as many as 30 months sooner for individuals diagnosed with ESRD who are covered through the exchanges.

As America's largest dialysis patient organization, we simply want to ensure that those covered under the exchanges who develop kidney failure do not lose their preferred private coverage plans and shift automatically to Medicare, if they chose to stay with their current plan. From the patient's perspective, an abrupt shift in coverage could limit access to benefits and increase out-of-pocket expenses. Simply by ensuring consistent application of MSP, we can ensure parity of treatment and preferred coverage for all patients both inside and outside the exchanges.

Recently, Health and Human Services (HHS) Secretary Kathleen Sebelius commented in response to questions from the House Energy and Commerce Committee that the ACA "does not change existing Medicare Secondary Payer rules should ESRD beneficiaries become enrolled in a qualified health plan through an exchange..." and that "this has always been and will continue to be a plan to plan relationship and health insurance exchanges do not change this dynamic." If the ACA is upheld, it's up to HHS to make certain that these intentions become unmistakable and binding under the terms of the law, and that the spirit of the exchanges – that individuals are able to access the coverage plan of their choice – is maintained.

Similar to the MSP provision, the kidney community urges the Administration to ensure that economically-disadvantaged individuals who develop ESRD are eligible for premium credits and cost-sharing subsidies that help them afford health insurance through an exchange, even though they may qualify for Medicare based upon their kidney failure. Dialysis patients should not be disqualified from

these important subsidies due to their health condition. While this issue is also unresolved, allowing access to these exchange subsidies will make private coverage attainable for more Americans, further reducing the number who become reliant on Medicare for health coverage.

There is great potential for unintended consequences to impact vulnerable patients, their families and the health care system if the ACA is not implemented correctly, and these patients are counting on our policymakers to get it right. Dialysis patients are not asking for anything other than fair and equal treatment whether they are seeking coverage inside or outside the exchange.