



November 20, 2020

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Washington, D.C. 20515

Congressman Jason Smith
2418 Rayburn House Office Building
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Congressman Tony Cardenas
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Congressman Brad Wenstrup
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Congressman G.K. Butterfield
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Senator Todd Young
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Senator Kyrsten Sinema
317 Hart Senate Office Building
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Congressmen Blumenauer, Smith, Cardenas, Wenstrup, and Butterfield and Senators Young and Sinema:

We stand together representing kidney patients and their caregivers, transplant surgeons, and physicians to express our concerns about H.R. 8254/S.4574, the “Bringing Enhanced Treatments and Therapies to ESRD Recipients” (BETTER) Kidney Care Act.

While we appreciate that the *BETTER Kidney Care Act* makes some improvements over the *Dialysis PATIENTS Demonstration Act* and applaud your strong ongoing support for patients with chronic and End-Stage Renal Disease (ESRD), we cannot be supportive of the legislation because it did not correct the foundational and substantive issues that we have repeatedly raised over the past several years.

We do note that the bill has made some comparative improvements over prior drafts – lengthening the opt-out window from 75 to 90 days, giving CMS the option to align this window with Medicare open enrollment, and postponing the demonstration start date to 2024. However, the BETTER Kidney Care Act still has significant flaws that prevent our support.

In short, we do not believe that the legislation is fully protective of patient care choice nor is it reflective of the significant advances made over the past five years to put patients at the center of their own health decisions. The bill also shifts responsibility for all aspects of patient care to entities without appropriate expertise and is redundant of existing models and models that are expected in 2021.

We are especially troubled by the fact that the bill aims to involuntarily enroll potentially hundreds of thousands of vulnerable patients into an arrangement that is portrayed as managed care but lacks the guardrails and patient safeguards essential to effective insurance markets, like Medicare Advantage. Further, the legislation,

- Undermines true patient choice by implementing a strict time-limited opt-out window.
- Lacks strong patient protections such as effective quality metrics and may have unintended consequences like curtailing access to kidney transplantation.
- Lacks focus and incentives to ensure patient choice in access to the latest dialysis therapies and innovations, especially home dialysis options.
- Lacks clear mechanisms to ensure improved beneficiary quality and to prevent increased costs to taxpayers.
- Shifts all aspects of care to entities without experience coordinating all aspects of patient care and unprepared to take on full Part A and Part B Medicare risk.
- Fails to maintain a level playing field in Medicare, which could negatively impact Medicare Advantage and other tested models for caring for ESRD patients

It is also important to note that new models and options are already available to ESRD patients and some will be available beginning next year.

- Starting in 2021, individuals with ESRD will have choice and access to coordinated care with cost protections via enrollment in Medicare Advantage.
- Moreover, CMS also initiated a mandatory ESRD Treatment Choice Model that will account for approximately 30 percent of ESRD facilities, and
- CMS has solicited applications for four Kidney Care Choices voluntary models, one of which is very similar to the risk model contemplated by the BETTER Act.

We urge Congress to focus on these models rather than approving new models, working with the Centers for Medicare & Medicaid Services (CMS) to ensure that these existing models ensure patient choice and patient protections.

We applaud your commitment to this vulnerable population and appreciate your consideration of our perspectives on this bill. For further information, contact Paul T Conway at conwaypault@gmail.com or Richard Knight at richardknight.aakp@gmail.com (AAKP); Peggy Tighe at Peggy.Tighe@PowersLaw.com (ASTS); or Bill Applegate at bill.applegate@bclplaw.com (AST).