



Saving and improving lives with transplantation.

American Society of Transplant Surgeons®

May 13, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue S.W. Room 314G
Washington, DC 20201

Dear Administrator Verma:

The American Society of Transplant Surgeons (ASTS) requests that the Centers for Medicare and Medicaid Services (CMS) revise Chapter 31 of the Provider Reimbursement Manual (PRM) to ensure that appropriate and accurate payment is made for the organ acquisition costs for kidneys transplanted into Medicare Advantage (MA) recipients on and after January 1, 2021.

Medicare pays for the organ acquisition costs attributable to Medicare patients on a reasonable cost basis. The rules applied to determine the proportion of aggregate organ acquisition costs attributable to Medicare patients are set forth in Section 3115 of the Provider Reimbursement Manual (**Attachment A**). These rules provide that organs transplanted into MA recipients do not count as Medicare organs. Rather, organs transplanted into MA recipients, like organs transplanted into recipients covered by non-Medicare payers, are excluded from Medicare fee-for-service payment. Since MA plans generally pay for the acquisition costs associated with organs transplanted into MA recipients as a component of global payments, excluding these costs from Medicare fee for service (FFS) organ acquisition cost payment currently makes sense.

However, effective January 1, 2020, Section 17006(c) of the 21st Century Cures Act (Cures Act) amended section 1852(a)(1)(B) of the Social Security Act to exclude coverage for kidney acquisition costs from the scope of services to be provided by MA plans to MA enrollees. Rather, the law provides that these costs are to be covered under the original Medicare FFS program. In fact, on April 6, 2020, in its “Announcement of Calendar Year (CY) 2021 Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies” CMS finalized MA rates for 2021 that reduce otherwise payable MA rates by approximately \$4 per member per month, to adjust for the exclusion of kidney organ acquisition costs from the rates. The new rates anticipate that MA plans will renegotiate their contracts with Transplant Centers to exclude payment for kidney acquisition costs.

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Since the governing legislation requires that the organ acquisition costs associated with kidney transplants performed for MA recipients will be reimbursed in the same manner as organ acquisition costs attributable to Medicare FFS beneficiaries, we request that PRM Section 3115 be revised to ensure that kidney acquisition costs associated with MA recipients be “counted” as Medicare organ acquisition costs. For your convenience, our suggested draft changes to Section 3115 are included as **Attachment B**.

Please note that, without this modification, Transplant Centers will be significantly underpaid for kidney acquisition costs. Beginning on January 1, 2021, as the result of changes made by the Cures Act, ESRD-eligible Medicare beneficiaries will be able to sign up for MA for the first time. In projections accompanying the proposed rule implementing these provisions of the Cures Act, CMS projects that the number of ESRD patients enrolled in MA plans will increase by 83,000. CMS further projects that about half of these beneficiaries will enroll in 2021, thereby increasing the number of ESRD patients in MA plans by over 20% in a single year. For this reason, failing to provide Medicare payment for kidney organ acquisition costs associated with MA enrollees would have a potentially devastating financial impact on Transplant Centers.

Thank you very much for your attention to this matter. We look forward to discussing this issue with you and your staff soon.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Ratner", is positioned above the typed name.

Lloyd E. Ratner, MD, MPH, FACS, FICS(Hon)
President

Cc: Tiffany T. Swygert

Attachment A

3115. COUNTING ORGANS

OPOs and CTCs are responsible for accurately counting both Medicare and non-Medicare organs to ensure that costs are properly allocated on the MCR. The OPO and CTC should count organs procured and transplanted en bloc (two organs transplanted as one unit) as one organ. This can include but is not limited to en bloc kidneys and en bloc lungs.

A. Counting Medicare Usable Organs at CTCs/HOPOs—Medicare usable organs include organs transplanted into Medicare beneficiaries (excluding Medicare Advantage beneficiaries), organs that had partial payments by a primary insurance payer in addition to Medicare, organs sent to other CTCs, organs sent to OPOs and kidneys sent to MRTCs (that have a reciprocal sharing agreement with the OPO in effect prior to March 3, 1988, and approved by the contractor). Medicare usable organs do not include organs used for research, organs sent to veterans hospitals, organs that were totally paid by primary insurance other than Medicare, organs that were paid by a Medicare Advantage plan, organs procured from a non-certified OPO and kidneys sent to a MRTC (without a reciprocal sharing agreement with the OPO in effect prior to March 3, 1988 and approved by the contractor.)

Attachment B

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A. Counting Medicare Usable Organs at CTCs/HOPOs—Medicare usable organs include organs transplanted into Medicare beneficiaries (including Medicare Advantage kidney transplant and en bloc kidney recipients, but excluding other Medicare Advantage beneficiaries), organs that had partial payments by a primary insurance payer in addition to Medicare, organs sent to other CTCs, organs sent to OPOs and kidneys sent to MRTCs (that have a reciprocal sharing agreement with the OPO in effect prior to March 3, 1988, and approved by the contractor). Medicare usable organs do not include organs used for research, organs sent to veterans hospitals, organs that were totally paid by primary insurance other than Medicare, non-renal organs that were paid by a Medicare Advantage plan, organs procured from a non-certified OPO and kidneys sent to a MRTC (without a reciprocal sharing agreement with the OPO in effect prior to March 3, 1988 and approved by the contractor.)