

September 29, 2021

Open Letter to State Medicaid Directors,

On behalf of the undersigned organizations, we urge you to modify your state Emergency Medicaid policy to allow outpatient and home dialysis and directed living donor kidney transplants as covered services.

As you may know, in most states, undocumented immigrants with kidney failure must wait until they are at the brink of death to receive the regular filtration of their blood that is necessary to stay alive.¹ The kidney care these individuals receive is inhumane, extraordinarily expensive, and largely ineffectual. Our organizations believe it is imperative that state policymakers act expeditiously to follow the lead of states like Arizona and Colorado and expand Emergency Medicaid for undocumented immigrants living in the United States.

Expanding access to care for undocumented people with kidney failure is bipartisan, cost saving, and requires no new statutory authority, requiring only simple changes to a state's Emergency Medicaid policies.

Hilda was a young, single mom of two school-aged children who suffered from kidney failure. Because she was undocumented and in Colorado, Hilda was ineligible for scheduled dialysis, receiving it only on an emergency basis. Every 6-8 days, Hilda would appear at the emergency department, near death, to receive two days of dialysis in the intensive care unit. After her third cardiac arrest, Hilda realized she needed to find a family to adopt her boys who had suffered tremendous trauma witnessing their mother's weekly battle with death. After Hilda identified a family to adopt her sons, she stopped emergency dialysis and passed away on Mother's Day in 2014.² In the wake of Hilda's death, the interdisciplinary clinicians who were compelled to provide emergency dialysis went on to conduct the research that ultimately supported Colorado Medicaid's inclusion of the diagnosis of end-stage renal disease (ESRD), also known as end-stage kidney disease (ESKD) as a qualifying condition for Emergency Medicaid. Colorado Medicaid predicted the policy change would save the state \$19 million per year.³ Scheduled dialysis reduces costs as much as \$4316 per patient per month (PPPM). When referenced to the increased costs associated with emergency dialysis, net savings are \$5768 PPPM.⁴ In a "cohort study of 181 adults, individuals receiving scheduled vs emergency-only dialysis had a 1-year mortality rate of 3% vs 17%, 6 fewer emergency department visits per month, 1.5 fewer hospitalizations, 10 fewer hospital days per 6 months, and incurred \$5768 less in health care costs per month."⁵

Background

¹ Renal Physicians Association. (2019, October). Kidney Care for Vulnerable Populations 10-19_FINAL.pdf . Rockville . Position paper approved by the Renal Physician Association Board on October 18, 2019.

² Cervantes, L. (2021). A call for civic engagement. *Nature Reviews Nephrology*. <https://doi.org/10.1038/s41581-021-00446-y>

³ Brown, J. (2019, February 25). <https://coloradosun.com/2019/02/25/undocumented-immigrants-dialysis-colorado-medicare-policy/>. *The Colorado Sun* . <https://coloradosun.com/2019/02/25/undocumented-immigrants-dialysis-colorado-medicare-policy/>.

⁴ Nguyen, O. K., Vazquez, M. A., Charles, L., Berger, J. R., Quiñones, H., Fuquay, R., Sanders, J. M., Kapinos, K. A., Halm, E. A., & Makam, A. N. (2019). Association of Scheduled vs Emergency-Only Dialysis With Health Outcomes and Costs in Undocumented Immigrants With End-stage Renal Disease. *JAMA Internal Medicine*, 179(2), 175. <https://doi.org/10.1001/jamainternmed.2018.5866>

⁵ Ibid.

Irreversible kidney failure or ESRD is a uniquely burdensome and expensive condition. Most people with ESRD rely on hemodialysis scheduled three times a week in a center to replace kidney function. The expenses associated with hemodialysis and its related services exceed \$90,000 per person annually.⁶ Since 1972, the federal Medicare program has covered U.S. citizens with ESRD regardless of age, race, or ethnicity. Medicare still covers the largest proportion of these patients; however, state budgets are not without liability for kidney failure.⁷

There are between 5,000 – 9,000 undocumented people with kidney failure living in the U.S.⁸ Compared with US citizens with ESRD, this population tends to be younger, Latino, have fewer comorbidities, and largely uninsured. Undocumented immigrants are neither eligible for Medicare nor for the financial subsidies that are often required to purchase Affordable Care Act (ACA) health insurance plans. Under the Emergency Medical Treatment and Active Labor Act (EMTALA), hospitals are required to treat anyone with an emergency medical condition. As a result, in over 35 states, the emergency department is virtually the only safety-net available to undocumented people with kidney failure. State governments are solely responsible for the expenditures associated with emergency dialysis, which can be as high as \$400,000 per person per year, more than four times the \$90,971 that Medicare spends per-patient-per-year (PPPY) on hemodialysis patients.⁹

Twelve states have expanded their Emergency Medicaid programs to specifically cover outpatient maintenance dialysis, meaning scheduled hemodialysis delivered at least three times a week or peritoneal dialysis daily in the home.^{10,11} Still, the more common scenario is that undocumented immigrants are dialyzed upon presenting to an emergency department when their life is threatened, approximately six times per month. Dialysis, even when scheduled, is one of the most challenging treatments in modern medicine. The kidney community has worked assiduously to reduce the burden of dialysis on patients; improving mortality rates, reducing hospitalizations, providing more and better options for how patients receive dialysis, and creating safer and more permanent means of accessing the patient's bloodstream. Undocumented immigrants benefit from few, if any, of these improvements in dialysis care. Undocumented immigrants with kidney failure have 14 times the mortality rate of those on scheduled dialysis.¹²

The manner in which undocumented people with kidney failure are treated in the states that have not expanded Emergency Medicaid is inadequate and unethical. As the data illustrate, the manner in which

⁶ United States Renal Data System. 2020 *USRDS Annual Data Report: Epidemiology of kidney disease in the United States*. National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Bethesda, MD, 2020.

⁷ Ibid.

⁸ Rodriguez, R., Cervantes, L., & Raghavan, R. (2020). Estimating the prevalence of undocumented immigrants with end-stage renal disease in the United States. *Clinical Nephrology*, 93(1), 108–112. <https://doi.org/10.5414/cnp92s119>

⁹ Rizzolo, K., Novick, T. K., & Cervantes, L. (2020). Dialysis Care for Undocumented Immigrants With Kidney Failure in the COVID-19 Era: Public Health Implications and Policy Recommendations. *American Journal of Kidney Diseases*, 76(2), 255–257. <https://doi.org/10.1053/j.ajkd.2020.05.001>

¹⁰ Cervantes, L., Mundo, W., & Powe, N. R. (2019). The Status of Provision of Standard Outpatient Dialysis for US Undocumented Immigrants with ESKD. *Clinical Journal of the American Society of Nephrology*, 14(8), 1258–1260. <https://doi.org/10.2215/cjn.03460319>

¹¹ As of March 2019, Medicaid programs in Washington, California, Arizona, Colorado, Minnesota, Wisconsin, Illinois, North Carolina, Virginia, Pennsylvania, New York, Massachusetts and the District of Columbia provide reimbursement for standard outpatient dialysis.

¹² Cervantes, L., Tuot, D., Raghavan, R., Linas, S., Zoucha, J., Sweeney, L., Vangala, C., Hull, M., Camacho, M., Keniston, A., McCulloch, C. E., Grubbs, V., Kendrick, J., & Powe, N. R. (2018). Association of Emergency-Only vs Standard Hemodialysis With Mortality and Health Care Use Among Undocumented Immigrants With End-stage Renal Disease. *JAMA Internal Medicine*, 178(2), 188. <https://doi.org/10.1001/jamainternmed.2017.7039>

undocumented people with kidney failure are treated is needlessly expensive. At a time when states budgets are under enormous pressure, ensuring that undocumented people with kidney failure can access Emergency Medicaid is just common sense.

What Can States Do?

Expanding Emergency Medicaid to undocumented people with kidney failure requires only minor changes to subregulatory guidance. The Centers for Medicare and Medicaid Services (CMS) gives each state's Medicaid program the discretion to define emergency conditions within the context of federal statute, which defines an emergency medical condition as "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in – (A) placing the patient's health in serious jeopardy; (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part."¹³ In addition to stating that outpatient dialysis is a covered service under Emergency Medicaid, the language must include coverage for all dialysis modalities and vascular access procedures. States should also consider clarifying that kidney transplants from a directed living donor (i.e., a family member or friend who wishes to donate to the individual), the living donor's procedure to remove the kidney, and lifetime immunosuppressive coverage for the recipient of the kidney are covered services. Living donor kidney transplants are cost saving and life prolonging when compared to dialysis.¹⁴ Ensuring comprehensive coverage of the services listed above will solidify the positive budgetary impacts of covering undocumented people with kidney failure while providing the opportunity for these individuals to receive standard quality care.

Sincerely,

American College of Physicians Colorado
Chapter
American Society of Nephrology
American Thoracic Society
Endocrine Society
Home Dialyzors United

Kidney Care Partners
National Kidney Foundation
Renal Physicians Association
Society of General Internal Medicine
Society of Hospital Medicine

¹³ Social Security Act § 1903(v)(3)

¹⁴ Axelrod, D. A., Schnitzler, M. A., Xiao, H., Irish, W., Tuttle-Newhall, E., Chang, S.-H., Kasiske, B. L., Alhamad, T., & Lentine, K. L. (2018). An economic assessment of contemporary kidney transplant practice. *American Journal of Transplantation, 18*(5), 1168–1176. <https://doi.org/10.1111/ajt.14702>