

CAPITOL STREET

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ESRD Cut?

Dialysis Legislation Unlikely To Pass In 2024

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A pay cut or not a pay cut? CMS revised its estimate of the ESRD growth rate downward, from 3.12% to 1.76% in the 2025 Final Notice ([here](#)). While this represents a lower growth rate than the Advance Notice, it does not mean that payments to MA plans on behalf of their members with dialysis are being reduced.

»» Key Points

The lower growth rate, according to CMS, is because the actual spending for ESRD enrollees in 2023 is below what CMS had previously projected. CMS assumed in the 2024 Final Notice that this spending would return to what had been reflected in their pre-pandemic baseline. As a result, CMS has used this more recent experience to revise their projected spending for ESRD enrollees downward.

It does not mean that payments that MA plans make to dialysis providers will be reduced from 2024. To the extent that the MA plan payments are tied to FFS – which are based on contracts between MA plans and dialysis providers – payments would change from 2024 to 2025 based on the changes in the ESRD PPS, and not based on the change in the MA payment rate.

Another potential reason for lower growth rates in FFS, which is not explicitly mentioned by CMS, could be due to increased enrollment of Medicare beneficiaries with ESRD moving into MA. Beginning in 2021, Medicare beneficiaries with ESRD could enroll in MA plans. If these individuals are sicker than average ESRD enrollees, that could result in lower growth in FFS. CMS notes this phenomenon is playing out in the non-ESRD USPCC, due to more dual enrollees joining MA plans and thereby reducing spending in FFS Medicare as a result.

Legislation Unlikely 2024

The rates that plans are using for their bids are set, and any changes to these rates would be extremely disruptive at this stage. LDOs (DVA, FMS) have supported recent legislation that would delay the movement of the phosphate binders from Part D to B, CMS confirmed that these payments are embedded into the ESRD USPCC.

On the legislative side, the Kidney PATIENT (Patient Access to Technologically Innovative and Essential Nephrology Treatments) [Act](#) is progressing in the House, despite the lack of a Senate companion bill. The Kidney Patient Act passed out of both the House [Energy & Commerce](#) (Chair McMorris Rodgers, R-WA) and [Ways & Means](#) Committee (Chair Smith, R-MO) in March 2024.

The bill prohibits CMS from moving oral ESRD drugs into the bundle until January 1, 2033, or until new intravenous therapies are FDA approved. The bill has bipartisan support with co-sponsors Rep. Buddy Carter (R-GA), Ann Kuster (D-NH), Carol Miller (R-WV), and Terri Sewell (D-AL). This bill has not been scored.

Oral-only drugs used for ESRD treatment are currently covered by the Medicare Part D prescription drug benefit. But CMS plans to move oral-only Phosphate Lowering Therapies (PLTs) into the Medicare Part B End-Stage Renal Disease (ESRD) prospective payment system in 2025, which will likely change where the drugs are dispensed and push PLTs to compete with other therapies for coverage.

Ipsita Smolinski
Managing Director | Capitol Street
ipsita@capitol-street.com

202.250.3741 | www.capitol-street.com

900 19th St NW 6th Fl
Washington, D.C. 20006

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