

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

May 27, 2021

Mr. Steve Miller
Chief Executive Officer
Association of Organ Procurement Organizations
8300 Greensboro Drive, #L1-620
McLean, VA 22102

Dear Mr. Miller:

The Subcommittee on Economic and Consumer Policy requests documents and information from the Association of Organ Procurement Organizations (AOPO) concerning certain costs that may be indirectly paid for by Medicare and other matters that arose during your testimony before the Subcommittee on May 4, 2021.

Medicare Reimburses Organ Procurement Organizations for Administrative and General Costs, Including AOPO Membership Fees

The nation's 57 Organ Procurement Organizations (OPOs) bear a responsibility to the public to make all feasible efforts to obtain organs for transplant from deceased donors in each OPO's designated service area. For performing this important public service, OPOs receive substantial reimbursement from Medicare for the "reasonable cost of allowable services."¹

Each OPO files annual cost reports with the Centers for Medicare and Medicaid Services (CMS) that outline the OPO's expenses for reimbursable services.² Medicare pays OPOs for organ transplant expenses.

¹ Centers for Medicare and Medicaid Services, *Medicare Provider Reimbursement Manual, Part 1, Chapter 31: Organ Acquisition Payment Policy* (Apr. 1, 2016) (online at www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R471pr1.pdf).

² Centers for Medicare and Medicaid Services, *Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2022 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Proposed Changes to Medicaid Provider Enrollment; and Proposed Changes to the Medicare Shared Savings Program*, 86 Fed. Reg. 25070 (May 10, 2021) (proposed rule) (online at www.federalregister.gov/documents/2021/05/10/2021-08888/medicare-program-hospital-inpatient-prospective-payment-systems-for-acute-care-hospitals-and-the).

OPOs also routinely charge Medicare for various costs not directly related, or entirely unconnected, to organ acquisition, including under a number of general overhead categories including “administrative and general” expenses.³

Based on the Subcommittee’s review of OPO cost reports, we understand that many OPOs are charging to Medicare their AOPO dues by adding that expense to their administrative and general expenses, which are then allocated to organ acquisition costs and passed onto Medicare.

AOPO, as an organization comprising member OPOs, receives the vast majority of its funding from OPOs in the form of membership dues. Thus, there is a clear connection between taxpayer dollars and AOPO’s operations.

Medicare Policy Restricts Reimbursement for Lobbying Activity

We hope that AOPO has ensured that none of the revenues derived from dues reimbursed by Medicare are being used to fund lobbying activities. Medicare policy is clear with respect to “lobbying and political activities” that “the portion of an organization’s dues or other payments related to these activities, including special assessments, is an unallowable cost.”⁴

It is clear that AOPO recently has been focused on increasing its lobbying efforts. During the May 4, 2021, hearing before this Subcommittee, you testified that “when I was hired 14 months ago, part of what I was focused on ... during the hiring process was increasing advocacy. That was what the search committee made clear to me.”⁵

For these reasons, to assist the Subcommittee in its ongoing oversight of OPOs, please provide the following documents and information by June 10, 2021.

1. Itemized expenses from January 1, 2016, to the present, including but not limited to itemized expenses for the following categories:
 - a. executive compensation;

³ Centers for Medicare and Medicaid Services, *Medicare Provider Reimbursement Manual, Part 2, Chapter 33: Organ Procurement & Histo Lab (Form CMS 216-94, Instructions & Specifications)* (Jan. 5, 2021) (HHS-0938--F-3139) (online at www.hhs.gov/guidance/document/provider-reimbursement-manual-part-2-2-pub-15-2-chapter-33-t8-organ-procurement-histo-lab).

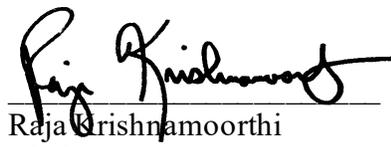
⁴ Centers for Medicare and Medicaid Services, *Medicare Provider Reimbursement Manual, Part 1, Chapter 21: Cost Related to Patient Care* (online at www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021929).

⁵ House Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, *Hearing on the Urgent Need to Reform the Organ Transplantation System to Secure More Organs for Waiting, Ailing, and Dying Patients* (May 4, 2021) (online at <https://oversight.house.gov/legislation/hearings/the-urgent-need-to-reform-the-organ-transplantation-system-to-secure-more>).

- b. payments to consultants or contractors of any nature, including an explanation for the purpose of each consultant or contractor;
 - c. any seminars, conferences, or meetings hosted by AOPO;
 - d. travel expenses, including an explanation for the purpose of the listed travel; and
 - e. lobbying and advocacy;
2. Itemized revenues from January 1, 2016, to the present, including membership dues;
 3. All guidance and other communications with OPOs concerning whether and to what extent AOPO dues may be listed on a CMS cost report and/or reimbursed by Medicare;
 4. All invoices and other communications to AOPO members stating the portion of AOPO fees related to lobbying; and
 5. All documents and communications, including board minutes and reports, referring or relating to the recruitment, evaluation, and hiring of Steve Miller as CEO of AOPO.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and
Consumer Policy



Katie Porter
Member
Subcommittee on Economic and
Consumer Policy

Enclosure

cc: The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.