The Changing Regulatory Environment – What to Expect in 2012 and Beyond

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Topics

- **2011 - Retrospective**
  - Better Patient Act (Hatch Bill)
  - AdvaMed Risk-based Approach
  - 510(k) Modifications Guidance
- **2012 and Beyond – The Look Ahead**
  - Medical Device Excise Tax
  - FDA User Fees
  - Additional FDA Legislative Reforms
  - Modernizing the FDA Review Process for Emerging Dx

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2011 Better Patient Care Act – Hatch Bill

- **Better Evaluation and Treatment Through Essential Regulatory Reform for Patient Care Act of 2011**
  - Senator Hatch (R-UT) drafted bill to create a new FDA regulatory category – In Vitro Diagnostic Products (IVDP)
  - Requires FDA review only for the highest risk LDTs
  - CLIA lab quality oversight for most LDTs
  - Replaces “safe and effective” standard of evidence with “competent and reliable”
  - Grandfathers LDTs approved by NYS Dept. of Health

BETTER Act put on hold due to opposition from clinical laboratories and Hatch re-election campaign. If Hatch wins, he is expected to re-engage in 2012.

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2010/2011 AdvaMed Risk-Based Approach

- **Built on historical FDA precedents and international risk management standards***
  - Exempt additional low risk Class I/II diagnostic tests from premarket review
  - Align intensity of 510(k) reviews with patient risks, novelty, user and risk mitigations
  - Can be implemented without legislation

- ***July 12, 2011, FDA published intent to reclassify over 30 low risk tests***
- ***April 17, 2012, FDA announced a Pilot Tier/Triage Program***

*FDA DCLD 1996 Tier/Triage Guidance, FDAMA '97 Class I/II Exemptions, and ISO 14971: 1997

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IVD Exemptions – With More to Come?

- **Enforcement Policy for Premarket Notification Requirements for Certain In Vitro Diagnostic and Radiology Devices, Draft 7/12/11; issued 12/20/11**
  - Exemption from 510(k) requirements for Class I and II diagnostic tests that are well standardized and have low risk of adverse events
  - While FDA proposes and finalizes these downclassifications and exemptions, it will exercise enforcement discretion with regard to 510(k) submission requirements for the relevant devices.
  - The devices subject to enforcement discretion per this document include the following:
    - Clinical chemistry devices, such as iron (non-heme) test systems, breath-alcohol test systems, and others;
    - Hematology devices, such as platelet-adhesion tests, euglobulin lysis time tests, and others;
    - Immunology and microbiology devices, which include hemoglobin immunological test systems.

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FDA Tier/Triage Pilot Program

- The Tier/Triage Pilot allows for a "30-day Quick Review" for low risk, well standardized Class I and II diagnostics.
- To qualify for the 30-day Quick Review, the 510(k) submission must:
  - be a high quality submission for a device that is well-known to FDA
  - be a device that does not have existing or unresolved post-market safety issues
  - not require an extensive review by multiple subject matter experts
  - and contain a 510(k) summary that will be used to support the SE decision
- The pilot program will run for 6 months, after which FDA will evaluate and refine the program

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2011 Industry Response to 510(k) Guidance

- **Industry Concerns**
  - Drafted as a “one size fits all” guidance – if implemented as written
  - Role of “significance” in decision making process is being diminished
  - Collection of clinical data should not automatically trigger a new 510(k)
    - CDRH focus driven out of ODE concerns over therapeutic devices
    - Little consideration given to non-patient contact devices (IVDs)
  - Guidance lacks clarification around the term “could significantly affect” safety or effectiveness

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2011 Industry Response to 510(k) Guidance

- **Industry Concerns, continued**
  - Does not address “Special” or “Abbreviated” 510(k)s
  - Creates new requirement for “catch-up” 510(k) that is not supported by statute or regulation
  - Lack of flowcharts increases subjectivity
  - Will lead to significant increase in submissions

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2011 Industry Response to 510(k) Guidance

- **Industry Recommendations**
  - Need to address difference between medical devices and IVDs
  - Recognize the role of QSR Systems (as 1997 guidance did)
  - Recognize decisions based on ISO 14971 risk assessment principles, past experience, and engineering principles
  - Utilize data from multiple devices in making risk assessment
  - Link final guidance with implementation of new 510(k) paradigm (draft issued Dec. 27, 2011)
  - Hold face-to-face meetings with industry to continue the dialogue

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2012 - Medical Device Tax (Affordable Care Act)

Implementation

- **2.3%** excise tax on the sale of medical devices by manufacturers or importers
- Will generate over **$20 billion/10 years** to support coverage expansion contained in Healthcare Reform
- Applies to any FDA listed device intended for use in humans
- Exempt: IDE products, some products sold in retail setting

Repeal Efforts

- House proposal has **229 cosponsors**, bipartisan support
- House vote likely this year
- Senate companion bill has less traction
- Absent funding offset, repeal efforts have little chance of advancing
- Effort to delay 2013 implementation possible

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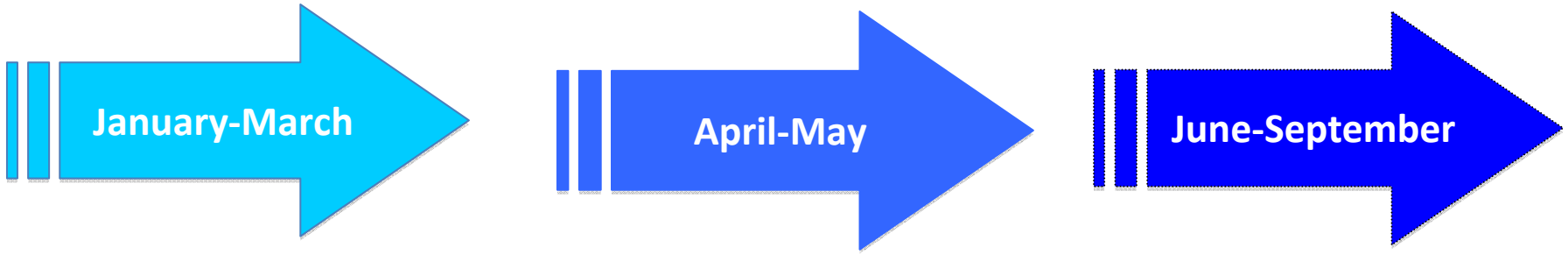
2012 FDA User Fee Reauthorization MDUFA III



January-March

- FDA/industry reach agreement to double user fee in exchange for improved review process
- House Energy & Commerce Committee holds multiple hearings; *consider additional FDA reform proposals*
- Senate HELP Committee conducts arduous consensus development process behind the scenes

April-May

- Proposed legislation to reauthorize MDUFA released
- House and Senate committees consider draft legislation
- Full House and Senate formally consider bills

June-September

- House and Senate blend bills into a conference report
- House and Senate vote on conference report
- President must sign bill by Sept. 30

Congress must also enact UFAs for Pharmaceuticals, Generics and Biologics

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2012 FDA Medical Device Related Legislation

Provision	Senate Discussion Draft	House Discussion Draft
Reclassification Procedures	Changes reclassification procedure from rulemaking to an administrative order, eliminating HHS and OMB review of reclassification decisions	None
Condition of Approval Studies	Moves authority for requiring condition of approval studies from CFR to FFDCA, which means FDA can impose GMPs for non-compliance	None
Section 522	Clarifies that FDA can issue 522 orders at time of clearance or anytime thereafter; establishes one year deadline for initiating surveillance	None
Sentinel	Expands Sentinel program to include devices	None
Recalls	Directs FDA to improve its recall system, as per GAO's 2011 report	Directs FDA to improve its recall system, as per GAO's 2011 report

- This chart and all following charts based on Senate Discussion Draft Issued 3/16/12 and House Discussion Draft issued 3/8/12
- Neither discussion draft contains H.R. 3207 "Modernizing laboratory Test Standards for Patients Act" sponsored by Rep. Burgess

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2012 FDA Medical Device Related Legislation

Provision	Senate Discussion Draft	House Discussion Draft
Unique Device Identifier	Directs FDA to implement as soon as possible	None
Clinical Holds on IDEs	Allows FDA to place clinical holds on IDEs	None
Clarification of Least Burdensome Standard	Adds clarity to the term “necessary” and states that least burdensome language does not alter the FDA standard for evaluation	Incorporates FDA’s least burdensome guidance language into legislation
Agency Documentation of Decisions	Requires FDA to document rationale for 510(k), PMA, and IDE denials	Requires documentation of any significant decision, establishes appeal rights
Good Guidance Practices	Requires sunset of draft guidance(s) if not finalized after 18 months; prohibits Notice to Industry letters by stating they shall be treated as guidance (Note: Provisions specific to CDRH)	Requires FDA to publish notice of intent for guidance and meet with stakeholders in advance; sets 12 month sunset period on guidance if not finalized; prohibits notice to industry letters by stating they shall be treated as guidance (Note: FDA-wide provisions)

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2012 FDA Medical Device Related Legislation

Provision	Senate Discussion Draft	House Discussion Draft
New Pathway Based on Performance Standards	Establishes new pathway to 510(k) clearance based on conformance to performance standards	None
Changes to De Novo	Eliminates NSE requirement; allows de novo submitters to submit draft special controls; establishes timelines for FDA review of de novo submissions	Eliminates NSE requirements
Humanitarian Use Device Exemptions	Permits profits for adult HDEs; already approved devices to make profits if HHS Secretary allows	Permits profits for adult HDEs; gives HHS Secretary flexibility in 4,000 patient HDE cap
Third Party Review Program	Reauthorizes the third party review program	Reauthorizes third party review program; expands scope of devices eligible for such reviews; includes requirements for FDA action on third party reviews; includes provisions for training and re-accreditation
Third Party Inspection Program	None (this was an oversight; Senate intends to reauthorize	Reauthorizes third party inspection

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2012 FDA Medical Device Related Legislation

Provision	Senate Discussion Draft	House Discussion Draft
Conflicts of Interest	Eliminates limitation on number of waivers that can be used for panels, retains disclosure provisions; requires public reporting of number of vacancies, waiver disclosures, etc.	Eliminates Section 12 FDAAA language
FDA Mission Statement	None	Revises FDA's mission to include "promoting economic growth, innovation, competitiveness, and job creation (among other things)
Electronic Submission of Applications	None	Requires electronic submission of drug applications no earlier than 24 months after final guidance issued
Tracking Provisions	None	Requires FDA to establish tracking system for device applications to record interactions between sponsor and FDA, starting with submission
IDEs	None	IDEs cannot be disapproved because the investigation does not meet requirements; establishes timeline for meetings

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2012 FDA Medical Device Related Legislation

Provisions	Senate Discussion Draft	House Discussion Draft
510(k) Decision Summaries	None	Requires FDA to publish detailed decision summaries for each clearance
510(k) Modifications	None	Clarifies that a new 510(k) is not required if the modification "does not significantly affect the safety or effectiveness of the device
Pre-Amendment Devices	Changes reclassification procedures from rulemaking to an administrative order; effectively eliminates HHS and OMB review of decisions; requires final decisions within 2 years of enactment	Requires FDA to establish a schedule for completing reclassification of the pre-amendment devices within 90 days of enactment; requires final regulations to be issued one year later
Harmonization	None	Encourages FDA to harmonize regulatory requirements for inspections and international labeling symbols; requires equal representation for industry on IMDRF; requires IMDRT to issue public reports of meeting minutes

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2012 Diagnostics Regulatory/Payment Policy

Market Access Objective:

Establish rational regulatory process for diagnostic tests and address lag between advances in technology and federal reimbursement.

AdvaMedDx
A Division of the Advanced Medical Technology Association

Situation

- Development of tests cleared for use by the FDA has not kept pace with scientific advancement
- Lab developed tests not subject to same regulatory threshold as manufacturer developed tests
- Medical device user fee bill creates unique opportunity for regulatory reforms

2012 Priorities

- Establish new pathway for emerging diagnostic tests through T/IVD proposal
- Maintain ability of FDA to regulate LDTs
- Protect Clinical Lab Fee Schedule from further cuts in austere budget environment
- Modernize Medicare reimbursement of diagnostic tests (MODDERN Bill)
- Respond to increasing evidentiary requirements to demonstrate test value to enable coverage and reimbursement

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2012 Modernizing the FDA Pathway for Novel Tests

- **Medical Device User Fee Reauthorization (MDUFA III)**
  - In order to accelerate access to novel tests, the clearance process must be enhanced
  - FDA agreed in MDUFA III Commitment Letter to
    - *"work with industry to develop a transitional In Vitro Diagnostics (IVD) approach for the regulation of emerging diagnostics*"
  - Industry proposal for T/IVD approach

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Transitional IVD Market Authorization

- The T/IVD Pathway seeks to establish a progressive stepwise review process for novel diagnostics
- Contemplated for a small subset of emerging diagnostics
- Those for which valid scientific information already exists in literature
- No previous clearance or approval for such use
- Reason to believe the probable benefit outweighs the risk of not having the test available
- Test used in conjunction with other clinical information (not stand alone use)

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Transitional IVD Market Authorization

1. Submit data to FDA on analytical performance, including simulated performance in human samples
2. Receive 3-year transitional market authorization for analytical claims while pursuing clinical claims
3. Must meet FDA GMPs -- design/manufacturing, safety reporting (GMPs) -- plus annual progress reports
4. At the end of 3 years, submit full premarket submission or authorization expires and product must be withdrawn
5. Multiple T/IVDs can exist for same analyte. Once an IVD is cleared for a specific diagnostic use, no new T/IVD market authorization will be issued

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Transitional IVD Market Authorization

- **Benefits include**
  - Improving patient care by accelerating access to needed tests
  - Encourage investment in emerging diagnostics
  - Provide a practical mechanism for FDA to consolidate and facilitate premarket reviews
  - T/IVD process would be open to all test developers, but no mandate to use it

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Questions?