

## U.S. Supreme Court Rules Limited Coverage for Dialysis Does Not Violate Medicare Secondary Payer Statute

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On June 21, 2022, the U.S. Supreme Court issued its decision in *Marietta Memorial Hospital Health Benefit Plan v. DaVita Inc.* In this case, an employer-sponsored group health plan paid limited benefits for outpatient dialysis, and DaVita Inc. (the dialysis provider) sued the plan for violating the Medicare Secondary Payer statute (the "**MSP Statute**"). Generally, the MSP Statute prohibits an employer-sponsored group health plan from (i) differentiating in its benefits coverage between individuals having end stage renal disease ("**ESRD**") and other individuals, and (ii) taking into account that an individual is entitled to or eligible for Medicare due to ESRD. For individuals who have ESRD, the primary treatment is renal dialysis, which is very expensive.

The U.S. Court of Appeals for the Sixth Circuit previously ruled that the MSP Statute permits disparate-impact liability and that the limited payments for dialysis treatment had a disparate impact on individuals with ESRD. However, in *Davita Inc.*, the U.S. Supreme Court reversed the Sixth Circuit and held that the plan did not violate the MSP Statute because the plan applied these coverage limitations to all participants. The outpatient dialysis coverage thus applied uniformly to all participants, whether or not they have ESRD or are entitled to or eligible for Medicare. This was the case even though, as the dissent noted, virtually everyone with ESRD and hardly anyone else undergoes outpatient dialysis.

The U.S. Supreme Court decision in *DaVita Inc.* is available [here](#).