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SUPREME COURT RULES EMPLOYERS CAN LIMIT BENEFIT FOR DIALYSIS

The Supreme Court has been the focus of a great deal of the national discourse over the past several weeks. In addition to the cases making headlines, the Court also issued a 7-2 ruling in a case directly related to employer sponsored health plans, *Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita Inc.* In this case, the Supreme Court rejected dialysis provider DaVita's claim that charging high out-of-pocket costs for dialysis treatments is in violation of Medicare's Secondary Payer (MSP) rules.

The self-insured medical plan in question was designed to treat all dialysis providers as out-of-network, and consequently reimburse such treatments at a very low rate. DaVita argued that the lack of any access to less costly in-network dialysis providers, in conjunction with the fact that nearly all end-stage renal disease (ESRD) patients in need of dialysis also qualify for Medicare, leads to discrimination against individuals with ESRD. This, they argued, is a violation of the MSP rules that prohibit plans from discriminating against ESRD patients.

While the original ruling from the 6th U.S. Circuit Court of Appeals found that this plan design was discriminatory, and therefore in violation of the Medicare Secondary Payer Act, the Supreme Court's ruling reversed this decision. In their majority opinion, the Supreme Court found that because the plan provides the same dialysis benefits to all participants, whether or not they are eligible for and/or actually enrolled in Medicare (and regardless of whether participants have ESRD), the plan does not differentiate between individuals with ESRD and other participants in a way prohibited by the MSP rules.

The dissenting opinion released by the Court's minority indicates that the plan's design effectively discriminates against participants with ESRD because "outpatient dialysis is an almost perfect proxy for end stage renal disease." In other words, though some dialysis patients may not have ESRD, the majority of ESRD patients will require dialysis, to which end providing no in-network options for treatment is discriminatory.

Employer-sponsored plans do not need to take any action in light of this ruling. However, the decision does create the opportunity for employers to explore new cost-containment measures around dialysis coverage.

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