

**Class Counsel**

The attorneys representing the plaintiffs and the class as class counsel are:

Sally Hart, Arizona Center for Disability Law and Center for Medicare Advocacy, Inc., 100 N. Stone Ave., Suite 305, Tucson, AZ 85701. (520) 327-9547. [shart@acdl.com](mailto:shart@acdl.com).

Dina Lesperance, Arizona Center for Disability Law, 3839 N. Third St., Suite 209, Tucson, AZ 85012-2069.

Gill Deford, Center for Medicare Advocacy, Inc., PO Box 350, Willimantic, CT 06266. (860) 456-7790.

**Counsel for Defendant**

Counsel for Defendant is:

Ori Lev, United States Department of Justice, PO Box 883, Washington, DC 20044.

Dated: November 5, 2002.

**John P. Burke III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 02-28873 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-03-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare and Medicaid Services****Notice of Proposed Settlement and Fairness Hearing**

We are giving notice that if you are a Medicare beneficiary you may be a member of a class action lawsuit involving local coverage policies. This case challenges, among other things, the notice given when claims are denied by Medicare based on local coverage policies. The United States District Court for the District of Arizona has certified a nationwide class action in this case, *Erringer v. Thompson*, No. CV 01-112 TUC BPV (D. Ariz.), and the parties have submitted a proposed Settlement Agreement to the Court for its approval. You may request a copy of, and comment on, the proposed settlement agreement. To receive a copy of the Agreement, please write or email class counsel at one of the addresses listed below. A copy of the proposed Agreement is also available on the Web at: <http://www.acdl.com/legalnews.html>. If you want to comment on the proposed Agreement, you must submit written comments to the Court.

**Summary of Agreement**

The proposed Agreement settles all claims relating to the initial notice provided to Medicare beneficiaries, whose claims for payment are denied in whole or in part based on application of a Local Medical Review Policy (LMRP) or a Local Coverage Determination (LCD), regarding: (i) The use of such policies in the determination of a beneficiary's claim for benefits, and (ii) the beneficiary's opportunity to provide additional evidence or information in support of his/her claim for benefits. In exchange for Plaintiffs releasing all such claims, Defendant agrees to provide beneficiaries whose claims are denied based on an LMRP or LCD notice that:

(1) An LMRP or LCD was used in making the decision to deny their claim; (2) an LMRP or LCD provides a guide to assist in determining whether a particular item or service is covered by Medicare; (3) a copy of the LMRP or LCD is available from the local intermediary or carrier by calling the toll free telephone number listed on the beneficiary's Medicare Summary Notice; (4) the beneficiary can compare the facts in his/her case to the guidelines set out in the LMRP or LCD to see whether additional information from his/her physician might change Medicare's decision; and (5) the beneficiary may also send any additional information regarding any appeal. The Agreement also provides for a way that beneficiaries may receive a copy of the LMRP or LCD used in their case, provides for monitoring of Medicare contractors' compliance with the proposed Agreement's provisions, and provides for a payment of \$23,061 in attorney's fees and costs to Plaintiffs' counsel.

**Fairness Hearing**

The Court will conduct a fairness hearing before Magistrate Judge Bernardo P. Velasco, at the United States District Court, Evo A. DeConcini U.S. Courthouse, 405 W. Congress Street, Tucson, Arizona 85701, on February 3, 2003, at 9 a.m., to determine whether to approve the proposed Agreement as fair, adequate and reasonable. Objections to the proposed Agreement will be considered by the Court if such objections are filed in writing with the Clerk of Court at the above address, on or before December 31, 2002. Attendance at the hearing is not necessary to have an objection considered; however, class members wishing to be heard orally in opposition to the proposed Agreement should indicate in their written objection their intention to appear at the hearing.

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Dina Lesperance, Arizona Center for Disability Law, 3839 N. Third St., Suite 209, Tucson, AZ 85012-2069.

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**Counsel for Defendant**

Counsel for Defendant is: Ori Lev, United States Department of Justice, P.O. Box 883, Washington, DC 20044.

Dated: November 6, 2002.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services**

[CMS-1217-N]

**Medicare Program; December 16, 2002, Meeting of the Practicing Physicians Advisory Council**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services. This meeting is open to the public.

*Meeting Registration:* Persons wishing to attend this meeting must contact the meeting coordinator Diana Motsiopoulos at [dmotsiopoulos@cms.hhs.gov](mailto:dmotsiopoulos@cms.hhs.gov) or (410)-786-3379 at least 72 hours in advance to register. Persons who are not registered in advance will not be permitted into the CMS Headquarters and thus will not be able to attend the

meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

**DATES:** The meeting is scheduled for Monday, December 16, 2002 from 8:30 a.m. until 5 p.m. e.s.t.

**ADDRESSES:** The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Website: You may access the Internet at <http://cms.hhs.gov/faca/ppac/default.asp> for additional information and updates on committee activities.

CMS Advisory Committees  
Information Line: (1-877-449-5659 toll free)/(410-786-9379 local).

**FOR FURTHER INFORMATION CONTACT:** Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard., Mail Stop C4-10-07, Baltimore, MD 21244-1850, (410) 786-3379. News media representatives should contact the CMS Press Office, (202) 690-6145.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation shall occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) of the Act. The remaining members may include dentists, podiatrists, optometrists, and chiropractors. Members are invited to serve for overlapping 4-year terms contingent upon the renewal of the Council's term. Section 14 of the Federal Advisory Committee Act requires that the 2-year term of advisory committees, such as the Council, be

renewed by appropriate action prior to its termination. Section 1868(a) of the Act provides that appointments for Council membership shall be based upon nominations to the Secretary made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Richard Bronfman, D.P.M.; Ronald Castellanos, M.D.; Rebecca Gaughan, M.D.; Joseph Heyman, M.D.; Stephen A. Imbeau, M.D.; Joe Johnson, D.O.; Christopher Leggett, M.D.; Dale Lervick, O.D.; Angelyn L. Moultrie-Lizana, D.O.; Barbara McAneny, M.D.; Michael T. Rapp, M.D. (Chairman); Amilu Rothhammer, M.D.; Victor Vela, M.D.; and Douglas L. Wood, M.D.

Council members will be updated on the status of recommendations. The agenda will provide for discussion and comment on the following topics:

- Program Integrity Customer Service Initiative.
- Is Immunoassay Fecal Occult Blood Testing an appropriate substitution for Guaiac Fecal Occult Blood Testing in the screening for Colon and Rectal Cancer?
- Educational preparation for February PPAC meeting regarding Physician Fee Schedule.
- Physicians Regulatory Issues Team Update.
- Doctor's Office Quality Project: A Physician Level Measurement and Improvement Initiative.

For additional information and clarification on the topics listed, call the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, Friday, December 6, 2002, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the meeting coordinator at [dmotsiopoulos@cms.hhs.gov](mailto:dmotsiopoulos@cms.hhs.gov) no later than 12 noon, December 6, 2002, for distribution to Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at [dmotsiopoulos@cms.hhs.gov](mailto:dmotsiopoulos@cms.hhs.gov) or (410)

786-3379 at least 10 days before the meeting.

(Sec. 1868 of the Social Security Act (42 U.S.C. 1395ee) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sect. 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 02-29362 Filed 11-21-02; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Oncologic Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Oncologic Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on December 17, 2002, from 12:30 p.m. to 6 p.m. and December 18, 2002, from 8 a.m. to 3:30 p.m.

*Location:* Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

*Contact Person:* Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7001, FAX 301-827-6776, e-mail: [SomersK@cder.fda.gov](mailto:SomersK@cder.fda.gov), or FDA

Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On December 17, 2002, the committee will discuss biologics licensing application BL STN 125011/0, BEXXAR, Tositumomab (Anti-B1) and Iodine-131-Tositumomab, Corixa Corp., indicated for the treatment of patients with relapsed or refractory low-grade, follicular or transformed low-grade, B-cell non-Hodgkin's lymphoma (NHL) including patients with rituximab