The Changing Policy Environment for Diagnostics

What to Expect in 2013 and Beyond

Richard Naples and Sheri Hall

AMDM Annual Meeting

April 18, 2013

Policy Topics

- **2011/2012 - Retrospective**
  - AdvaMed Risk-based Approach
  - FDA Tier Triage Program
  - 510(k) Program Guidance
  - Other pending final guidance
- **2013 and Beyond – The Look Ahead**
  - Medical Device Excise Tax
  - Unique Device Identifiers
  - FDA User Fees Performance Expectations
  - Modernizing the Regulatory and Reimbursement Process for Emerging Diagnostics

2011-2012 Risk-Based Approach

- **A Risk-based Approach to regulation built on historical FDA precedents* and international risk management standards was submitted to FDA by AdvaMed for its consideration; it proposes to**
  - Exempt additional low risk Class I/II diagnostic tests from premarket review through a defined algorithm
  - Align intensity of 510(k) reviews with patient risk, novelty of the marker, risk mitigations, submission quality, and FDA experience
  - And be implemented without a regulation change
- **In July 2011 FDA published their intent to reclassify over 30 low risk tests with under consideration with more to come**

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

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. The pilot program will run for 6 months, after which FDA will evaluate and refine the program**
- **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

Draft 510(k) Program Guidance

- **Guidance Objectives to provide greater clarity regarding:**
  - when clinical data should be submitted in a 510(k)
  - the appropriate use of multiple predicates
  - criteria for identifying "different questions of S&E" and technological changes that raise such questions
  - resolving discrepancies between the 510(k) flowchart and the FD&C Act
  - the characteristics that should be included in "intended use“, and
  - a harmonized 510(k) summary format

Draft 510(k) Program Guidance

- **Industry Concerns Needing Clarity**
  - Guidance appears to be more “bright line” compared to the K-86 Blue Book (Mohan) Memorandum; it can be interpreted as a “one size fits all” guidance if implemented as written
  - Role of “significance” in decision making process is diminished
  - Collection of clinical data should not automatically trigger a new 510(k)
    - ODE concerns over therapeutic or other specific device-types seem to have raised the bar for all other devices
    - Considerations were not specifically made for IVD products that use clinical data in many aspects of product development
  - Guidance needs clarification around the term “could significantly affect” safety or effectiveness

2011 Industry Response to 510(k) Guidance

- **Industry Concerns (cont.)**
  - Seems to limit use of the Special 510(k)s compared to current guidance
  - Appears to create new requirement for “catch-up” 510(k)s that is not supported by statute or regulation
  - Flow charts are not included, but rather guidance is delivered through a series of examples
    - Lack of flowcharts increases subjectivity
    - Insufficient number of IVD examples make it more difficult for our industry to effectively use the guidance
  - Could lead to increase in submissions as industry and FDA gain experience with the guidance

2011 Industry Response to 510(k) Guidance

- **Industry Recommendations for the Final Guidance**
  - More granularly address differences between medical devices and IVDs
  - Integrate the role of QSR Systems (as 1997 guidance did) to balance submission necessity and content
  - Recognize decisions based on ISO 14971 risk assessment principles, past experience, and engineering principles
  - Utilize data from multiple devices in making risk assessment
  - Hold face-to-face meetings with industry to continue the dialogue

Other Key Guidance

- **Molecular Diagnostic Instruments with Combined Functions (4/9/13)**
- **E-Copy Program for Medical Device Submissions (10/17/12)**
- **Actions on PMA; Effect on FDA Review Clock and Goals (10/15/12)**
- **Actions on 510(k) Submissions; Effect on FDA Review Clock and Goals (10/15/12)**
- **Review to Accept Policy for 510(k)s (8/13/12)**
- **Acceptance and Filing Reviews for PMAs (7/31/12)**
- **The Pre-Submission Program and Meetings with FDA Staff (7/13/12)**

Other Key Guidance

- **Procedures for 513(g) Requests (4/6/12)**
- **Providing Submissions in Electronic Format – Standardized Study Data (2/12/12)**
- **Medical Device Classification Product Codes (1/3/12)**
- **The 510(k) Program (12/27/11)**
- **De Novo Classification Process (10/3/11)**
- **Applying Human Factors and Usability Engineering (6/22/11)**
- **IVD Products Labeled RUO and IUO (6/1/11)**

2013 – Medical Device Excise Tax (Affordable Care Act)

- **Implementation**
  - 2.3% excise tax on the sale of medical devices by manufacturers or importers; Expected to generate over $20 billion over 10 years to support coverage expansion contained in Healthcare Reform
  - Begins effective January 1, 2013; not likely to repeal or delay
  - Applies to any FDA listed device intended for use in humans
  - Exemptions are limited to devices for further manufacture, devices to be exported, and devices to be sold at retail for general public use
- **Challenges for the Industry**
  - Excise tax impact to company bottom lines; impact to jobs
  - Logistical challenges with distributors and partners
  - Industry is lobbying Congress for repeal

2013 – Unique Device Identifiers

- **Basics of the Regulation**
  - Requires the label of medical devices (including IVDs) to include a UDI in both plain-text version and form that uses AIDC technology, phase in over 5 years from final release
  - Requires direct application to the device itself for many categories
  - Requires submission of information for each device to a database that FDA will make public to identify the device through its distribution and use
  - Requires expiration dates to be in a standard “US” format within 1 year from final release
  - Specifies technical requirements of a UDI
  - UDIs must be “issued” under a system operated by an FDA-accredited issuing agency (to be established)

2013 – Unique Device Identifiers

- **Challenges for the Industry**
  - IVDs don't fit "cleanly" into the implementation scheme
  - Small containers/vials may not have space to barcode
  - Need to barcode at the kit component level or just kit
  - GUDID (Government UDI Database) content entry and maintenance
  - Integration of UDI requirements into current quality systems processes and documentation
  - Meeting the timelines for date format and Class III products (one year from implementation date)
  - Cost

Direction of UDI Final Rule

- Default for UDI location will be on the label
- Kit requirements will not be overly prescriptive
- FDA acknowledged requests for
  - Class II small parts to be exempt from unit use marking
  - Manufacturing date as criteria for implementation
- ISO 8601 seems like the date format – YYYY-MM-DD
- Reinforced phasing out NDC/NHRIC
- GUDID Guide is under development with data definitions

The expected June date for FR could slip…

FDA User Fee Performance Expectations

- **MDUFA III**
  - Result of more than a year of FDA/Industry/Public input and negotiations
  - FDA can collect $595 million (plus inflation adjustments) over the 5 year period of the agreement
  - FDA will hire more than 200 full time workers to meet certain performance goals outlined in the legislation
- **Key Goals**
  - FDA will render a 510(k) decision for 91% of submissions within 90 days
  - FDA will issue a number of guidance documents to explain the provisions of MDUFA III, improve the process, and ensure performance goals

FDA User Fee Performance Expectations

- **Aspects expected to improve 510(k) & PMA processes**
  - Pre-submission structured processes
  - Submission acceptance criteria
  - Interactive reviews
  - New guidance documents
  - Low risk medical device exemptions
  - Transitional IVD approach for emerging diagnostics
  - Performance goals for 510(k)s and PMAs
  - “No submission left behind” commitment
  - CLIA waiver process and goals improvements
  - Independent assessment of the progress to the MDUFA III goals

Diagnostics Regulatory/Payment Policy

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

- Clinical Lab Fee Schedule has not been updated since the mapping of the human genome
- FDA clearance process has not kept pace with scientific advancement
- Lab developed tests not subject to same regulatory threshold as manufacturer developed tests
- Medical device user fee agreement directs FDA to work with industry to develop a new pathway for emerging diagnostic tests

2013 Priorities

- Modernize Medicare reimbursement of diagnostic tests
- Respond to increasing evidentiary requirements to demonstrate test value to enable coverage and reimbursement
- Formalize new pathway for emerging diagnostic tests through T/IVD proposal
- Recognize FDA's authority (and value) in regulating all diagnostics

Evolving Regulatory Environment for Advanced Diagnostics

- FDA has developed a guidance on the regulation of LDTs; currently help up at OMB, no release date set
- Many proposals for regulation of Advanced Diagnostics
  - Senator Hatch – “BETTER Bill”
  - 21st Century Coalition
  - Burgess Bill for RUOs used in LDTs
  - AdvaMed
- WSJ April 3 article on concerns over LDTs for prenatal testing is likely to generate additional FDA focus

Hatch Bill – BETTER Act – 2013 Re-boot

- **Better Evaluation and Treatment Through Essential Regulatory Reform for Patient Care Act of 2013**
  - Objective: To accelerate the advancement and quality of personalized health care through new regulatory pathways
  - Purpose: To create a new regulatory framework outside the medical device framework of the FFDCA
  - Scope: Would apply to all tests ordered by physicians and performed in a clinical lab setting, whether LDTs or IVDs
  - Would remove IVDs from the definition of a medical device and create a new class of medical product –
    -- In Vitro Diagnostic Products (IVDPs)
  - Effective date 5 years after enactment

Hatch Bill – BETTER Act – 2013 Re-boot

- **Other Key Provisions of the 2013 BETTER Act**
  - Creates three classes of risk
    - Category 3 IVDP – high impact for serious or life-threatening disease and intended to be primary determinant of treatment
    - Category 2 IVDP – moderate impact for serious or life-threatening disease but only used as adjunctive information
    - Category 1 IVDP – Lowest risk for non-serious disease
  - "Competent and reliable scientific evidence" standard replaces "safe and effective" device standards
  - Currently marketed LDTs would be grandfathered
  - Establishes Advisory Committee to review classification

Modernizing the FDA Review Process for Emerging Diagnostics (T/IVDs)

- **Industry Objective**
  - Establish rational regulatory process for diagnostic tests and address lag between advances in technology and federal reimbursement
- **Situation**
  - Development of tests cleared by the FDA for clinical diagnostic use has not kept pace with scientific and medical advancement
  - Laboratory developed tests (LDTs) are better positioned to keep pace with scientific and medical advancement as they are not subject to the same regulatory threshold as manufacturer developed tests
  - MDUFA III has created a unique opportunity for regulatory reforms that provide IVD manufacturers an innovative pathway for emerging diagnostic tests

AdvaMedDx
A Division of the Advanced Medical Technology Association

BD

T/IVDs for Emerging Diagnostics

- **MDUFA III Provision**
  - "work with industry to develop a transitional In Vitro Diagnostics (IVD) approach for the regulation of emerging diagnostics"
- **2012 & 2013 Priorities**
  - Establish new pathway for emerging diagnostic tests through a transitional IVD (T/IVD) approach
  - Recognize FDA's role in regulating all diagnostics to the least degree necessary to ensure safety and effectiveness
  - Ensure the Clinical Lab Fee Schedule will have a pathway for reimbursement of T/IVDs
  - Respond to increasing evidentiary requirements to demonstrate test value to enable coverage and reimbursement

T/IVD Market Authorization Proposal

- **The T/IVD Pathway seeks to establish a progressive stepwise review process for novel diagnostics**
  - Contemplated for a subset of emerging diagnostics
  - Focus on assays that have valid scientific information in the literature
  - Consider tests without 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)

T/IVD Market Authorization Proposal

- **Proposed attributes of the T/IVD Market Authorization proposal**
  - Submit data to FDA on analytical performance, including simulated performance in human samples
  - Receive 3-year transitional market authorization for analytical claims while pursuing clinical performance data
  - Meet FDA GMPs -- design/manufacturing, safety reporting (MDRs) -- ***plus annual progress reports***
  - At the end of 3 years, submit full premarket submission ***otherwise authorization expires and product must be withdrawn***
  - Multiple T/IVDs can exist for same test/marker, but once an IVD is cleared for a specific diagnostic use, no new T/IVD market authorizations will be issued

T/IVD Market Authorization Proposal

- **Benefits include**
  - Improving patient care by accelerating access to needed tests under FDA oversight
  - Encourage investment in emerging diagnostics
  - Support to FDA's innovation initiative
  - Provide a practical mechanism for FDA to consolidate and facilitate premarket reviews
  - An optional process that would be open to all assay developers in addition to traditional 510(k)/de novo, or PMA pathways

Evolving Reimbursement Environment for Advanced Diagnostics

- **Payment Reform**
  - **Challenges**
    - Fiscal crisis leading to significant Medicare/Medicaid cuts
    - Affordable Care Act leading to greater emphasis on payment based on outcomes rather than volume
    - Public and private payors seeking greater transparency in paying for new tests – leading to the end of stacked coding
  - **Opportunities**
    - CBO is finally willing to score savings from preventive care
    - AdvaMedDx gives IVDs a bigger seat at the policy table
    - Opportunity for industry to engage in formulation of new healthcare delivery models

Evolving Reimbursement Environment for Advanced Diagnostics

- **Medicare Lab Test Benefits**
  - **Covered Service** – Dx in a symptomatic patient
  - **Non-covered Service**
    - Risk assessment – asymptomatic family member
    - Carrier testing
    - Prenatal Dx – known familial mutations in at-risk pregnancy
    - Recurrence risk calculation
    - Post-mortem Dx

Evolving Reimbursement Environment for Advanced Diagnostics

- **Palmetto, a CMS contractor, is piloting a MolDx Tech Assessment**
  - Clarify what CMS is actually paying for (versus stacked codes)
  - Evaluate safety, effectiveness, and cost effectiveness for coverage
  - LDTs and IVDs within scope, including Companion Diagnostics (CDx)
  - Palmetto is paying a small premium for FDA approved tests
  - CMS is considering expanding this program nationally
  - Creates a process equivalent to a combined FDA approval and CMS coverage decision
  - Congress has many questions over this new approach

If Palmetto's approach becomes the national standard, where is the incentive to invest in the FDA approval process??

Policy Outlook for 2013 and Beyond

- Congress, Obama Administration, and HHS
  - Great interest and focus on healthcare policy issues
  - Greater recognition of Dx and the value of preventive care
  - Balanced by Administration efforts to reduce budget
    - Cuts to the Clinical Lab Fee Schedule
    - Palmetto MolDx Program
    - Competitive bidding?
    - Reductions in payment for commodity products?
  - Legislative or Administrative Regulatory Reforms?
  - More IVD manufacturers looking to buy labs?

Thank You

Thank You