

Finalized Rule to Remove Disincentives to Living Organ Donation

October 1, 2020 – *Dorsey Health Law*
by Randall Hanson and Neal N. Peterson

On September 22, 2020, the Department of Health and Human Services (“DHHS”) finalized a new rule to expand the scope of qualified reimbursable expenses incurred by living organ donors to include lost wages, child-care expenses, and elder-care expenses. The new rule goes into effect on October 22, 2020, and is a win for living organ donation. This final rule aligns with the initial proposed rule, and you can read our post on the proposed rule [here](#) for additional background.



Related People

- Randall Hanson

Related Capabilities

- Healthcare & Life Sciences
- Healthcare Transactions & Regulations
- Healthcare Litigation
- Medical Devices

The final rule is associated with Section 8 of Executive Order 13879 titled “Advancing American Kidney Health,” issued on July 10, 2019. The Executive Order directed DHHS to propose a regulation allowing living organ donors to be reimbursed for related lost wages, child-care expenses, and elder-care expenses through the Reimbursement of Travel and Subsistence Expenses Incurred toward Living Organ Donation program (the “Program”) authorized under section 377 of the Public Health Service Act. Every 10 minutes, another person is added to the national organ transplant waiting list, and approximately 20 people die every day while waiting for a transplant. This final rule should expand the pool of willing organ donors and also improve donation outcomes by: (i) providing for the receipt of more high quality organs; (ii) reducing the waiting period for an organ; and (iii) resulting in better clinical outcomes than continuing dialysis or receiving a deceased donor kidney transplant.

A new regulatory section will be added at 42 C.F.R. § 121.14 to list the categories of “incidental non-medical expenses” to include lost wages, child-care expenses, and elder-care expenses. The other criteria of the Program remain applicable and will still need to be met for reimbursement to be provided to living organ donors and other individuals

evaluated for living organ donation. Of note, concurrently with the publication of this final rule DHHS published a final notice that changes the Program's eligibility guidelines to increase the household income eligibility threshold to 350 percent of the DHHS Poverty Guidelines (from the current threshold of 300 percent) for living organ donors and organ recipients.

If you have any questions on this new rule, one of the authors or your regular Dorsey attorney would be happy to assist you.