

## Part B Insider (Multispecialty) Coding Alert

### DRUG PRICING: CMS Seeks Alternative To Inherent Reasonableness For Drugs

The trouble with bluffs is they wear off eventually.

The **Centers for Medicare & Medicaid Services** has been threatening since last year to tackle Medicare drug prices administratively if Congress doesn't address the issue. But Congress has taken a pass on reforming the average wholesale price methodology, and still CMS hasn't acted.

Now CMS is once again threatening to take action on its own, but its less clear than ever what the agency plans to do.

For one thing, the agency isn't saying when it'll act. "We have said publicly if Congress doesn't fix the AWP-based payment system legislatively, CMS will act administratively," one CMS official says. "We do not have a timetable," the official adds, "but we are looking at that issue very closely."

For another thing, CMS Administrator **Tom Scully** has ruled out using inherent reasonableness, short of a catastrophic need. Indeed, the CMS official says the agency is looking for an alternative approach to IR, but won't go into details.

The new approach probably will involve finding an alternative to the Red Book that currently forms the basis of drug prices. "The Red Book is self-reporting," the official notes. "What we're looking at is some ways to get some better data than that."

Meanwhile, the **House Ways and Means Health Subcommittee** still wants to come to grips with the AWP honor system. As with other Medicare issues, the issue of drug payments is being wrapped up in **President Bush's** Medicare reform package, which the subcommittee has yet to take up.

The subcommittee had a hearing on AWP last October, and the issue remains on the subcommittee's radar screen, the CMS source says.

The AWP issue remains on the states' radar screen as well, and the pressure of state lawsuits may yet force drugmakers to start reporting lower costs to the Red Book, which would lower both Medicare and Medicaid payments.

Connecticut Attorney General **Richard Blumenthal** said he plans to sue seven drug makers for playing games with AWP. Blumenthal maintains that the companies' artificial inflation of the AWP forced the state to pay far too much for their products under Medicaid. Nevada, Minnesota, Montana, Texas and other states already have sued drugmakers.