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U.S. FDA Proposes User Fees for Biosimilar Products Comparable to Fees for Branded Biologic Drugs

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On May 10, 2011, the Food and Drug Administration ("FDA") took its next step toward implementing an abbreviated pathway for biosimilar product approval under the Biologics Price Competition and Innovation Act of 2009 ("BPCIA"), by publishing notice of its proposed user fee program for biosimilar and interchangeable biologic products ("biosimilar products"). In the User Fee Notice, FDA seeks comment on proposed fees for manufacturers of biosimilar products, including up-front and annual fees comparable to pre-marketing fees imposed on branded biologic drug manufacturers.

According to IMS Health, global sales of biosimilars have doubled annually since 2006, with U.S. sales rising from $10.6 million in 2007 to $235 million in 2010 through August. Additionally, with 45 branded monoclonal antibody products generating total annual U.S. sales of over $40 billion per year, biosimilar manufacturers await FDA's guidance on the new approval pathway before finalizing strategies to fully realize the tremendous growth opportunity for biosimilar products.

FDA Seeks Input from Stakeholders in the Industry

Following the March 23, 2010, enactment of the BPCIA as a provision of the Affordable Care Act, FDA sought input from industry stakeholders on specific issues and challenges for implementing the biosimilar product pathway at a November 2010 hearing. The BPCIA also requires FDA to seek input from the public and industry stakeholders on the user fee program, and the User Fee Notice is FDA's first published notice on the biosimilar pathway following the November 2010 hearing. FDA seeks comments not only on the proposed user fees, but also on FDA's principles underlying the proposed user fee program, and FDA's performance goals for review of biosimilar product applications. FDA plans to hold hearings to address these issues before providing Congress with its recommendations on the user fee program by the statutory deadline of January 15, 2012, for Congress' authorization by October 2012. Written comments in response to the User Fee Notice were due by June 9, 2011.

User Fees for Biosimilar Applications Remain the Same as Fees for Biologics Licensed Applications (BLAs)

In a move that may surprise biosimilar manufacturers, FDA proposed that user fees for biosimilar product applications under the new section 351(k) abbreviated pathway initially remain comparable to fees imposed for standard BLAs submitted under the preexisting section 351(a) pathway. According to FDA, the fee program balances the need to prevent unnecessary delays in the development and approval of biosimilar products, with the need to ensure adequate FDA resources for reviewing BLAs.

FDA noted that its review to determine biosimilarity or interchangeability of a proposed product in a 351(k) application will be as "complex, technically demanding, and resource-intensive" as its review of a BLA, and that user fees "should provide funding to support activities that occur early in the biosimilar and interchangeable product development cycle."

FDA further anticipated that the nascent state of the biosimilar approval pathway will make FDA's services most critical to biosimilar manufacturers during the investigational stage. Accordingly, FDA's proposed fee program for a biosimilar marketing application imposes payment of an up-front development fee of around $150,000, to be paid upon submission of an investigational new drug application (IND), and annually thereafter. Credit for the development fee would be subtracted from a marketing fee comparable to the marketing fee under 351(a), to yield the biosimilar marketing application fee. Establishment and product fees for biosimilar products would also be comparable to fees for biologic products licensed under 351(a).

FDA's proposed assessment of a biosimilar product development fee upon filing of an IND, coupled with FDA's statement that review of a 351(k) marketing application will be "comparably complex, technically demanding, and resource-intensive as review" of a standard BLA, may suggest that future biosimilar guidelines will require submission of substantial clinical data to establish that a product is biosimilar to, or interchangeable with, a reference biologic drug. However, BioCentury reported that Rachel Behrman, associate director for medical policy in FDA's Center for Drug Evaluation and Research (CDER), indicated that FDA will likely first evaluate analytical data before providing "advice on the extent to which animal or human testing will be necessary" to establish biosimilarity or interchangeability. Behrman also noted that duplicative testing is unethical, stating, "What I think we've shown in our decision on generic enoxaparin, is we may be able to take the European experience [approving biosimilar products] and go one step further."

The User Fee Notice also appeared to resolve a controversy spurred by letters written by two groups of U.S. senators to FDA last January over whether the 12-year exclusivity provision of the BPCIA extends "data" exclusivity or "market" exclusivity. By tracking the statutory language that does not refer to "data" or "market" exclusivity, and discussing performance goals for review of applications submitted four to 10 years after the date of first licensure, FDA may have resolved any remaining uncertainty in favor of "market" exclusivity. In further confirmation, FDA Commissioner Margaret Hamburg told industry leaders at the Generic Pharmaceutical Association (GPhA) meeting in Orlando, Florida in February 2011 that "the legislation as enacted provides for a 12-year market exclusivity period."

Conclusion

The User Fee Notice marks further progress in FDA's implementation of the biosimilar approval pathway. On May 9, 2011, Reuters reported that Janet Woodcock, director of CDER, announced that FDA will provide general guidance on the biosimilar pathway later this year—clearing the way for manufacturers to pursue the abbreviated pathway for bringing biosimilar products to market.

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