

## Part B Insider (Multispecialty) Coding Alert

### Physician Notes: Judge Shoots Down Medicare's Plan to Pay 'Least Costly Alternative' Therapy for COPD

**Plus: Permanent RAC program on hold; CMS issues flu resources.**

Medicare will have to find another way to save money rather than limiting COPD payments, according to a new court ruling.

A Nov. 4 New York Times article indicates that on Oct. 16, a federal judge ruled that Medicare can no longer use the "least costly alternative" to set payment rates for certain drugs. In this case, the judge found that certain Medicare carriers slashed payments for nebulizer drug Duo-Neb. However, the judge ruled, Medicare should heed the payment rates set by the government.

#### **In other news...**

• **If you were biting your nails awaiting CMS' permanent RAC program to take effect, you can relax -- at least for now.**

On Nov. 4, CMS announced that it would impose an "automatic stay in the contract work of the four Recovery Audit Contractors RACs)."

The decision was made based on protests that two unsuccessful RAC bidders filed with the General Accountability Office (GAO), according to the Nov. 4 CMS statement.

Any decisions about the RAC program will be put on hold until the GAO makes a determination in the case, which it has 100 days to do.

To read the RAC delay information, visit [www.cms.hhs.gov/RAC/03\\_RecentUpdates.asp#TopOfPage](http://www.cms.hhs.gov/RAC/03_RecentUpdates.asp#TopOfPage).

• **With flu season here, you may want to check out some new resources from the government. One tool is a new compliance checklist offered by the feds.**

"'Community Pan-Flu Prepared-ness: A Checklist of Key Legal Issues for Healthcare Providers,' is a scalable tool designed to assist providers along the continuum of care ... in taking concrete steps to prepare for an influenza pandemic," CMS says.

The American Health Lawyers Association, the HHS Office of Inspector General, and the U.S. Centers for Disease Control and Prevention contributed to the document that helps providers "consider the legal impediments and implementation challenges to community pan-flu preparedness and practical solutions to such challenges," CMS notes.

The checklist is online at [www.healthlawyers.org/panfluchecklist](http://www.healthlawyers.org/panfluchecklist)