

To: Our Clients and Friends

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Pharmaceuticals, Medical Devices and Biologics Regulatory and Policy Bulletin



Top News

Coalition Fracturing as Senate Opens Healthcare Debate

Although Senate Majority Leader Reid, D-Nev., was able to garner the 60 votes necessary to begin debate on the Senate health bill, the Democratic coalition that allowed the bill to progress is showing signs of [fracture](#). With members of the coalition threatening to withhold support for the bill if certain provisions are either included or not included, it remains unclear precisely which changes will be made, or [sweeteners added](#), to the bill. In addition, some are concerned that the length of time before some of the bill's provisions take effect will be [disappointing](#).

The bill's provisions would reduce expected Medicare payment cuts for makers of in vitro diagnostics and for testing labs compared to the package approved by the Senate Finance Committee, lift the 14-day rule for some tests for two years beginning in 2011, and limit the total payments that could be made to labs as a direct result of the change to \$100 million. The bill also removes language passed by the Finance Committee that would have required CMS submit a report to Congress on reforming the process for determining Medicare payments for lab tests.

The bill also provides for pediatric exclusivity for biologics, extending the maximum possible brand exclusivity to 12.5 years, in line with the House bill. However, the CBO score of the proposal offers the generics industry its best evidence yet that the Senate version creates a more favorable pathway than the House version does.

The Senate has set aside [three weeks for debate](#) on the legislation, and Senate Majority Leader Reid has stated that he will bring the Senate into session on weekends if necessary to finish work on the bill this year.

Meanwhile, HHS has published a [U.S. state map](#) advocating for health reform that allows viewers to see how health reform would affect their state.

Generics Encouraged by Orszag Statement on Biosimilars

The generic-drug industry may have gotten a show of support from the White House last week, as the administration endorsed a seven year exclusivity period. Some believe that Orszag's November 20 Op-Ed in [The Washington Post](#) also endorses that position. The current House and Senate healthcare bills include provisions allowing for 12 years of exclusivity.

CMS' Final 2010 Fee Schedule Will Hurt Some Device Sectors

Cardiac device and imaging equipment manufacturers hope Congress will revise the 2010 Medicare Fee Schedule before it takes effect Jan. 1 because its fee cuts for services involving their products will reduce sales. Jack Lewin, an internist and president and CEO of the American College of Cardiology, has stated that the cardiac industry expects a 30 percent to 40 percent cut in CMS payments over the next four years because of the rule. The schedule would also reduce payments for pelvic CTs done in non-hospital-based practices by 48 percent and for chest-spine MRIs by 46 percent, according to the Access to Medical Imaging Coalition.

House Bill Would Let FDA Debar Device Researchers

The Strengthening of FDA Integrity Act, H.R. 3932, introduced by Rep. Joe Barton (R-TX), would grant the FDA authority to debar device clinical trial researchers convicted of felonies. The bill also would require the FDA to send annual debarment reports to Congress and would reduce the time it has to debar a researcher from five years to one.

DOJ Prosecutors Turn Attention to Manufacturing, Safety Issues

Recent cases suggest that the Department of Justice is increasingly pursuing cases related to device manufacturing, adverse event reporting and even product labeling. While the Food, Drug & Cosmetic Act does not have whistleblower provisions, Eugene Thirolf, director of DOJ's Office of Consumer Litigation, has stated that he predicts that future qui tam cases will cite FDC Act violations, such as manufacturing controls or adverse event reporting issues, as evidence of fraud against the government in False Claims cases.

2009 Improper Payments Of \$55 Billion In Medicare and Medicaid Prompt Executive Order

President Obama has issued an [executive order](#) prompted by the announcement of \$55 billion in improper payments under the Medicare and Medicaid programs in 2009. The order boosts Medicare provider or supplier eligibility verification, accountability for reducing improper payments, and streamlined coordination among agencies and government levels to stop payment when fraud is identified.

Study Finds Plavix Advertising May Have Cost Consumers \$207 Million Over 5 Years

A [study](#) published in the Archives for Internal Medicine found that the price of Plavix for the Medicaid insurance plan for the poor rose 12 percent "immediately" after consumer ads began in 2001, and that those higher costs added [\\$207 million](#) to Medicaid spending over the next four years.

CER Debate Heats Up With CMS Actuary Data, Cancer Screening Guides

Some are expressing concern that comparative effectiveness research may lead to a rationing of health care, and cited last week's recommendations from two panels to delay routine screenings for breast and cervical cancers.

Oxygen Rules Pinching Patients

New Medicare payment rules for oxygen services that will take effect on January 1 may drive some home-oxygen suppliers out of business and require patients to find new providers, according to a November 24, 2009, article in the Wall Street Journal. Under the new rules, Medicare will pay suppliers at the prevailing rate for the first three years after the patient begins coverage, after which suppliers must continue to provide services for two years, but at a reduced payment rate. After the fifth year, the patient is entitled to receive newer equipment, and Medicare will resume paying suppliers at the higher rate.

China May Streamline Regulations for Device Registration, Trials

China's State Food and Drug Administration soon will no longer require devicemakers to register products in the country of export as a condition of registration and will not automatically require clinical trials in China for certain classes of devices, as part of an overhaul of the country's device regulations. The agency has also stated that it will consider establishing an exemption to the requirement to test product samples in Chinese labs prior to approval if a devicemaker demonstrates it complies with international standards and provides sound scientific evidence.

MEP Questions Figure Used to Justify Not Having Mandatory API Plant Inspections

A member of the European Parliament has questioned the EC's estimate that 20,000 API producers supply the EU, which was used to justify not having mandatory inspections. The member has called for mandatory inspections.

European Health Care Agencies Add Medco Clinical Services to Price Controls

Medco executives have stated that European health care agencies are increasingly interested in new clinical service programs for drugs to create greater cost savings in light of growing inflation and budget deficits.

CHMP: Sponsors Should Consider Factors in Extrapolating Data

The Committee for Medicinal Products for Human Use has recommended that sponsors wanting to extrapolate data from drug trials conducted outside the EU for marketing approval within the EU address several factors that could affect the applicability of the data, including differences in medical practice, disease definition and the study population.

CMS Proposes Coverage With Study Participation For PET in Bone Metastasis

CMS has announced that it is proposing to cover positron emission tomography imaging for identification of bone metastasis in patients with a previously diagnosed solid tumor, but only as part of prospective clinical trials. CMS is accepting comments on the proposal through Dec. 30. A final decision is due Feb. 28, 2010.

New Role for FDA's Temple Could Have Policy Implications

Industry sources are speculating that longtime FDA official Robert Temple's move to the new position of deputy director of clinical science at the agency might allow for some new thinking on off-label communications. The move could also signal increased attention to centralizing clinical trial issues into a single office.

FDA Ponders Whether to Publicly Discuss Pending NDAs and INDs

FDA leadership has stated that they are considering whether, and to what extent, the agency should be able to publicly discuss INDs, drug applications and complete response letters, as part of its Transparency Task Force's efforts to identify the appropriate paradigm for communicating product risks and other information to industry and consumers.

Submitters Still Confused on Adverse Event Reporting to ClinicalTrials.gov

Device and drug firms that submit details about their clinical trials to ClinicalTrials.gov are still having problems reporting adverse events data, Deborah Zarin, the Web site's director, told the FDA Risk Communication Advisory Committee on Nov. 12.

Pharma, Marketers Disagree on Liability for Online Content

In the absence of FDA guidance on Internet promotion, drug companies are grappling with whether their online activities make them responsible for presenting balanced information or liable for others' endorsement of off-label drug use. The

FDA is also struggling with the issue and has requested suggestions on when companies should be responsible for comments about their products.

Third Parties Could Train Auditors for AP Inspection Program, AdvaMed Says

Janet Trunzo, executive VP of technology and regulatory affairs at AdvaMed, has suggested that the FDA allow FDA-certified, third-party auditing firms train their own investigators.

Greater Use of Vaccine for Infection Is Urged

Dr. Anne Schuchat, director of immunization and respiratory disease for the Centers for Disease Control and Prevention, is urging more people to get the vaccine preventing some [secondary bacterial infections](#), due to the [spike](#) in secondary bacterial infections among Americans with swine flu.

Studies Use Cord Blood Stem Cells

Studies in which scientists used stem cells derived from human umbilical cord blood on rats and sheep with heart and lung defects found that the stem cells can help treat lung and heart defects in those animals.

Appellate Court Upholds Injunction Against PTO Final Rule

The U.S. Court of Appeals for the Federal Circuit has upheld an injunction of a PTO final rule that would have affected generic-drug makers by changing the number of claims allowed for patent applications by innovator companies and the number of continuing applications such companies could file.

Drug-Eluting Stents Protected by Preemption, Judge Rules

Louisiana Judge Tom Stagg has dismissed a case against Boston Scientific involving its Class III Taxus drug-eluting stent, citing the preemption provision in the Federal Food, Drug and Cosmetic Act. The ruling mirrors a Minnesota decision in June involving a drug-eluting stent produced by Johnson & Johnson subsidiary Cordis.

Trade Groups Urge FDA to Extend Compliance Period for e-MDR Rule

The Advanced Medical Technology Association and other trade groups have called on the FDA to extend from one year to two years the period for complying with a proposed rule that would require device firms to electronically file adverse event reports with the agency.

Warnings

The FDA has sent warning letters to nine companies for distributing unapproved, misbranded and adulterated drugs.

The FDA has also warned French active pharmaceutical ingredient (API) maker Zach System for failing to take appropriate action on API lots shipped to the U.S. that may be affected by a cross-contamination problem. Although the company discovered the cross-contamination in March 2008, it did not notify customers until after a June FDA inspection, and its investigation has not defined the extent of the contamination.

Approvals

The FDA has [approved Agriflu](#), manufactured by Novartis Vaccines and Diagnostics, for people ages 18 years and older to prevent disease caused by influenza virus subtypes A and B. Agriflu was approved using the FDA's accelerated approval pathway.

The FDA has cleared ziprasidone (Geodon) for treatment of bipolar I disorder as an adjunct to lithium or valproate.

The FDA has granted orphan-drug designation to BioMarin Pharmaceutical's amifampridine phosphate, a drug for Lambert Eaton Myasthenic Syndrome.

The FDA has cleared Eli Lilly and Co. to market Cymbalta as a maintenance therapy for generalized anxiety disorder.

The FDA's Pulmonary-Allergy Drugs Advisory Committee on November 19 voted 11-1 that the UPLIFT trial for Spiriva (tiotropium bromide inhalation powder) addressed a potential signal of stroke and that it addressed a potential signal of adverse cardiovascular outcomes.

Recalls and Notifications

Stryker and the FDA are notifying healthcare professionals of a [recall](#) of 23 Operating Room System II Surgical Navigation Systems because of the potential for the navigation PC SPC-1 component to stop working which could result in the screen freezing, the system updating at a slow rate, or not responding at all.

Xolair Pediatric Efficacy Discussion Slides Into Value of Treatment

The FDA's attempt to describe its internal assessment of "relatively modest" efficacy from the pediatric use of Novartis/Genentech's Xolair (omalizumab) during the Nov. 18 joint meeting of the Pulmonary & Allergy and Pediatric Drugs Advisory Committee included questions from committee members about the efficacy of the product in terms of the cost of treatment, questions generally beyond the purview of regulatory decisions.

GSK Asks Canadian Government to Stop Using H1N1 Vaccine Batch

GSK has asked several Canadian provinces to stop using one batch of its H1N1 vaccine after a higher than expected number of allergic reactions.

FDA Publications and Reports

An article by [Janet Woodcock](#), M.D., Director of the FDA's Center for Drug Evaluation and Research, titled "A Difficult Balance – Pain Management, Drug Safety, and the FDA," appears in the Nov. 26, 2009, issue of [The New England Journal of Medicine](#). The article [discusses FDA efforts](#) to strike a balance between access to pain medication for those who need it and managing the risks posed by various analgesics.

The FDA has published the SSS-GHX pilot-test team's report on the usability and feasibility of the Prototype Unique Device Identifier Database. The report is available at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentifiers/ucm191770.htm>.

The FDA has also published a guidance on Guidance for Industry on Residual Solvents in Drug Products Marketed in the United States. The guidance is available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM070621.pdf>.

Jubilant Organosys to Set Up Joint Venture for Cancer Drug Development

Indian pharmaceuticals company Jubilant Organosys Ltd. has announced that it has entered into an initial agreement to set up a joint venture with University of Alabama at Birmingham and U.S.-based Southern Research Institute that will focus on discovering and developing new drugs to treat cancer, according to a November 24, 2009, article in the Wall Street Journal.

GlaxoSmithKline Announces Withdrawal of Avodart Approval Application

GlaxoSmithKline has announced that it is [temporarily withdrawing](#) its application for U.S. approval of its drug Avodart for the prevention of prostate cancer.

FDA Delays Theravance Decision

Theravance Inc. has stated that the FDA has delayed a decision on whether to approve its infection drug Vitabiv as a treatment for hospital-acquired pneumonia.

FDA Rejects Merck KGaA's NDA for MS Treatment

Merck KGaA has stated that it has received a refuse-to-file letter from the FDA for its cladribine NDA to treat relapsing forms of multiple sclerosis, and that it plans to work closely with the FDA to resolve the agency's concerns and submit the application as soon as possible.

Medtronic Aims for Summer Approval of Deep Brain Stimulation Implant

Medtronic has stated that it is aiming for PMA approval of its deep brain stimulation implant for epilepsy by next summer, despite a recent delay in a scheduled FDA advisory panel review of the device.

India's Ranbaxy Gains as Valtrex Sales Begin in U.S.

Ranbaxy Laboratories Ltd., India's biggest drugmaker, has risen to its highest level in more than a year in Mumbai trading, following its sale of a generic version of GlaxoSmithKline drug Valtrex drug in the U.S.

Partnering Inflammation/Autoimmune Drugs of Increasing Interest to Big Pharma

As Big Pharma companies back away from developing primary care products because of rising development costs and regulatory risk, they are increasingly turning to specialty medicines to fill their pipeline holes, with inflammation/auto-immune medicines being one area of particular interest.

AZ to outsource all API production in 7 years

AstraZeneca has announced that it will outsource the manufacture of all drug APIs and that the move will provide both cost and flexibility benefits and highlighted the Asian manufacturing sector, particularly in China and India.

CMO market worth \$33.7bn by 2014

A recent report is stating that the market for contract manufacturing organisations (CMO) will be worth \$33.7bn (€22.4bn) by 2014. The report also states that developing biologics capabilities is a key imperative for growth.

Will a CV Warning on Meridia Alter FDA View on Obesity Drugs?

Some are worried that the FDA's recent cardiovascular safety warning on Abbott's obesity drug Meridia (sibutramine) could mean higher regulatory risk for up-and-coming obesity drugs.

"Groupthink" Leads Big Pharma to Downplay Neurosciences At Industry's Peril

Harry Tracy, president of NI Research, has warned that a generation of potentially useful drugs for neurologic disorders may be lost if something isn't done to shore up early stage companies being "strangled fiscally" by the shift in partnering and financing toward later-stage projects. Tracy warned that as many as half of small CNS companies could go out of business over the next year.

Regulatory Notices

FDA Publishes Technical Amendment to Final Rule Regarding Organ-Specific Warnings

The FDA is amending a final rule that appeared in the Federal Register of April 29, 2009 (74 FR 19385) (as amended in the Federal Register of June 30, 2009 (74 FR 31177)). The final rule requires new organ-specific warnings and related labeling for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic (IAAA) drug products. The new labeling informs consumers about the risk of liver injury when using acetaminophen and the risk of stomach bleeding when using nonsteroidal anti-inflammatory drugs (NSAIDs). This final rule is effective April 29, 2010, and the compliance date for all products subject to the final rule, including products with annual sales less than \$25,000, is April 29, 2010. More information is available at <http://edocket.access.gpo.gov/2009/E9-28296.htm>.

FDA Publishes Guidance on Residual Solvents in Drug Products Marketed in the United States

The FDA is announcing the availability of a [guidance for industry](#) entitled "Residual Solvents in Drug Products Marketed in the United States." On July 1, 2008, the United States Pharmacopeia (USP) published a new test requirement for the control of residual solvents, General Chapter <467> "Residual Solvents," which replaced USP General Chapter <467> "Organic Volatile Impurities." This guidance reflects FDA's recommendations on how to comply with those USP changes. More information is available at <http://edocket.access.gpo.gov/2009/E9-28247.htm>.

AHRQ Proposes Project on Techniques to Reduce the Spread of MRSA

The Agency for Healthcare Research and Quality has requested that the Office of Management and Budget approve a proposed information collection project: "Spreading Techniques to Radically Reduce Antibiotic Resistant Bacteria (Methicillin Resistant Staphylococcus aureus, or MRSA)." More information is available at <http://edocket.access.gpo.gov/2009/E9-28211.htm>.

Public Meetings

FDA Announces Meeting of Cardiovascular and Renal Drugs Advisory Committee

The FDA has announced that the Cardiovascular and Renal Drugs Advisory Committee will meet on January 11, 2010, from 8 a.m. to 5 p.m. in Silver Spring, Maryland. More information is available at <http://edocket.access.gpo.gov/2009/E9-28302.htm>.

More Information

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