

Congress of the United States
Washington, DC 20515

February 8, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

We write today to urge the Centers for Medicare & Medicaid Services (CMS) to ensure all Medicare beneficiaries have the choice of care that is best suited for them during all stages of their care plan and to express our concern with barriers to access hospice for dialysis patients. We request that you consider expanding the current benefit to include short-term palliative dialysis as a part of pain and symptom management for all ESRD patients.

Currently, hospice services are available to patients with end-stage renal disease (ESRD) on dialysis only if they abandon dialysis or have a separate, concurrent condition which is the principal diagnosis that makes them eligible for hospice. This is only the case if there is a predicted survival of less than 6 months and the diagnosis is unrelated to ESRD. The lack of a scheduled, accommodative transition off dialysis can lead to significant discomfort and pain due to shortness of breath from fluid retention, itching, confusion, and nausea from uremia. Stopping dialysis suddenly can lead to additional pain and worrisome symptoms at exactly the time when a person deserves quality and comfort at the end of life.

We recommend an alternative policy that avoids maintenance dialysis (as provided under Section 1881 of the Social Security Act [42 U.S.C. 1395rr]) in favor of short-term, palliative, concurrent care that employs dialysis services as one of several tools for pain and symptom management. Like other palliative measures, such an approach should be provided for in the plan of care by the hospice interdisciplinary team, working with a patient's nephrologist to establish dialysis frequency, length of episode, and related services. While a patient electing hospice due to a primary diagnosis of ESRD would still waive their right to maintenance dialysis, the plan of care could still provide for limited dialysis episodes, modified use of related services such as laboratory tests and pharmaceuticals, as well as a more flexible diet, for the sole purpose of palliation. In order to maintain continuity of patient care and reduce administrative and financial burden to hospice, CMS should provide payment to the beneficiary's selected dialysis provider to administer the palliative dialysis. We believe that such an approach is provided for under the Secretary's authority at 42 CFR 418.202(i) that allows:

“any other service that is specified in the patient’s plan of care as reasonable and necessary for the palliation and management of the patient’s terminal illness and related conditions and for which payment may otherwise be made under Medicare.”

Palliative dialysis is a compassionate path for patients with ESRD at their end of life. Rather than face a cliff if a patient were permitted to receive even a maximum of 10 dialysis episodes, it could provide more physical and emotional comfort than if that patient abruptly goes off dialysis. Treatment episodes may be shorter or less frequent, but still provide palliative symptom treatment consistent with Medicare’s hospice rules. Palliative dialysis may also lower costs to beneficiaries and the Medicare program.

Thank you for your attention to this important matter. We look forward to working with you to provide the best care choices to all Medicare beneficiaries.

Sincerely,



Earl Blumenauer
Member of Congress



Jason Smith
Member of Congress



Don Bacon
Member of Congress

/s/

Mike Doyle
Member of Congress



Chuck Fleischmann
Member of Congress

/s/

Jeff Fortenberry
Member of Congress



Cindy Axne
Member of Congress



Diana DeGette
Member of Congress

Terri A. Sewell
Member of Congress

Brian Fitzpatrick
Member of Congress

Donald M. Payne, Jr.
Member of Congress

Adam Smith
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Derek Kilmer
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/s/

Jim Cooper
Member of Congress

Bobby L. Rush
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Ron Kind
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Lucy McBath
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Lance Gooden
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Rodney Davis
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/s/

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Tom Reed
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Suzan DelBene
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Diana Harshbarger
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James A. Himes
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