



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-1307]

Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities--Questions and Answers; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled “Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities--Questions and Answers.” This guidance provides answers to common questions regarding the communication of health care economic information (d) about approved prescription drugs and approved or cleared medical devices by medical product manufacturers, packers, distributors, and their representatives (firms) to payors, formulary committees, or other similar entities with knowledge and expertise in the area of health care economic analysis (collectively referred to as payors). This guidance also provides answers to common questions about both firms’ dissemination of information to payors about medical products that are not yet approved or cleared for any use and firms’ dissemination of information to payors about unapproved uses of approved or cleared medical products. The Agency is issuing this guidance to explain FDA’s current thinking on frequently asked questions regarding these topics in order to provide clarity for firms and payors. FDA is also announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: The announcement of the guidance is published in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Submit written comments on the collection of information by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: To ensure comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-New and title “Recommendations for Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities.” Also include the FDA docket number found in brackets in the heading of this document.

You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2016-D-1307 for “Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities--Questions and Answers; Guidance for Industry; Availability.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that

states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research,

Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002; or to the Office of Communication, Education and Radiation Programs, Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Kristin Davis, Office of Policy, Office of the Commissioner, 10903 New Hampshire Ave., Bldg. 32, Rm. 4252, Silver Spring, MD 20993-0002, 301-796-0418; Sheila Ryan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3320, Silver Spring, MD 20993-0002, 301-796-1200; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911; or Ana Loloie Marsal, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5452, Silver Spring, MD 20993-0002, 301-796-8774.

Regarding the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 11601 Landsdown St., 10A-12M, North Bethesda, MD 20852, 301-796-5733, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and review staff entitled “Drug and Device Manufacturer Communications With Payors, Formulary Committees, and

Similar Entities--Questions and Answers.” This guidance provides answers to common questions regarding firms’ communications of HCEI about their approved prescription drugs to payors. The guidance also provides answers to common questions regarding firms’ communications of HCEI about their approved or cleared medical devices to payors. In addition, the guidance addresses common questions relating to firms’ dissemination to payors of information about medical products¹ that are not yet approved or cleared for any use and about unapproved uses of approved/cleared medical products. For purposes of this guidance, the term “payors” collectively refers to payors, formulary committees, or other similar entities with knowledge and expertise in the area of health care economic analysis that are responsible for making product selection or acquisition, formulary management, and/or coverage and reimbursement decisions on a population basis regarding drugs and/or devices on behalf of health care organizations, which may include entities such as integrated health care delivery networks, hospitals, and hospital systems.

FDA is aware that payors seek a range of information on effectiveness, safety, and cost-effectiveness of approved/cleared medical products, including information from firms, to help support their medical product selection, formulary management, and/or coverage and reimbursement decisions on a population basis. This information may differ from and may be in addition to the information FDA reviews in order to make drug and device approval or clearance decisions. Because coverage and reimbursement decisions by payors impact many patients, FDA believes it is critical that HCEI provided by firms to payors about their approved drugs and approved/cleared devices be truthful and non-misleading.

With respect to HCEI regarding approved drugs, section 502(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 352(a)), as amended by section 114 of the Food

¹The term “medical product” refers to both drugs and devices.

and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) and section 3037 of the 21st Century Cures Act (Pub. L. 114-255), includes a provision regarding communication of HCEI about such drugs to payors. Section 502(a) of the FD&C Act indicates that HCEI provided to payors carrying out their responsibilities for the selection of drugs for coverage or reimbursement shall not be considered to be false or misleading if the HCEI relates to an FDA-approved indication for the drug, is based on competent and reliable scientific evidence, and includes, where applicable, a conspicuous and prominent statement describing any material differences between the health care economic information and the FDA-approved labeling for the drug. Section III.A of this guidance provides FDA's current thinking on key concepts in section 502(a) of the FD&C Act and recommendations for how firms can communicate HCEI about approved drugs to payors in accordance with this section to help ensure that payors have information needed to make informed drug selection, formulary management, and/or coverage and reimbursement decisions and to help ensure that the information is not false or misleading. Section III.A also discusses how FDA's requirements for submission of promotional materials apply to HCEI about approved drugs disseminated by firms to payors. If a firm disseminates HCEI about an approved drug in accordance with this guidance, FDA does not intend to consider such information false or misleading. In addition, FDA does not intend to use HCEI about approved drugs disseminated consistent with this guidance as evidence of a new intended use.

When FDA published a notice announcing the availability of the draft guidance document in the *Federal Register* of January 19, 2017 (82 FR 6568), the Agency specifically requested comments from interested parties on the extent to which the principles provided in section III.A of the draft guidance could be applicable to communications of HCEI about approved/cleared devices (82 FR 6568 at 6571). We also stated that, to the extent that interested

parties believe that different considerations should apply to medical devices or that guidance is needed on additional issues with respect to medical device firms' communications of HCEI about approved/cleared medical devices to payors, FDA is interested in input on those topics as well (*Id.*). FDA received 23 comments on the draft guidance; 3 comments expressed support for applying the recommendations in section III.A of the guidance to medical devices and no comments opposed applying these recommendations to medical devices. In response to this feedback, section III.B of the guidance provides FDA's recommendations for how firms can communicate HCEI about approved or cleared devices to payors to help ensure that device firms' communication of HCEI to payors is not false or misleading. These recommendations generally follow the recommendations in section III.A of the guidance. If a device firm disseminates HCEI about an approved or cleared device in accordance with this guidance, FDA does not intend to consider such information false or misleading. In addition, FDA does not intend to use HCEI about approved or cleared devices disseminated consistent with this guidance as evidence of a new intended use.

FDA also recognizes that due in part to their need, in some situations, to plan for and make coverage and reimbursement decisions far in advance of the effective date of such decisions, payors are also interested in receiving information from drug and device firms about medical products that are not yet approved or cleared by FDA for any use, and about unapproved uses of approved/cleared medical products. Section III.C of the guidance discusses FDA's thinking with respect to communication by firms to payors of information about unapproved products² and about unapproved uses of approved/cleared medical products. The draft guidance

²As used in this guidance, the term "unapproved products" refers to drugs and devices that are not yet approved/cleared by FDA for any use (but which must be approved/cleared to be legally marketed), including products for which firms have submitted or plan to submit a new drug application, a biologics license application (including an application submitted under the 351(k) pathway), an abbreviated new drug application, a premarket

provided similar recommendations, but the relevant section only addressed communications related to unapproved products. As noted above, FDA received 23 comments on the draft guidance; 17 of these comments requested that the Agency also provide recommendations for firms' communications to payors of information about unapproved uses of approved/cleared medical products. No comments opposed providing recommendations on this topic. In response to these comments, section III.C of this guidance provides FDA's recommendations on firms' dissemination to payors of information about both unapproved products and about unapproved uses of approved/cleared medical products. As with firms' communications to payors of HCEI about approved prescription drugs and approved or cleared devices, it is essential that information provided by firms about their unapproved products and about unapproved uses of their approved/cleared medical products be truthful and non-misleading. Therefore, section III.C also lays out a series of recommendations to help achieve these goals.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on drug and device manufacturer communications with payors, formulary committees, and similar entities. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection for OMB review and clearance:

Title: Recommendations for Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities; OMB Control No. 0910--NEW

The information collection supports Agency guidance and includes Third-Party Disclosure recommendations regarding information that firms should include in HCEI for prescription drugs if they choose to disseminate such materials (“HCEI materials”) to payors, in accordance with section 502(a) of the FD&C Act. Specifically, FDA recommends that various aspects of study design and methodology of an economic analysis (i.e., type of analysis, modeling technique, patient population, perspective/viewpoint, treatment comparator, time horizon, outcome measures, cost estimates, and assumptions); factors that limit generalizability of an economic analysis; limitations to an economic analysis; and sensitivity analyses, if applicable, be included in HCEI materials disseminated to payors to allow for informed decision-making.

Furthermore, FDA recommends that firms include other information when disseminating HCEI materials, as applicable, to provide a balanced and complete presentation. Such information includes a statement of the FDA-approved indication of the drug and a copy of the most current FDA-approved labeling. Under section 502(a) of the FD&C Act, firms must also include a conspicuous and prominent statement to describe any material differences between the HCEI and the FDA-approved labeling. HCEI materials should also disclose whether certain studies or data sources were omitted from an economic analysis and how the omission of those studies or data sources may alter the conclusions presented in the analysis. Moreover, FDA

recommends that HCEI materials disclose important risk information associated with the approved use of the drug, and pursuant to section 502(a) of the FD&C Act, must disclose any additional risk information related to assumptions that vary from the approved labeling. Finally, HCEI materials should disclose potential financial or affiliation biases to the extent reasonably known by firms at the time of dissemination.

The guidance provides similar recommendations for HCEI materials disseminated to payors about approved or cleared devices.

If firms choose to make communications to payors about unapproved products or unapproved uses of approved/cleared products, FDA recommends that firms include a clear statement with their communications that the product or use is not approved/cleared and that the safety or effectiveness of the product or use has not been established. In addition, FDA recommends providing information related to the stage of product development (e.g., the status of any study(ies) in which a product/new use is being investigated and how it relates to the overall product development plan; whether a marketing application for the product or new use has been submitted to FDA or when such a submission is planned). FDA also recommends that communications that include factual presentations of results from studies also describe material aspects of study design and methodology and disclose material limitations related to the study design, methodology, and results. Moreover, FDA recommends that firms provide followup information to payors if previously communicated information becomes materially outdated as a result of significant changes or as a result of new information regarding the product or its review status.

Description of Respondents: For information that should be included when HCEI about approved prescription drugs is disseminated to payors, respondents to this collection of

information are firms that manufacture prescription human drugs products, including biological products; for information that should be included when HCEI about approved or cleared medical devices is disseminated to payors, respondents to this collection of information are firms that manufacture medical devices; for information that should be included in communications with payors about unapproved products and about unapproved uses of approved/cleared products, respondents to this collection of information are firms that manufacture prescription human drug products, including biological products, and medical devices.

As noted, in the *Federal Register* of January 19, 2017, we published a notice announcing the availability of the draft guidance document and included an analysis under the PRA of the information collection burden associated with recommendations found in the draft guidance. Although no comments were received in response to the four information collection topics solicited in the notice, we revised the guidance as discussed above. These revisions resulted in a significant increase to the number of respondents to the information collection and also recommended new data elements. However, because our estimate reflects the average burden of the information collection distributed among all respondents, we believe any increase resulting from revisions to the guidance would be nominal.

Based on the post-marketing submissions of promotional materials using Form FDA 2253 received in calendar year 2016 for approved human prescription drugs, including prescription biological products, FDA estimates that approximately 440 manufacturers will disseminate 4,400 distinct HCEI materials for approved human prescription drugs annually. FDA estimates that approximately 236 manufacturers will disseminate 2,360 distinct HCEI materials for approved/cleared devices annually. FDA estimates it will take firms approximately 20 hours to compile and draft the information that this final guidance recommends should be

included when disseminating HCEI materials for approved human prescription drugs and approved/cleared devices. Based on the number of human prescription drugs and devices approved/cleared and the number of efficacy supplements approved/cleared (i.e., approving/clearing a new use for an approved/cleared product) in a calendar year, FDA estimates that approximately 717 manufacturers will prepare 1,434 distinct communications of information to payors about their unapproved products or unapproved uses of approved/cleared products annually. FDA estimates it will take firms approximately 0.5 hour to compile and draft the information that this final guidance recommends should be provided with communications to payors about unapproved products or unapproved uses of approved/cleared products. Additionally, FDA estimates that 50 percent of the firms will spend approximately 2 hours to compile and provide 718 distinct communications of followup information regarding previously communicated information to payors about their unapproved products or unapproved uses of approved/cleared products annually. We therefore estimate the burden of the information collection as follows:

Table 1.--Estimated Annual Reporting Burden¹

Type of Information	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response (Hours)	Total Hours
Recommended information to be included when firms choose to disseminate HCEI materials to payors about approved prescription drugs	440	10	4,400	20	88,000
Recommended information to be included when firms choose to disseminate HCEI materials to payors about approved or cleared medical devices	236	10	2,360	20	47,200
Recommended information to be included when firms choose to disseminate information about unapproved products or unapproved uses of approved or cleared products	717	2	1,434	.5 (30 minutes)	717

Followup information to payors regarding previously communicated about unapproved products or unapproved uses of approved or cleared products	359	2	718	2	1,436
Total					137,353

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

This guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 314.81(b)(3)(i) (Form FDA 2253) have been approved under OMB control number 0910-0001.

FDA is issuing this final guidance subject to OMB approval of the collections of information. Before implementing the information collection provisions of the guidance, FDA will publish a notice in the *Federal Register* announcing OMB's decision to approve, modify, or disapprove the collections of information, including OMB control number(s) for newly approved collections.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>, or <https://www.regulations.gov>.

Dated: June 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

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