



# PRACTICAL COMPLIANCE

From Contribution Health

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## Supreme Court allows Reduced Reimbursement Rates for Outpatient Dialysis

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differentiated between and/or h  
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renal disease, the need for  
renal dialysis, or in any other manner."

The majority opinion held that there is no differentiation in benefits between individuals with end stage renal disease and those without it because the benefits were the same regardless of the individual's diagnosis. The only difference was that the reimbursement rate was low , in DaVita's opinion compared to reimbursements for other benefits. The majority pointed out that there were no benchmarks provided to compare those rates to other outpatient services.

In addition, Justice Kavanaugh dismissed the disparate impact argument by pointing out that the law does not prohibit a plan from having a disparate impact on those with end stage renal disease. The dissenting opinion pointed out that renal dialysis is the treatment used by 97% of end stage renal disease patients and that most of the individuals receiving dialysis have end stage renal disease, but because the lower reimbursement rate applied to patients even without end stage renal di.

Of particular importance, the opinion makes it clear that the Medicare Secondary Payer statute addresses coordination of benefits and does not dictate that any particular benefit reimbursement level must be maintained by the health plan.

## Tips and Take Aways

There are a number of different ways that a health plan may work to reduce the costs of outpatient dialysis, which has greatly increased in price over the past years:

- 1) Limit reimbursement rates (permitted by current case)
- 2) Exclude coverage for dialysis once Medicare becomes primary (after 30 months) - likely not permissible based on the wording in the statute because benefits would differ based on whether the individual had end stage renal disease
- 3) Follow the coordination of benefits rules in the Medicare Secondary Payer statute and pay primary for the first 30 months and secondary after that. Some employers will also pay secondary based on Medicare reimbursement rates whether or not the individual is enrolled in Medicare (whether this option violates Medicare Secondary Payer rules is still an open question)

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