

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 charge ratio) and included as acquisition costs on the recipient TH's Medicare cost report.

(c) *Procurement and transport of a kidney.* When a donor's TH procures and furnishes a kidney to a recipient's TH all of the following are applicable:

(1) All costs must be reasonable and necessary.

(2)(i) The donor's TH bills the recipient's TH.

(ii) The donor's TH bills its charges reduced to cost, or bills its applicable kidney SAC for the reasonable costs associated with procuring, packaging, and transporting the kidney.

(3) The donor's TH records the costs described in paragraph (c)(2)(ii) of this section on its Medicare cost report as kidney acquisition costs and offsets any payments received from the recipient's TH against its kidney acquisition costs.

(4) The recipient's TH records as part of its kidney acquisition costs -

(i) The amounts billed by the donor's TH for the reasonable costs associated with procuring, packaging, and transporting the organ; and

(ii) Any additional testing performed and billed by the donor's TH.

(d) Donor's procurement occurs at recipient TH. In a kidney-paired exchange—

(1) When a donor's TH does not procure a kidney, but the donor travels to the recipient's TH for the organ procurement, the reasonable costs associated with the organ procurement are included on the Medicare cost report of the recipient's TH; and

(2) The travel expenses of the living donor are not allowable Medicare costs.

[86 FR 73515, Dec. 27, 2021, as amended at 87 FR 72290, Nov. 23, 2022]

§ 413.418 Amounts billed to organ procurement organizations for hospital services provided to deceased donors and included as organ acquisition costs.

(a) *General.* A donor community hospital (a Medicare-certified non-TH) and a TH incur costs for hospital services

attributable to a deceased donor or a donor whose death is imminent. These services must not be part of medical treatment that primarily offers a medical benefit to the patient as determined by a healthcare team, must be authorized by the OPO, and are included as organ acquisition costs when:

(1) There is consent to donate; and

(2) Declaration of death has been made, or if a declaration of death has not been made, death is imminent and it is necessary that the services be provided prior to declaration of death in order to avoid compromising the viability of the organs for transplant.

(b) *Amounts billed for organ acquisition costs.* When a donor community hospital or TH incurs costs for services furnished to a deceased donor, or a donor whose death is imminent as described in paragraph (a) of this section, as authorized by the OPO, the donor community hospital or TH must bill the OPO the lesser of its customary charges that are reduced to cost by applying its most recently available hospital specific inpatient operating cost-to-charge ratio for the period in which the service was rendered, or a negotiated rate.

[87 FR 72290, Nov. 23, 2022]

§ 413.420 Payment to independent organ procurement organizations and histocompatibility laboratories for kidney acquisition costs.

(a) *Principle.* (1) Covered services furnished by IOPOs and histocompatibility laboratories in connection with kidney acquisition and transplantation are reimbursed under the principles for determining reasonable cost contained in this part.

(2) Services furnished by IOPOs and histocompatibility laboratories, that have an agreement with the Secretary in accordance with paragraph (c) of this section, are paid directly by the TH using a kidney SAC (for an IOPO) or contractor-established rates (for a histocompatibility laboratory). (The reasonable costs of services furnished by IOPOs or laboratories are reimbursed in accordance with the principles contained in §§ 413.60 and 413.64.)

(b) *Definitions.* Definitions relevant to this section can be found in § 413.400.

(c) *Agreements with IOPOs and laboratories.* (1) Any IOPO or histocompatibility laboratory that

wishes to have the cost of its pre-transplant services reimbursed under the Medicare program must file an agreement with CMS under which the IOPO or laboratory agrees to do all of the following:

(i) To file a cost report in accordance with §413.24(f) within 5 months following the close of the period covered by the report.

(ii) To permit CMS to designate a contractor to determine the interim reimbursement rate, payable by the THs for services provided by the IOPO or laboratory, and to determine Medicare's reasonable cost based upon the cost report filed by the IOPO or laboratory.

(iii) To provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate.

(iv) To pay to CMS amounts that have been paid by CMS to THs and that are determined to be in excess of the reasonable cost of the services provided by the IOPO or laboratory.

(v) Not to charge any individual for items or services for which that individual is entitled to have payment made under section 1881 of the Act.

(2) The initial cost report due from an IOPO or laboratory is for its first fiscal year during any portion of which it had an agreement with the Secretary under paragraphs (c)(1) and (2) of this section. The initial cost report covers only the period covered by the agreement.

(d) *Interim reimbursement.* (1) THs with approved kidney transplant programs pay the IOPO or histocompatibility laboratory for their pre-transplantation services on the basis of an interim rate established by the contractor for that IOPO or laboratory.

(2) The interim rate is a kidney SAC or contractor established rates, based on costs associated with procuring a kidney for transplantation, incurred by an IOPO or laboratory respectively, during its previous fiscal year. If there is not adequate cost data to determine the initial interim rate, the contractor determines it according to the IOPO's

or laboratory's estimate of its projected costs for the fiscal year.

(3) Payments made by THs on the basis of interim rates are reconciled directly with the IOPO or laboratory after the close of its fiscal year, in accordance with paragraph (e) of this section.

(4) Information on the interim rate for all IOPOs and histocompatibility laboratories must be disseminated to all THs and contractors.

(e) *Retroactive adjustment*—(1) *Cost reports.* Information provided in cost reports by IOPOs and histocompatibility laboratories must meet the requirements for cost data and cost finding specified in §413.24. These cost reports must provide the following:

(i) A complete accounting of the cost incurred by the IOPO or laboratory in providing covered services, the total number of Medicare beneficiaries who received those services.

(ii) Any other data necessary to enable the contractor to determine the reasonable cost of covered services provided to Medicare beneficiaries.

(2) *Audit and adjustment.* A cost report submitted by an IOPO or histocompatibility laboratory is reviewed by the contractor and a new interim reimbursement rate for kidney acquisition costs for the subsequent fiscal year is established based upon this review.

(i) *Retroactive adjustment.* A retroactive adjustment in the amount paid under the interim rate is made in accordance with §413.64(f).

(ii) *Lump sum adjustment.* If the determination of reasonable cost reveals an overpayment or underpayment resulting from the interim reimbursement rate paid to THs, a lump sum adjustment is made directly between that contractor and the IOPO or laboratory.

(f) *Payment requirements.* For services furnished on or after April 1, 1988, no payment may be made for services furnished by an IOPO that does not meet the requirements of part 486, subpart G, of this chapter.

(g) *Appeals.* If the amount in controversy is \$1,000 or more, any IOPO or histocompatibility laboratory that disagrees with a contractor's cost determination under this section is entitled to a contractor hearing, in accordance

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with the procedures set forth in §§ 405.1811 through 405.1833 of this chapter.

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