

§ 413.406 Acquisition of pancreata for islet cell transplant.

(a) Medicare only covers and pays for reasonable costs of acquisition on or after October 1, 2004, of pancreata for islet cell transplants into Medicare beneficiaries participating in a National Institute of Diabetes and Digestive and Kidney Diseases clinical trial of islet cell transplantation in accordance with section 733 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(b) Pancreata procured under paragraph (a), for covered islet cell transplants must be assigned a full standard acquisition charge and be treated as solid organs for procurement purposes.

§ 413.408 [Reserved]**§ 413.410 [Reserved]****§ 413.412 Intent to transplant, intent for research, counting en bloc, and unusable organs.**

(a) *Principles for organs intended for transplant for organ acquisition payment purposes.* (1) An organ is intended for transplant when the OPO or TH designates it for transplant prior to the time the donor enters the hospital's operating room for surgical excision/recovery of the organ(s).

(2) OPOs and THs must identify the costs associated with the recovered and unrecovered organs and apportion those costs to the appropriate cost centers by organ type. These costs include the costs associated with an organ intended for transplant, but subsequently determined unsuitable for transplant and furnished for research.

(3) An organ intended for transplant but subsequently determined unsuitable for transplant and instead furnished for research is not counted as a Medicare usable organ or as a total usable organ in the ratio used to calculate Medicare's share of organ acquisition costs.

(4) Subject to paragraph (a)(4)(iii) of this section, OPOs and THs must reduce total organ acquisition costs, when the organ is intended for transplant but determined unsuitable for transplant and instead furnished for research, as follows:

(i) By deducting the costs to furnish organs for research from total organ acquisition costs; or

(ii) By offsetting the total organ acquisition costs by the revenue received for these organs.

(iii) In no event may the reduction in total organ acquisition costs as a result of application of paragraph (a)(4) of this section exceed the costs incurred to furnish organs for research.

(5) When the costs to furnish organs for research are not included in total organ acquisition costs but are included in a non-reimbursable cost center, no offset is necessary.

(b) *Principles for organs intended for research for organ acquisition payment purposes.* (1) An organ is intended for research when the OPO or TH designates it for research

prior to the time the donor enters the hospital's operating room for surgical removal of the organ.

(2) Medicare does not share in the acquisition costs of an organ intended for research and costs to procure these organs must not be included in organ acquisition costs (except pancreata for islet cell transplants as specified in § 413.406(a)).

(3) An organ intended for research is not counted as a Medicare usable organ or as a total usable organ in the ratio used to calculate Medicare's share of organ acquisition costs (except pancreata for islet cell transplants as specified in § 413.406(a)).

(c) *Counting en bloc organs.* En bloc organs can be en bloc lungs or en bloc kidneys. For Medicare cost allocation purposes, OPOs and THs count -

(1) En bloc lungs or en bloc kidneys procured and transplanted en bloc (two organs transplanted as one unit) as one total usable organ. En bloc organs transplanted into a Medicare beneficiary count as one Medicare usable organ or one Medicare usable kidney.

(2) En bloc lungs and en bloc kidneys procured en bloc but separated and transplanted into two different recipients as two total usable organs. For each organ transplanted into a Medicare beneficiary, count each as one Medicare usable organ or one Medicare usable kidney.

(d) *Unusable organs.* (1) An organ is not counted as a Medicare usable organ

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or a total usable organ in the ratio used to calculate Medicare's share of organ acquisition costs if a physician determines, upon initial inspection or after removal of the organ, that the organ is not viable and not medically suitable for transplant and is therefore unusable.

(2) OPOs and THs include the cost to procure unusable organs, as described in paragraph (d)(1) of this section, in total organ acquisition costs reported on their Medicare cost report.

[87 FR 72289, Nov. 23, 2022]

§ 413.414 Medicare secondary payer and organ acquisition costs.

(a) *General principle.* If a Medicare beneficiary has a primary health insurer other than Medicare and that primary health insurer has primary liability for the transplant and organ acquisition costs, the Medicare Program may share a liability for organ acquisition costs as a secondary payer to the TH that performs the transplant in certain instances. To determine whether Medicare has liability to the TH that performs the transplant as a secondary payer for organ acquisition costs, it is necessary for the TH that performs the transplant to review the TH's agreement with the primary insurer.

(b) *Medicare has no secondary payer liability for organ acquisition costs.* If the primary insurer's agreement requires the TH to accept the primary insurer's payment as payment in full for the transplant and the associated organ acquisition costs, Medicare has zero liability as a secondary payer with no payment obligation for the transplantation costs or the organ acquisition costs, and the organ at issue is not a Medicare usable organ.

(c) *Medicare may have secondary payer liability for organ acquisition costs.* When the primary insurer's agreement does not require the TH that performs the transplant to accept the payment from the primary insurer as payment in full, and the payment the TH receives from the primary insurer for the transplant and organ acquisition costs is insufficient to cover the entire cost, Medicare may have a secondary payer liability to the TH that performs the transplant for the organ acquisition costs.

(1) To determine whether Medicare has a secondary payer liability for the organ acquisition costs, it is necessary for the TH that performs the transplant to submit a bill to its contractor and to compare the total cost of the transplant, including the transplant DRG amount and the organ acquisition costs, to the payment received from the primary payer.

(2) If the payment from the primary payer is greater than the cost of the transplant DRG and the organ acquisition costs, there is no Medicare liability and the TH must not count the organ as a Medicare usable organ.

(3) If the payment from the primary payer is less than the transplant DRG and the organ acquisition costs, there is a Medicare secondary payer liability and all of the following must occur:

(i) The TH must pro-rate the payment from the primary payer between the transplant DRG payment and the organ acquisition payment.

(ii) Only the TH that performs the transplant counts the organ as a Medicare usable organ.

(iii) The portion of the payment applicable to organ acquisition is used on the cost report to reduce the Medicare organ acquisition costs.

[86 FR 73515, Dec. 27, 2021, as amended at 87 FR 72289, Nov. 23, 2022]

§ 413.416 Organ acquisition charges for kidney-paired exchanges.

(a) Initial living donor evaluations. When a recipient and donor elect to participate in a kidney paired exchange, the costs of the initial living donor evaluations are incurred by the originally intended recipient's TH, regardless of whether the living donor actually donates to their originally intended recipient, a kidney paired exchange recipient, or does not donate at all.

(b) *Additional tests after a match.* In a kidney paired exchange, regardless of whether an actual donation occurs, once the donor and recipient are matched, any additional tests requested by the recipient's TH and performed by the donor's TH, are billed to the recipient's TH as charges reduced to cost (using the donor's TH's cost to