



# Dialysis & Nephrology DIGEST

A monthly report by Benesch on the Dialysis & Nephrology Industry

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September 20, 2024

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## Dialysis & Nephrology DIGEST



Please contact us if you would like to post

information regarding our upcoming events or if you'd like to guest author an article for this newsletter.

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### Calendar of Events

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SEPTEMBER 26, 2024

**RHA: Dialysis Center Regulatory Risk Webinar**

For more information, please click [here](#).

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SEPTEMBER 26–28, 2025

**ANNA: 2025 Nephrology Nursing Summit: Call for proposals opening soon!**

Charlotte, NC

For more information, please click [here](#).

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SEPTEMBER 27–28, 2024

**RPA Advocacy Weekend**

Washington, DC

For more information, please click [here](#).

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SEPTEMBER 28, 2024

**2024 Renal Physicians Association PAL Forum**

Washington, DC

For information, please click [here](#).

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OCTOBER 17–19, 2024

**CV Transforum Fall '24**

Denver, CO

For more information, please click [here](#).

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OCTOBER 23–27, 2024

**ASN Kidney Week 2024**

San Diego Convention Center

San Diego, CA

For more information, please click [here](#).

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FEBRUARY 7–9, 2025

**ASDIN: 21st Annual Scientific Meeting**

Grapevine, TX

For more information, please click [here](#).

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FEBRUARY 16–19, 2025

**American Venous Forum: Annual Meeting**

Atlanta, GA

For more information, please click [here](#).

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MARCH 29–APRIL 2, 2025

**SIR: 2025 Annual Scientific Meeting**

Nashville, TN

For more information, please click [here](#).

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APRIL 3–6, 2025

**Renal Physicians Association 2025 Annual Meeting**

Las Vegas, NV

For more information, please click [here](#).

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MAY 1–3, 2025

**OEIS 12th Annual National Scientific Meeting**

Orlando, FL

For more information, please click [here](#).

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MAY 1–4, 2025

**ANNA: 2025 National Symposium**

Portland, OR

For information, please click [here](#).

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NOVEMBER 5–9, 2025

**ASN Kidney Week 2025**

Houston, TX

For more information, please click [here](#).

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**Dialysis &  
Nephrology**  
DIGEST

SAVE THE DATE

**Benesch Healthcare+ Fifth Annual  
Nephrology & Dialysis Conference**



**June 26, 2025**

**8 a.m. to 4:30 p.m.**

Cocktail reception to follow

**Sheraton Grand Riverwalk**  
301 East North Water Street | Chicago, IL

Please join us for this full-day conference addressing business and legal issues facing nephrology and dialysis providers. Hear from industry leaders discussing current and future trends in care delivery, business and payment models and legal and regulatory issues.

Please contact MEGAN THOMAS ([mthomas@beneschlaw.com](mailto:mthomas@beneschlaw.com)) for more information about this event or if you require assistance.

Invitation to follow.

**Benesch  
Healthcare+**

[www.beneschlaw.com](http://www.beneschlaw.com)

## Nephrology and Dialysis

AUGUST 14, 2024

### **Benesch: Appellate court ruling widens scope of NY fee-splitting law to include earnouts**

The decision overturned a lower court ruling relating to the sale of part of a dental practice in 2015. The plaintiff agreed to sell certain assets to another dental practice for \$250,000. Under the asset purchase agreement (APA), the defendant was to pay a fixed sum of \$50,000, with the remainder of the purchase price parsed out in monthly installments based on:

- A percentage of the future monthly revenue generated by the plaintiff's practice; and
- A percentage of the future revenue from the defendant's practice that wasn't part of the transaction, if certain conditions were met.

The plaintiff sued the defendant in 2022, alleging breach of contract and unjust enrichment. However, the defendant motioned for the case to be dismissed as the APA was illegal under NY's fee-splitting law. The lower court found the earnout provision didn't breach the law, however, an appellate court **ruled** otherwise. It held that requiring the defendant to pay a portion of future revenue generated by the plaintiff's practice after the sale was fee splitting. This is despite the future revenue provision only applying to the amount of the set purchase price to be paid in a monthly installment and not the price itself. Benesch Law says the ruling broadens the scope of NY's fee-splitting prohibition for professionals and "may signal an increased trend of enforcement and scrutiny regarding earnout distributions" in these types of transactions.

**SOURCE: Benesch Law**

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AUGUST 21, 2024

### **Benesch: TX judge quashes FTC non-compete rule; appeal to Fifth Circuit unlikely to succeed**

The FTC's **final rule** on non-compete agreements was supposed to go into effect on Sept. 4, but that's unlikely after a TX judge struck down the measure, saying the agency exceeded its authority in issuing the ruling, stepping outside its traditional role of consumer protection. The FTC could appeal the ruling to the U.S. Court of Appeals, but Benesch Law notes the Fifth Circuit is notorious for striking down policies and orders from the Biden Administration.

**SOURCE: Benesch Law**

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## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis (cont'd)

AUGUST 16, 2024

#### **CA law would require PE groups to obtain AG consent for certain healthcare business purchases**

The proposed [legislation](#) is sponsored by the state's Attorney General, Rob Bonta and would give his office the power to "grant, deny or impose conditions to a change of control or an acquisition between a private equity group or hedge fund and a healthcare facility or provider group." The measure has the backing of healthcare unions, consumer advocates and the California Medical Association, who say profits should never come before outcomes in healthcare. Not surprisingly, the bill isn't supported by hospitals in the state, concerned they could be losing a source of funding and the California Chamber of Commerce as it will discourage investment. In CA, healthcare deals involving PE firms grew 20-fold between 2005 and 2021, to \$20 billion.

**SOURCE: *Modern Healthcare* (sub. rec.)**

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AUGUST 13, 2024

#### **Bipartisan House bill would provide up to \$50K in tax credits to kidney donors**

The [bill](#), co-sponsored by Reps. Josh Harder (D.-CA), Nicole Malliotakis (R.-NY), Don Bacon (R.-NE) and Joe Neguse (D.-CO), would provide kidney donors with \$50,000 in refundable tax credits spread out over five years. The legislation would require the donation to be for someone the person doesn't know. The co-sponsors claim the bill could save up to 100,000 Americans currently on the waitlist for a kidney and save taxpayers an estimated \$10 billion to \$37 billion in long-term healthcare costs.

**SOURCE: U.S. Congressman Josh Harder**

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## Nephrology and Dialysis (cont'd)

JULY 10, 2024

### **CMS memo clarifies board certification requirements for medical directors at ESRD facilities**

CMS explains the conditions for Medicare coverage at dialysis facilities **require** a board-certified medical director in internal medicine or pediatrics who “completed a board-approved training program in nephrology and has at least 12 months of experience providing care to patients receiving dialysis.” To be considered board-certified, the individual must be adjudged as having the advanced knowledge and skills to be accepted by a nationally recognized medical board. CMS admits it didn’t specify from which particular board a medical director at a dialysis center should receive their certification but provides the following guidance:

- Nationally Recognized: The professional board by which the medical director is certified is well-known, prominent and widely recognized by entities across the U.S. that serve the dialysis population, e.g. The American Board of Pediatrics;
- Board-certified: The medical director’s board certification status must be current and active;
- Professional: The composition and governance of the individuals who are appointed to serve on the board represent a broad range of experience in patient care, quality improvement, health policy and education; and
- Verification: The physician must have a valid, unrestricted license to practice medicine in the state where they are employed. Additionally, health surveyors must verify that the information received for credentialing is accurate.

**SOURCE: CMS**

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AUGUST 13, 2024

### **Baxter sells kidney care business to Carlyle for \$3.8B**

Baxter revealed last year it was going to carve out its kidney care business with the intent of selling it off, and in May, unveiled **Vantive** as a standalone entity. One of the largest PE firms in the world, Carlyle expressed interest in Vantive and entered into a definitive agreement with Baxter to acquire the company for \$3.8 billion. Carlyle’s investment in Vantive is made in partnership with **Atmas Health**, its healthcare acquisition arm. Atmas co-founder **Kieran Gallahue** will serve as chair of Vantive, working alongside CEO Chris Toth.

**SOURCE: Baxter**

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## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis (cont'd)

JULY 30, 2024

#### **FMC says missed Q2 revenue targets function of lower U.S. patient volume**

Fresenius Medical Care (FMC) reported a 1% YoY decrease in revenue in Q2 to \$5.2 billion. CEO Helen Giza implemented a cost-cutting regimen to staunch the flow of red ink, but 'underwhelming' volume growth in its U.S. dialysis business caused the company to miss its estimates for the sector. Giza remarked COVID and the flu impacted patient volumes in H1, leading FMC to downgrade expected growth in the U.S. market from 2% to just 0.5% this year. She added obesity drugs that preserve kidney health will have a neutral effect on dialysis revenue as only 5% of FMC patients take the medications.

**SOURCE: Bloomberg (sub. rec.)**

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JULY 31, 2024

#### **CO judge denies petition to consolidate two lawsuits relating to alleged unpaid wages by DaVita**

In separate proposed class actions, nurses and technicians working for the dialysis provider allege they were made to perform unpaid work during scheduled breaks or overtime. The original case was certified in nine states, while the second involves all other states excluded in the original filing. One of the lead plaintiffs was seeking to have the cases consolidated due to their similarities but a District Court judge **denied** the petition, ruling one of the cases involves two possible sets of litigants (nurses and technicians) while the other involves only nurses. As well, the former case alleges a more expansive set of circumstances, that workers were denied wages during lunch breaks and rest breaks. The latter only cites unpaid work during lunch.

**SOURCE: Law360 (sub. rec.)**

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September 20, 2024

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## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis (cont'd)

JULY 31, 2024

#### **GA kidney practice adds AI-powered virtual care management platform developed by Vironix**

[Georgia Kidney Associates](#), with four locations in the Atlanta area, says the partnership with TX-based remote care technology provider [Vironix](#) provides its patients the option for:

- Comprehensive virtual care through remote physiologic monitoring, chronic care management, remote therapeutic monitoring and principal care management;
- State-of-the-art physiologic monitoring devices and software to empower over 10,000 patients with kidney disease and associated heart, lung and endocrinological conditions; and
- Expanded support for CKD patients through personalized care plans and advanced health data tracking.

**SOURCE: Vironix**

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AUGUST 8, 2024

#### **NKF recommendations for genetic testing underscore role of patient advocates in kidney care**

The National Kidney Foundation (NKF) [makes](#) 56 recommendations relating to genetic testing for kidney diseases. The report covers guidance on who should offer genetic testing and the need for pre- and post-test counseling, testing symptomatic and at-risk individuals, APOL1 genetic testing, bias and disparities in genetic testing. Ethical, legal and social considerations in the context of the Genetic Information Nondiscrimination Act were discussed, as well as issues like informed consent, genetic counseling and access to testing. NKF stresses the importance of specialized training and education and further collaboration between healthcare providers, policymakers and patients.

**SOURCE: National Kidney Foundation**

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## Nephrology and Dialysis (cont'd)

AUGUST 14, 2024

### **Diality joins KCP; receives FDA clearance for hemodialysis system**

The medical device company was accepted by Kidney Care Partners (KCP), a coalition of patient advocates, physician organizations, health professional groups, dialysis providers, researchers and manufacturers. The L.A.-based firm is the first pre-revenue medical device manufacturer to join the KCP. [Diality](#) developed the [Moda-flx](#) hemodialysis system, which [received](#) an FDA 510(k) clearance, indicating its safety in treating patients with acute or chronic renal failure.

**SOURCE: Diality**

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AUGUST 1, 2024

### **Interwell claims acquisitions in past year pushed number of nephrologists in provider network past 2K**

The MA-based value-based kidney care provider says in the past 12 months that it added over 300 clinicians and 75 nephrology practices to its provider network. In total, the company boasts over 2,000 physicians at over 210 practices in 38 states and PR. [Interwell Health](#) explains its model provides personalized patient education, embedded care coordinators in the practice and the nephrology-specific EHR, Epic. Interwell's offers an interdisciplinary care team of social workers, nurses and dietitians to support patients.

**SOURCE: Interwell Health**

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AUGUST 6, 2024

### **Somatus claims two firsts after receiving NCQA accreditation for health equity**

[Somatus](#) says it's the first value-based kidney care and chronic condition management provider to earn the health equity [accreditation](#) from the National Committee for Quality Assurance (NCQA). The VA-based company claims the designation not only reflects its commitment to equality in the workforce and its leadership but also its efforts to reduce healthcare disparities. Somatus notes that relative to the overall Black population in the U.S., its Black patients receive:

- A 63% higher access to nephrology care;
- A 95% higher home dialysis start;
- A higher adoption of disease-delaying medications; and
- A four-times higher pre-emptive kidney transplant waitlist rate.

**SOURCE: Somatus**

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September 20, 2024

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## Dialysis & Nephrology DIGEST

### Nephrology and Dialysis (cont'd)

AUGUST 1, 2024

#### **Duo Health names exec of home-based care company ConcertoCare as president, COO**

The Chicago-based kidney care company named [Kristen Warden](#) as president and COO. For the past three years, she was COO at [ConcertoCare](#), a NYC-based provider of at-home care for seniors and was formerly at DaVita. Duo Health also hired Marella Umali as GM for the AZ market and Silvana Fischman as GM of the FL market.

**SOURCE:** Duo Health

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### VAC, ASC and Office-Based Labs

AUGUST 20, 2024

#### **FCA, AKS violations by TX radiology practice, leadership result in \$8.8M settlement: DOJ**

Houston-based National Interventional Radiology Partners (NIRP) and its CEO were accused of illegally paying physicians for referrals of patients with peripheral arterial diseases. The CEO operated several clinics, raising the necessary capital from physicians who'd receive kickbacks for referring patients to NIRP. Physicians involved in the scheme were told their profits would rise as the number of procedures at NIRP went up. As well, they were told some surgical centers could be sold off, which would benefit the investors. It's alleged the scheme began in 2015 but the case only came to the DOJ's attention via a whistleblower, who'll receive 19% of the settlement or \$1.6 million.

**SOURCE:** United States Attorney's Office

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## VAC, ASC and Office-Based Labs (cont'd)

AUGUST 22, 2024

### **Becker's suggests current numbers don't favor ASCs**

*Becker's ASC Review* notes that as of last year, facility fees for colonoscopy procedures covered by private health insurance cost 55% more at hospitals than at ASCs. It also finds:

- The percentage of ASCs with an operating budget of \$3 million or more in 2023 went up nine percentage points compared to the previous year to 43%;
- The percentage of ASCs reporting an increase in their operating budget in the last year was 47%. Only 12% reported a decrease;
- The percentage by which Medicare hospital pay increased from 2001 to 2023 was 70%.
- For Medicare physician payments during the same period, the increase was 9%;
- The increase in use of hospital outpatient departments instead of ASCs for colonoscopies following vertical integration was nearly seven percentage points;
- The number of ASCs that went from independent to under partnership by a national operator from 2021 to 2022 was 52, a trend likely to continue as costs soar;
- The number of anesthesiologists who left the workforce from 2021 to 2022 was 2,872;
- The percentage that medical and surgical supply costs faced by practices per full-time physician increased by 82% from 2022 to 2023;
- The number of physicians who left private practice for employment opportunities from 2019 to 2021 was over 108,700; and
- The number of nurse practitioners and physician assistants that left the workforce between 2021 and 2022 was 47,724.

**SOURCE: *Becker's ASC Review***

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September 20, 2024

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## Dialysis & Nephrology DIGEST

For more information regarding our nephrology, dialysis  
and office-based lab experience, or  
if you would like to contribute to the newsletter, please contact:

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### Advertise with Us!

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To advertise in Benesch's Dialysis & Nephrology Digest, contact Lauren Luna at  
[lluna@beneschlaw.com](mailto:lluna@beneschlaw.com) or (216) 363-6199.

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