SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ATTORNEYS AT LAW

Life Science Law BLOG
Highlight Legal Issues Regarding the Life Sciences Industry

Life Sciences Law Blog

Posted at 12:16 PM on October 7, 2010 by Sheppard Mullin

FDA Announces Much Anticipated Public Hearing on Biosimilars

By Deborah M. Shelton

Having had the opportunity to analyze the biosimilars provisions of the new health care law enacted this past March, stakeholders have at long last the chance on November 2-3 to weigh in on FDA's implementation of the biosimilar approval pathway. FDA will hold a two-day public hearing on November 2-3, 2010, from 8:30 am to 4:30 pm, at the FDA Conference Center on FDA's campus in White Oak, Maryland. FDA published its official announcement of the public hearing in the October 5th issue of the Federal Register. 75 Fed. Reg. 61497 (Oct. 5, 2010). Here is the link to the Federal Register Notice: http://edocket.access.gpo.gov/2010/pdf/2010-24853.pdf.

The Biologics Price Competition and Innovation Act of 2009 (BPCIA), a subtitle of the Patient Protection and Affordable Care Act, creates an abbreviated approval pathway for biological products "highly similar" to a previously approved reference product. The BPCIA also permits FDA to deem as interchangeable a biosimilar that satisfies certain additional specified standards.

FDA now turns its attention to the implementation phase. As FDA acknowledges, implementation of the BPCIA poses significant scientific and technical challenges. Since most biological products are produced in a living system versus through chemical synthesis, their molecular structure and their manufacturing is highly complex.

The Agency seeks input from a diverse group of stakeholders -- including biopharmaceutical manufacturers, healthcare professionals and institutions, third-party payers, associations, and the public -- on the implementation of the abbreviated approval pathway and the scientific and technical challenges presented.

FDA solicits information and comments on any issues related to biosimilars and/or interchangeability, but poses several specific statutory provisions on which it seeks input at the public hearing. These areas of interest include issues concerning biosimilarity, interchangeability, pharmacovigilance, the definition of "biological product," guidance priorities, exclusivity, permissible use of supportive data and information, the statutory provisions governing the transition of approval of biological products, and user fees.

Specifically, FDA seeks input on the following:

- Biosimilarity
    - What scientific and technical factors should FDA consider in determining whether a biological product is “highly similar” to the reference product notwithstanding minor differences in clinically inactive components?
    - What scientific and technical factors should FDA consider in determining the analytical, animal, and clinical data required to assess the nature and effect of actual or potential structural differences between a proposed biosimilar and the reference product?
        - What is the range of structural differences between the reference product and the proposed biosimilar that may exist, but yet still permit a determination of "highly similar" in the absence of any clinically meaningful differences?
        - Under what circumstances would it be appropriate for FDA to consider exercising its authority to find that animal or clinical studies are “unnecessary” for a particularly biosimilar application.
- Interchangeability
    - What factors should FDA consider in determining whether a proposed biosimilar can be “expected to produce the same clinical result as the reference product in any given patient?”
    - What factors should FDA consider in assessing the potential risk related to switching between use of a proposed interchangeable biological product and the reference product, or among interchangeable products?
- Patient Safety and Pharmacovigilance
    - In developing a pharmacovigilance program for proposed biosimilar and interchangeable biological products, what factors unique to these products should be considered?
    - What approaches can FDA, industry, and the healthcare community take to ensure appropriate pharmacovigilance for biosimilar and interchangeable biological products?
    - If each product were given a unique non-proprietary name, should there be appended a prefix or suffix added to that name to distinguish those products that are biosimilars, interchangeable, and those have not been demonstrated to be a biosimilar? What factors should be considered to reduce any negative impact on

the healthcare delivery system related to unique non-proprietary names for highly similar biological products?

- What safeguards should FDA consider to assist the healthcare community when prescribing, administering, and dispensing biological products to prevent unsafe substitution?

- What are possible ways that FDA may consider to communicate a finding that a particular biological product is or is not biosimilar to, or interchangeable with, a reference product?

- Use of Supportive Data and Information

  - From a "scientific perspective," to what extent, if any, should animal or clinical data comparing a proposed biosimilar with a non-U.S. licensed comparator product be used to support a demonstration of biosimilarity to an FDA-licensed reference product? What type of bridging data or other information would be needed to scientifically justify the relevance of the comparative data?

- Definition of a "Biological Product"

  - What "scientific and technical factors" should FDA consider if it were to develop a regulatory definition for "protein" as distinguished from peptide or polypeptide?

  - What "scientific and technical factors" should FDA consider if it were to develop a regulatory definition for "chemically synthesized polypeptide?"

- Guidance Documents

  - What types of guidance documents should FDA make a priority during early implementation?

  - What "scientific and technical factors" should FDA consider in determining whether current science and experience are sufficient to permit biosimilar approval for a product or product class?

- Exclusivity

  - What factors should FDA consider in determining the types of "related entities" that may be deemed covered by the existing 12-year exclusivity for a biological product?

  - What factors should FDA consider in determining whether a modification to the structure of a biological product "results in a change in safety, purity, or potency" such that a subsequent BLA could be deemed eligible for a 12-year period of exclusivity?

- Transition Provisions
    - What "scientific" factors should FDA consider in defining and applying "product class" for purposes of determining which applications for biological products may be submitted under the Food, Drug, and Cosmetic Act during the statutory 10-year transition period?
    - What "scientific" factors should FDA consider in determining whether another biological product approved under a full BLA could serve as the reference product for a biosimilar application?
- User Fees
    - If PDUFA were to be considered as a model for a user fee structure for biosimilar and interchangeable biological products, what factors should FDA consider and why?
    - What factors should FDA consider when determining whether to recommend that user fees for biosimilar and interchangeable biological products be used to monitor post-market safety?
    - In addition, FDA seeks to identify companies, and industry associations representing such companies, that would be affected by a user fee program for biosimilar and interchangeable biological products. **FDA requests such entities to be identified by sending the following information to BiosimilarsUserFeeProgram@fda.hhs.gov**: the name of the entity; contact person; e-mail address; and telephone number.

* * * *

Attendance at the public hearing is free and will be on a first-come, first-served basis. **Persons wishing to present at the public hearing must register on or before October 11, 2010,** by sending an e-mail to biosimilarspublicmtg@fda.hhs.gov, providing complete contact information (name, title, affiliation, address, e-mail and phone number). Those persons wishing to present but that do not have e-mail access may register by contracting Sandra Benton, FDA CDER, at (301) 796-1042. FDA will also make available a live Webcast of the two-day public hearing. The Webcast can be viewed via http://www.fda.gov/Drugs/NewsEvents/ucm221688.htm. A video recording of the public hearing will be made available at this same internet address for one year.

Authored By:

Deborah M. Shelton
(202) 772-5351
dshelton@sheppardmullin.com