

Statement and Q&A on today's U.S. Supreme Court ruling

June 21, 2022

Statement

We do not expect that this case triggers a major change in the relationship between providers and health insurers as the vast majority of those in the industry are interested in the well-being of patients. To limit coverage for certain conditions is in our view not an appropriate or ethical behavior and raises a significant health equity issue for patients living with kidney disease.

The U.S. government has a long-standing history of supporting end-stage renal disease (ESRD) patients beginning with Nixon's signing of the Medicare ESRD act 50 years ago to the 2019 Executive Order on Advancing American Kidney Health.

To reduce healthcare costs to be covered by the U.S. government, the coordination period for ESRD under the Medicare Secondary Payer Statute (MSP) has been extended several times from 12 to 30 months.

We do not expect any financial impact on our fiscal year 2022.

Q&A

- *Have you seen similar issues like the Marietta case?*
 - Historically, we have seen a low number of typically smaller self-insured employer group health plans (EGHPs) adopt their own defined benefits that are in conflict with the rates in our contracts with administrators of those self-insured plans.
 - Our contracts with national and regional health plans do not differentiate between their fully insured business and their administrative services business.

- *How big is the anticipated annual / 2022 financial impact?*
 - We do not expect a financial impact for fiscal year 2022 as EGHP plan years usually start on 1 January or 1 July.

- *How much of your commercial book of business will you lose going forward?*
 - Based upon our historical experience, we would not expect a significant impact on our commercial book of business for two reasons:
 - Adopting a similar approach would create a significant health equity issue among our patients in EGHPs due to the disproportionate prevalence of ESRD among patients in racial and ethnic minority groups. This would contradict the progress many corporations have made on equity in recent years.
 - In a competitive labor market, it is not assumed that employers would cut the benefits they provide to their employees and their dependents.

- *Which plans have a similar structure and could be changed on short notice?*
 - We do not expect a financial impact for 2022 as EGHP plan years usually start on 1 January or 1 July.

- *What steps will you take now? Will there be an industry response?*
 - The opinion and the dissent reference legislative action as a solution to this issue. We therefore would expect the interest for legislative action to be high.
 - From Justice Kagan’s dissent, with Justice Sotomayor joining: *"Now Congress will have to fix a statute this Court has broken."*
 - From Justice Kavanaugh’s majority opinion: *"To the extent that Congress wants to create such a system going forward, Congress of course may do so."*
 - We believe that there will be a broad stakeholder group of patients, providers and others to support a legislative fix to avoid any impact on health equity.

- *What are the steps for Congress to put mitigating legislation in place?*
 - Several members of Congress have shown interest in resolving this issue. We and our industry partners continue to advocate for a solution that continues to protect these very vulnerable patients.

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