The Changing Regulatory & Policy Environment for Diagnostics

What to Expect in 2014 and Beyond

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AMDM Focus Meeting

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Policy Topics – Looking Back

- **2011/2012/2013 - Retrospective**
  - AdvaMed Risk-based Classification & Regulatory Approach
  - FDA Tier Triage Program revitalized
  - OIR/CDRH Guidance development
  - 510(k) Program Draft Guidance released
  - Medical Device Excise Tax initiated
  - Unique Device Identifier Regulation released
  - FDA User Fees MDUFA III Performance Expectations
  - Modernizing the Regulatory and Reimbursement Process for Emerging Diagnostics

2011/2012/2013 Retrospective

- **The Risk-based Approach to regulation built on historical FDA precedents and international risk management standards was submitted to FDA by AdvaMed for its consideration**
- **In July 2011 FDA published their intent to reclassify over 30 low risk tests with under consideration with more to come**
- **The Tier/Triage Pilot allowed for a "30-day Quick Review" for low risk, well standardized Class I and II diagnostics. The pilot program ran for 6 months, after which FDA evaluated and refined the program**

2011/2012/2013 Retrospective

- **The Agency worked on and released a number of guidance documents addressing needs of the industry**
  - Cybersecurity in Medical Devices (6/14/13)
  - 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 & Meetings with FDA Staff (7/13/12)

2011/2012/2013 Retrospective

- **The Agency worked on and released a number of guidance documents addressing needs of the industry**
  - 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)
  - 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)

2011/2012/2013 Retrospective

- **Molecular Diagnostic Instruments with Combined Functions (4/9/13)**
  - Describes FDA's current thinking on molecular diagnostic instrumentation and software (but can be applied to other dual-function instruments) that can be used for FDA cleared/approved diagnostics, or LDT/research tests on a single platform
  - Instruments with software having dual functionality should be designed with sufficient measure to ensure 1) non-IVD functions do not interfere with or adversely affect the safety or effectiveness of the approved/cleared functions/tests and 2) prevent confusion on the part of the end user as to which functionality they are using.
  - Reinforces requirement for Instrument and software design controls, functionality separation, including risk management-risk mitigation plans, and labeling that distinguishes IVD functions from non-IVD

2011/2012/2013 Retrospective

- **The 510(k) Program Guidance was released, comments submitted, and is pending re-issue**
  - The guidance was very broad covering a number of topics from 510(k) content, summaries, Special 510(k)s, and changes
  - Concerns centered around perceived changes in policy, more conservative decision-making process, and increased numbers of submissions for modifications
  - The guidance as issued appeared to be more “bright line” compared to the K-86 Blue Book (Mohan) Memorandum; more prescriptive in nature
  - Clinical data collection would automatically drive new 510(k)s even though IVD companies routinely generate clinical data as part of V&V

2013 – Medical Device Excise Tax

- **Implementation**
  - January 2013 the 2.3% excise tax on the sale of medical devices by manufacturers or importers was initiated to generate over $20 billion over 10 years to offset the cost of the Affordable Care Act
  - 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**
  - Creating processes to identify affected product within the company supply chain, capture quantities sold in the US, deal with distributors and partners, and submit payments
  - The industry has gathered support for a repeal, but with the current situation in Washington this may be increasingly difficult

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; requires direct application to the device itself for many categories
  - Phases in over 5 years from final release
  - 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 prescribed 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 (being established)

2013 – Unique Device Identifiers

- **Challenges remain for the Industry**
  - IVDs don't fit "cleanly" into the implementation scheme
  - Small containers/vials may not have space to barcode; 2D barcodes will work but the human-readable portion becomes a "real estate" issue
  - Barcodes for most IVD products will be at the "kit" level, unless the components can be sold individually (and will then need to be barcoded as well)
  - Companies will have to establish infrastructure to support the GUDID (Government UDI Database) content entry and maintenance, and integrate UDI requirements into current quality systems processes and documentation
  - Meeting the timelines for date format and implementation will require inventory/supply chain management, not to mention cost

2013 - 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 continues to work on guidance documents to explain the provisions of MDUFA III, improve the process, and ensure performance goals

2013 - FDA User Fee Performance Expectations

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

Policy Topics – Looking Forward

- **2013 … and Beyond**
  - Laboratory Developed Tests (LDTs) and the “level playing field”
  - Modernizing the Regulatory and Reimbursement Process for Emerging Diagnostics; the Transitional IVD Approach (T-IVDs)
  - Diagnostic payment policies and reimbursement

LDTs and Advanced Diagnostics

- **FDA has developed a guidance on the regulation of LDTs; currently in OMB (the last we knew) with no release date in sight**
- **There have been many proposals for regulation of LDTs/Advanced Diagnostics by Congress but none have reached the floors for votes**
  - Senator Hatch – "BETTER Bill"
  - 21st Century Coalition
  - Burgess Bill for RUOs used in LDTs
- **WSJ April 3, 2013 article on concerns over LDTs for prenatal testing is likely to generate additional FDA focus; Genentech Citizen's Petition is still pending**

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)
  - Proposed to be 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 could be grandfathered
  - Would establish an Advisory Committee to review classifications

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"
- **2013 & 2014 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/least burdensome necessary to ensure safety and effectiveness
  - Ensure the Clinical Laboratory Fee Schedule will have a pathway for reimbursement of T-IVDs

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
  - To be considered, the T-IVD must have valid scientific information published in peer-reviewed literature or journals; indication of clinical evidence should be taken into account
  - The Agency and medical community should believe the probable benefit of having a quality T-IVD test available from a manufacturer outweighs the risk of not having the test or a quality test available
  - Candidate tests must be used in conjunction with other clinical information; not stand-alone or sole determinant

T-IVD Market Authorization Proposal

- **Proposed attributes of the T-IVD Market Authorization proposal**
  - Submit data to FDA on analytical performance, including simulated performance on banked or fresh human samples
  - Agency would issue a 3-year transitional market authorization for analytical claims while the manufacturer pursues clinical performance data
  - The T-IVD must meet design/manufacturing cGMPs, be subject to adverse event reporting, and have an annual progress report
  - At the end of 3 years, the manufacturer submits a 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 by FDA 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

T-IVD Market Authorization Proposal

- **Industry/FDA meeting October 2013**
  - Debrief points

Diagnostics Payment Policy Reform

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
- Ensure the Clinical Laboratory Fee Schedule will have a pathway for reimbursement of T-IVDs

Diagnostics Payment Policy Reform

- **Payment Reform**
  - **Challenges**
    - Fiscal crisis leading to significant Medicare/Medicaid cuts
    - Affordable Care Act leading to greater emphasis on payment based on outcomes
    - Public and private payors seeking greater transparency in paying for new tests – leading to the end of stacked coding
  - **Opportunities**
    - Open to assessing savings from preventive care including diagnostics
    - AdvaMedDx has a seat at the policy table for IVDs
    - Opportunity for industry to engage in formulation of new healthcare delivery models

Diagnostics Payment Policy Reform

- **Medicare Laboratory Test Benefits**
  - **Currently Covered Service**
    - Diagnostic tests in a symptomatic patient
  - **Currently Non-covered Service**
    - Risk assessment – asymptomatic family member
    - Carrier testing
    - Prenatal Diagnostics – known familial mutations in at-risk pregnancy
    - Recurrence risk calculations
    - Post-mortem Diagnostic testing

Diagnostics Payment Policy Reform

- **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 between manufacturers
    - Reductions in payment for products that are commodities, have older technologies, are in limited clinical use
  - Legislative or Administrative Regulatory Reforms unknown
  - More IVD manufacturers looking to buy labs as an alternative to developing FDA-cleared/approved assays

Thank You