

July 29, 2026

The Honorable Mehmet C. Oz, MD, MBA
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Re: File Code CMS-2454-IFC : Medicaid Program; Community Engagement Requirement for Certain Individuals (the “IFC”)

Dear Dr. Oz:

As President of the American Society of Transplant Surgeons, I am pleased to have the opportunity to comment on this interim final rule with comment period (IFC). ASTS is a medical specialty society representing approximately 2,400 professionals dedicated to excellence in transplantation surgery. Our mission is to advance the art and science of transplant surgery through patient care, research, education, and advocacy, and we have long advocated for the removal of financial and other disincentives that pose a barrier to living donation.

We concur with the comments filed by the American Medical Association with respect to the IFC, and we incorporate those comments by reference. We are particularly concerned that the IFC restricts the statutory exemption for the “medically frail” in a manner not anticipated by Congress by imposing on Medicaid recipients who meet the statutory definition of “medically frail” the additional burden of demonstrating functional impairment.

We also concur with the concerns raised by numerous patient organizations representing those with end stage organ failure, transplant-related professional organizations and others on behalf of transplant candidates and recipients. Consistent with those comments, we request CMS to issue guidance to the states that:

- Explicitly recognizes that waitlisted transplant candidates and transplant recipients should be considered “medically frail” for the purposes of the community engagement requirements;
- Suggests that states include diagnostic codes for end stage organ failure (including, but not limited to, the ICD-10 diagnostic codes set forth at Attachment A) on their list of diagnoses indicating medical frailty and functional impairment; and
- Urges states to consider inclusion on a transplant waitlist as dispositive evidence of medical frailty and functional impairment.

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While it appears that most kidney transplant candidates and recipients will be exempt from the community engagement requirements because they are eligible for or covered by Medicare Part A and Medicare Part B (ESRD-eligible), some kidney transplant candidates and recipients who are not ESRD-eligible under Medicare rules, as well as lung, liver, and heart transplant candidates and recipients may be significantly impacted. Numerous studies have established that Medicaid expansion substantially increases access to transplantation¹ and requiring Medicaid recipients who are transplant candidates or recipients to comply with the community engagement requirements has the potential to reverse the progress made in expanding access to life-saving transplantation for those with end stage organ failure.

We are also extremely troubled by the potential impact of the IFC on living donors. Living donor transplantation is by far the most clinically effective and cost-effective treatment for ESRD and other end stage organ failure (liver). Living donor transplants offer significantly better long-term patient and allograft survival rates and dramatically shorter waiting times than for deceased donor transplants. Because the organ comes from a healthy person who has undergone extensive medical vetting, the overall quality of the organ is typically superior. Additionally, each living donor transplant removes the recipient from the national waitlist, which indirectly frees up a deceased donor organ for another candidate in need.

Because living donors **must** be in good health to donate an organ, they necessarily cannot be considered “medically frail” within the meaning of the IFC.

While the federal guidelines allow for short-term hardship exceptions for hospitalized patients, this exception is “optional” and need not be recognized by a potential living donor’s state of residence. Moreover, patients or their advocates must request and prove the hardship exception, which creates administrative hurdles during a period when time may be of the essence for the potential recipient. Moreover, the IFC explicitly indicates that the hardship exception for hospitalized Medicaid recipients should extend for no longer than one-month post-op. While most kidney donors recover from a living organ donation procedure within six weeks, liver donors typically take at least six to eight weeks for recovery², and recovery may take considerably longer, depending upon individual factors. Moreover, whether a living donor may safely return to work depends to a large extent on the nature of the work involved. For example, a donor working a desk job may safely return to work, while a donor may put themselves at considerable risk in returning to manual labor at the same timepoint after donation.

Both the first and the second Trump Administrations have strongly supported transplantation. In 2019, the first Trump Administration launched the *Advancing American Kidney Health initiative* to prioritize transplants over dialysis and expand the pool of available kidneys; President Trump strongly supported and signed legislation providing extended lifetime coverage of anti-rejection medications for kidney transplant recipients and the Trump Administration expanded reimbursement rules through the Health Resources and Services Administration (HRSA) to cover lost wages, child care, and travel costs for living donors.

¹ See e.g. Goni Katz-Greenberg, Mariya L. Samoylova, Brian I. Shaw, Sarah Peskoe, Dinushika Mohottige, L. Ebony Boulware, Virginia Wang, Lisa M. McElroy, Association of the Affordable Care Act on Access to and Outcomes After Kidney or Liver Transplant: A Transplant Registry Study, *Transplantation Proceedings*, Volume 55, Issue 1, 2023, Pages 56-65, ISSN 0041-134 ; Nunez M, Shifman H, Lai J . . Medicaid Expansion and Its Association with Liver Transplant Outcomes in Adults *American Journal of Transplantation*, 26, S286-S287.

² <https://www.kidney.org/kidney-topics/what-to-expect-after-donation>; <https://www.hopkinsmedicine.org/transplant/programs/liver/living-donor-liver-transplant/what-to-expect>.

To ensure that the community engagement requirements do not dissuade living donation, and to maintain consistency with longstanding Administration policy and goals, **we strongly urge CMS to issue follow up guidance to the states that:**

- Urges states to make the hospitalization exception available to living donors and to make that policy clear to Medicaid recipients;
- Expedites hardship requests for living donors and minimizes applicable administrative requirements; and
- Clarify that a living donor is likely to take longer than 30 days to recover from surgery and should not be subject to community engagement requirements until fully recovered and cleared for their regular employment.

We appreciate the opportunity to comment on this important IFC. If you have any questions, please do not hesitate to contact Emily Besser, ASTS Director, Advocacy and Professional Practices (Emily.Besser@ASTS.org).

Respectfully,



Henry B. Randall, MD, MBA

Attachment A

The specific ICD-10 diagnostic codes used to indicate end-stage organ failure include, but may not be limited to, the following:

Kidney Failure

- **N18.6:** End-stage renal disease (ESRD), used when a patient requires chronic dialysis or has a transplant failure.
- **Z99.2:** Dependence on renal dialysis, used as a secondary status code.

Heart Failure

- **I50.84:** End-stage heart failure, applied specifically to Stage D heart failure.
- **I50.24** or **I50.34:** End-stage systolic or diastolic heart failure when further specified by the provider.

Liver Failure

- **K72.10:** Chronic hepatic failure without coma.
- **K72.11:** Chronic hepatic failure with coma.
- **K74.60:** Unspecified cirrhosis of the liver, frequently paired to denote underlying chronic damage.

1. https://www.icd10data.com/ICD10CM/Codes/N00-N99/N17-N19/N18-/N18.6#google_vignette
2. <https://icdcodes.ai/diagnosis/end-stage-renal-failure/documentation>.
3. <https://www.icd10data.com/ICD10CM/Codes/I00-I99/I30-I5A/I50-/I50.84>.
4. <https://cdek.pharmacy.purdue.edu/icd10/K72.1/>.

Lung Failure

For end-stage lung failure, there is no single standalone "end-stage" code in the ICD-10-CM system. Instead, clinicians must use a combination of the primary underlying disease code alongside the specific chronic respiratory failure code. ^[1]

1. Chronic Respiratory Failure (The Manifestation Codes)

To indicate that the lung failure has reached a chronic, severe, or terminal state, one of the following codes from the **J96** series must be used: ^[1]

- **J96.11:** [Chronic respiratory failure with hypoxia](#) (severe, long-term oxygen deficit).
- **J96.12:** Chronic respiratory failure with hypercapnia (severe, long-term carbon dioxide retention).
- **J96.21** or **J96.22:** Acute on chronic respiratory failure (used if an end-stage patient suffers a sudden, life-threatening flare-up). ^[1, 2, 3, 4]

2. Underlying Lung Diseases (The Etiology Codes)

The respiratory failure code is paired with the specific underlying condition causing the terminal lung disease: ^[1]

- **J44.9:** [Chronic obstructive pulmonary disease \(COPD\), unspecified](#) — used for end-stage emphysema or chronic bronchitis.
- **J84.112:** Idiopathic pulmonary fibrosis (IPF).
- **E84.0:** Cystic fibrosis with pulmonary manifestations.
- **J47.9:** Bronchiectasis, unspecified. ^[1, 2, 3, 4, 5]

3. Oxygen and Equipment Status Codes

Because end-stage lung failure nearly always requires supplemental support, these secondary status codes are frequently appended to the claim:

- **Z99.81:** Dependence on supplemental oxygen.
- **Z99.11:** Dependence on a respirator [ventilator].

1. <https://icdcodes.ai/diagnosis/end-stage-copd/documentation>.
2. <https://prombs.com/blog/icd-10-code-for-respiratory-insufficiency/>.
3. <https://www.aapc.com/codes/icd-10-codes/J96.2>.
4. <https://chartpath.com/what-is-the-icd-10-code-for-acute-and-chronic-respiratory-failure-with-hypoxia>.
5. https://www.icd10data.com/search?s=end+stage+chronic+obstructive+pulmonary+disease&page=1#google_vignette.