

**Congress of the United States**  
**Washington, DC 20515**

February 5, 2024

The Honorable Denis McDonough  
Secretary  
Department of Veterans Affairs  
810 Vermont Ave., NW  
Washington, DC 20420

Mr. Michael D. Parrish  
Chief Acquisition Officer and Principal Executive  
Director  
Department of Veterans Affairs  
Office of Acquisition, Logistics, and Construction  
810 Vermont Ave., NW  
Washington, DC 20420

Dear Secretary McDonough and Mr. Parrish,

We are writing as members of the California Congressional delegation to express concern about dialysis centers in our state where veterans receive care under the National Dialysis Services Contract program (NDSC). Our understanding is that an ongoing labor dispute threatens the reliable continuity of these life-sustaining services for the many veterans in California who depend on them. Disruptions in service can have severe consequences because veterans with Chronic Kidney Disease, especially those diagnosed with End-Stage Renal Disease (ERSD), cannot live more than a few days without access to dialysis care.<sup>1</sup> Veterans deserve to have confidence in the dependability of these essential services. For this reason, we believe that our constituents would be better served if NDSC agreements ensure the uninterrupted delivery of NDSC services at dialysis centers participating in the NDSC. Doing so would ensure that the California veterans we represent can continue to access the healthcare they need and deserve.

We believe a requirement that agreements ensure the uninterrupted delivery of NDSC is informed by recent events in our state. We are aware of instances in our state where labor disputes threaten to affect the care that veterans receive at health care facilities participating in the NDSC Program. For example, last year, some California Members wrote to Fresenius Medical Care and Satellite Healthcare regarding collective bargaining and expressing concerns about short staffing and other working conditions that threaten to impact the care received by our constituents.<sup>2</sup> The dispute has escalated since those letters were sent, as employees of both companies went on strike in September<sup>3</sup> and October.<sup>4</sup>

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<sup>1</sup> Connor, N., Dougherty, M., Harris, P., and Casarett, D. (2013) "Survival after Dialysis Discontinuation and Hospice Enrollment for ESRD." The Clinical Journal of the American Society of Nephrology, 8(12) p2117-2122. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3848402/>

<sup>2</sup> See letter from Rep. Lofgren, August 8, 2023: and <https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/8.9.23-letter-to-fresenius-and-satellite-healthcare-1.pdf> and letter from Rep. Garcia, July 21, 2023: <https://acrobat.adobe.com/id/urn:aaid:sc:US:94625084-2e60-4b72-89a6-7bc4ad4a6cce>

<sup>3</sup> "California dialysis workers to go on strike over allegedly unfair labor practices," The Mercury News, September 24, 2023; "Healthcare workers on strike," Fox 5 San Diego, September 25, 2023; "Dialysis caregivers strike," KCRA News, September 25, 2023; "Más de 500 empleados de diálisis en California realizan una huelga histórica por prácticas laborales injustas," Univision 14 (Bay Area), September 25, 2023.

<sup>4</sup> "Fresenius Kidney Care Riverside Workers Strike Over Alleged Unfair Labor Practices," The Riverside Record, October 1, 2023, <https://riversiderecord.org/fresenius-kidney-care-riverside-workers-strike-over-alleged-unfair-labor-practices/>

There are 600,000 VA-enrolled veterans living with kidney disease and 40,000 VA-enrolled veterans living with ESRD who rely on dialysis or a kidney transplant to survive.<sup>5</sup> As many as 17,000 were receiving care through the NDSC as of 2018 and each year approximately 13,000 veterans develop kidney failure.<sup>6</sup> Non-VA dialysis facilities are a lifeline to veterans living with ESRD. Only 10% of veterans initiate dialysis treatment at a VA facility; the remaining 90% initiate treatment at non-VA facilities, such as those contracted under the NDSC.<sup>7</sup> According to VA data, in California, almost 1,500 veterans made more than 148,000 visits to dialysis clinics in 2015.<sup>8</sup> The number is likely to be higher today, given the annual increases reported above.

We believe that the VA should take steps to protect these critical NDSC services from disruption. We support the VA requiring agreements ensuring the uninterrupted delivery of NDSC services at dialysis centers participating in the NDSC.<sup>9</sup>

We note that the Department of Labor (DOL) has offered technical assistance to other federal agencies regarding labor issues affecting federal grants and contracts. We believe the VA has the opportunity to take advantage of DOL's expertise in considering our request.

Maintaining the continuity of dialysis services is essential, as there is no alternative for patients who depend on dialysis to survive: when treatment is delayed, the consequences can be dire. The VA has itself stressed the importance of smooth and continuous operation of the NDSC:

A gap in contractual coverage would have catastrophic results outside of just a lapse in care/coverage. Dialysis services are not optional for veteran patients with chronic renal failure. It is imperative that no lapse in contractual coverage occurs, as any delay in dialysis service will cause mental/physical distress, discomfort, and potential loss of life....[T]he Government could be harmed by losing dialysis services coverage by aiding in the discomfort and potential deaths of veterans currently utilizing the NDSC.<sup>10</sup>

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<sup>5</sup> Chen, Chien. 2023. "Support for Veterans with kidney disease - VA News." VA News. <https://news.va.gov/119226/support-for-veterans-with-kidney-disease/>.

<sup>6</sup> Department of Veterans Affairs. 2018. "JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION UNUSUAL AND COMPELLING URGENCY NATIONWIDE DIALYSIS CONTRACT EXTENSION." VA.gov. <https://www.vendorportal.ecms.va.gov/FBODocumentServer/DocumentServer.aspx?DocumentId=4631185&FileName=VA791-13-D-0011-P00008001.pdf>; Department of Veterans Affairs. 2022. "CHRONIC KIDNEY DISEASE AND DIALYSIS IN VETERANS INFORMATION BRIEF." VA.gov. [https://www.va.gov/HEALTH/EQUITY/docs/ESRD\\_and\\_Dialysis\\_Info\\_Brief\\_Final.pdf](https://www.va.gov/HEALTH/EQUITY/docs/ESRD_and_Dialysis_Info_Brief_Final.pdf).

<sup>7</sup> Kalantar-Zadeh, K., et. al. 2017. Renal Replacement Therapy and Incremental Hemodialysis for Veterans with Advanced Chronic Kidney Disease. Seminars in dialysis, 30(3), 251–261. <https://doi.org/10.1111/sdi.12601>

<sup>8</sup> Department of Veterans Affairs. 2017. "VA791-16-R-0086 A00013 Attachment AD Rev 1 Dialysis Rurality Unique Visits BDOC by Zip." SAM.gov. <https://sam.gov/opp/2cd0c98b82978134e3329a2371873339/view#attachments-links>.

Note: Based on zip codes between 90000 and 96162.

<sup>9</sup> See 48 C.F.R. § 22.101–1; Office of Management and Budget, *M-23-08 Strengthening Support for Federal Contract Labor Practices* (Jan. 10, 2023) available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-08-Labor-Advisor.pdf> (agencies can "us[e] the policy of FAR 22.101-1 where the agency has cause to believe that there is a possibility of work stoppages on a projected acquisition" including by "requiring an agreement between the offeror and any labor organization seeking to organize its employees that would assure the uninterrupted delivery of services over the course of the contract").

We believe these circumstances demonstrate the importance of the VA including a requirement that future NDSC contracts ensure that labor disputes and other issues do not disrupt life-saving services for veterans who we represent who rely on the NDSC dialysis centers.

We look forward to working with you on this matter. If your staff have any questions, please contact Chad Powell with Rep. Lofgren at [Chad.Powell@mail.house.gov](mailto:Chad.Powell@mail.house.gov).

Sincerely,



Zoe Lofgren  
Member of Congress



Ami Bera, M.D.  
Member of Congress



J. Luis Correa  
Member of Congress



Jim Costa  
Member of Congress



Mark DeSaulnier  
Member of Congress



Anna G. Eshoo  
Member of Congress



Jared Huffman  
Member of Congress



Sydney Kamlager-Dove  
Member of Congress

<sup>10</sup> Department of Veterans Affairs. 2018. "JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION UNUSUAL AND COMPELLING URGENCY NATIONWIDE DIALYSIS CONTRACT EXTENSION." VA.gov. Accessed November 28, 2023.  
<https://www.vendorportal.ecms.va.gov/FBODocumentServer/DocumentServer.aspx?DocumentId=4631185&FileName=VA791-13-D-0011-P00008001.pdf>.



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Ro Khanna  
Member of Congress



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Barbara Lee  
Member of Congress



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Mike Levin  
Member of Congress



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Doris Matsui  
Member of Congress



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Katie Porter  
Member of Congress



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Adam B. Schiff  
Member of Congress



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Brad Sherman  
Member of Congress



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Norma J. Torres  
Member of Congress



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Maxine Waters  
Member of Congress