

FY 2027 IPPS PROPOSED RULE - CHANGES TO ORGAN ACQUISITION AND REASONABLE COST PAYMENT POLICIES

On April 14, 2026, the Centers for Medicare & Medicaid Services ("CMS") published the **fiscal year (FY) 2027 Inpatient Prospective Payment System (IPPS) proposed rule** (the "Proposed Rule") in the Federal Register, which included several proposals that would affect organ acquisition reimbursement policies for Independent Organ Procurement Organizations ("IOPOs"), as well as Organ Procurement Organizations ("OPOs") more broadly, histocompatibility laboratories ("HCLs") and transplant hospitals. Although CMS characterizes some of the changes as codifying longstanding policy, others substantively alter how organ acquisition costs are reconciled, what qualifies as an allowable cost, how certain costs are allocated and how reimbursement disputes are reviewed.

Comments on the Proposed Rule are due **June 9, 2026**.

BACKGROUND

Medicare reimburses organ acquisition costs on a reasonable cost basis that includes the costs that transplant hospitals and OPOs incur in procuring organs for transplantation (i.e., tissue typing, donor evaluation and management, operating room and ancillary services, transportation and registry fees). Medicare's share of these costs is determined by the ratio of Medicare usable organs to total usable organs, by organ type, as reported on the Medicare cost report.

For kidney acquisition costs, Medicare has long required Medicare Administrative Contractors ("MACs") to establish standard acquisition charges ("SACs") for OPOs and to reconcile those charges against actual costs at cost report settlement. This process ensures that interim payments to OPOs align with actual kidney acquisition costs. No comparable regulatory reconciliation process has existed for non-renal organs procured by OPOs. Instead, these costs have been governed primarily through sub-regulatory guidance, a gap that CMS and the OIG believe has resulted in payment inaccuracies.

Beginning in FY 2022, CMS clarified and codified certain organ acquisition payment policies in a new Subpart L of 42 C.F.R. Part 413. That rulemaking, among other things, addressed definitions, standard acquisition charges, living donor complications, Medicare secondary payer provisions and billing requirements for donor community hospitals. The FY 2027 Proposed Rule continues and expands this effort with the proposals summarized in this article.

PROPOSALS IMPACTING IOPOS, HCLs AND TRANSPLANT HOSPITALS

Non-Renal Organ Cost Reconciliation for IOPOs: CMS proposes to require MACs to establish, adjust and publish SACs for non-renal organs for IOPOs and testing rates for HCLs, bringing non-renal organ cost reconciliation in line with the existing process for kidney acquisition costs. CMS cites OIG audit findings and cost report data showing non-renal organ revenue exceeded non-renal acquisition costs by \$100 million in 2024 and estimates the proposal would save Medicare approximately \$100 million annually beginning in FY 2028 if finalized.

By extending the SAC and reconciliation framework to non-renal organs at IOPOs and to HCL testing rates, CMS would close the \$100 million annual gap it has identified between revenues and costs. If finalized, IOPOs and HCLs should expect that MACs will play a materially larger role in establishing and adjusting interim payment rates for non-renal organ acquisition.

IOPOs that have operated without formal MAC-established SACs for non-renal organs will need to prepare for a fundamentally different interim payment structure.

Codification of Reasonable Cost Principles and Prudent Buyer Standards: CMS proposes to codify and, in some cases, revise Medicare reasonable cost reimbursement principles applicable to all providers reimbursed on a reasonable cost basis, including OPOs, transplant hospitals, Critical Access Hospitals, Skilled Nursing Facilities and Home Health Agencies. This includes codifying the prudent buyer principles. CMS proposes to define a prudent buyer as a "person, provider type or entity that purchases items or property with caution, good judgment and a sensible approach, aiming to make a sound informed decision that minimizes risk and avoids unnecessary financial loss."

Further, CMS proposes that providers are expected to seek “to minimize their costs, so that their actual costs will not exceed what a prudent and cost-conscious buyer would pay for a given item or service.”

CMS states the proposal responds to OIG audit findings that providers, including OPOs, have claimed unallowable costs due to a misunderstanding of Medicare’s reasonable cost principles. However, important considerations will include the level of discretion CMS and its contractors will have in challenging these costs and the documentation providers will be expected to produce to justify costs.

OPO Public Education Cost Limitations: As part of the reasonable cost proposals, CMS proposes to clarify the scope of allowable OPO public education costs. Under the proposal, CMS is allowing public education costs for community-based, locally focused outreach activities that include direct donor engagement and registration tracking.

CMS proposes to expressly disallow costs for entertainment and sponsorship, including sponsorship of sporting events, teams or athletes; floats in national parades; concert, theater or performing arts events; professional musicians or other entertainers; golf outings; ski trips; retreats at spas; etc.

These public education cost limitations will affect OPOs that have invested in high-profile sponsorship and awareness campaigns. OPOs should not assume that prior acceptance of these costs on filed cost reports will insulate them from prospective disallowance under a finalized rule.

Overhead Cost Allocation: CMS proposes to clarify how providers can allocate overhead costs. CMS says that providers are not following Medicare cost reporting instructions regarding cost allocation, resulting in inflated and improper reimbursement. Administrative and general costs can be improperly allocated when the statistic “accumulated costs” is used. Services purchased “under arrangement” and organs purchased from OPOs are identified as examples because they are acquired as complete items or services, inclusive of the seller’s direct and indirect costs. When these costs are included in the accumulated cost for A&G allocation, CMS believes this may result in improper allocation of overhead costs.

To reduce the perceived improper distribution/allocation of overhead expenses, CMS proposes requiring hospitals to use one or both of two different allocation methods: a Negative Adjustment Method or a Fragmenting (Componentizing) A&G Method. Under the Negative Adjustment Method, when providers purchase a good or service, the non-purchased portion of the cost center will receive an A&G allocation, while the purchased amount will not. Under the Fragmenting A&G Method, providers must subcript the A&G cost center into multiple cost centers so that overhead costs are accurately assigned to departments benefiting from the services provided and to specifically track and allocate overhead expenses based on “actual resource consumption.”

Note that this change impacts cost allocation principles governing the allocation of overhead costs across all providers.

Administrator Review of IOPO and HCL Reimbursement Appeals: CMS proposes to codify the Administrator's discretionary authority to review CMS reviewing official determinations in IOPO and HCL reimbursement appeals under 42 C.F.R. § 413.420(g). Under the proposal, parties could request the Administrator’s review of a CMS reviewing official’s decision, and the Administrator could also initiate review on his or her own motion. This codification would formalize a layer of appellate oversight that, while not entirely new in concept, has not previously been established in regulation for these entity types.

SUMMARY

These proposed regulations do not exist in isolation. The FY 2027 IPPS organ acquisition provisions are in addition to a **proposed rule** to revise the OPO Conditions for Coverage (published January 30, 2026), recent **QSO guidance** strengthening survey enforcement around OPO and donor hospital responsibilities and broader transplant system **modernization efforts** led by the Health Resources and Services Administration (“HRSA”). Taken together, these actions reflect a growing regulatory focus on the organ donation and transplantation system and suggest that transplant hospitals and OPOs should anticipate continued changes to the compliance and reimbursement landscape.

PRACTICAL TAKEAWAYS

- **Consider submitting comments by June 9, 2026. Our Transplant & Organ Procurement team is available to assist in preparing comments.** The non-renal organ reconciliation proposal, public education cost limitations and prudent buyer codification each warrant careful evaluation by affected stakeholders, including the following:
 - Stakeholder input on the prudent buyer standard, including documentation requirements and how providers can challenge CMS’s

application, will be important to help ensure CMS addresses key issues and considerations before determining whether to finalize the proposal.

- Stakeholders should also evaluate the impact of eliminating national outreach activities and consider submitting comments on these impacts to promote clarity if and when the proposal is finalized.

- **Evaluate non-renal organ cost reporting.** OPOs should assess how their current interim payment arrangements and cost-reporting practices for non-renal organs compare with the proposed SAC and reconciliation framework.
- **Review public education expenditures.** OPOs should review the classification of public education costs and practices and determine if current practices are sustainable without CMS support.
- **Assess overhead allocation methodologies.** Not only transplant hospitals and IOPOs, but all impacted providers should evaluate their current overhead cost allocation practices against the proposed methodologies to identify areas that may require adjustment.
- **Understand the appeals process changes.** IOPOs and HCLs involved in or anticipating reimbursement disputes should familiarize themselves with the proposed codification of Administrator review authority and consider how it may affect their appeals strategy.
- **Monitor the broader regulatory landscape.** These proposals are one component of a multifaceted regulatory effort affecting organ donation and transplantation. Stakeholders should track developments across the OPO Conditions for Coverage rulemaking, recent survey enforcement guidance and ongoing HRSA modernization initiatives.

If you have questions or would like assistance evaluating the impact of these proposals on your organization, please contact:

- **Lori Wink** at (414) 721-0456 or lwink@hallrender.com;
- **Brian Betner** at (303) 802-1298 or bbetner@hallrender.com;
- **Joe Krause** at (414) 721-0906 or jkrause@hallrender.com;
- **Megan Culp** at (317) 429-3644 or mculp@hallrender.com;
- Hall Render's **Transplant & Organ Procurement** service line; or
- Your primary Hall Render contact.

Special thanks to law clerks Nick Baker and David Yanda for their assistance in preparing this article.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside of an attorney-client relationship—answer specific questions that would be legal advice.