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ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

March 24, 2017

To: Subcommittee on Health Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "Examining FDA's Medical Device User Fee Program"

On **Tuesday, March 28, at 10:15 a.m., in 2123 Rayburn House Office Building,** the Subcommittee on Health will hold a hearing examining the FDA's prescription drug user fee program.

I. BACKGROUND

The Medical Device User Fee Amendments (MDUFA), first established in 2002, authorizes FDA to collect fees from medical device manufacturers to support the work of reviewing device applications, processing facility registrations, quarterly reporting, and ensuring the necessary review capacity. Since then MDUFA has been amended and reauthorized three times, most recently reauthorized in 2012 as MDUFA III. MDUFA IV must be reauthorized by September 30, 2017.

II. MDUFA IV

MDUFA IV continues the work of FDA to increase efficiency of the regulatory process while ensuring the safety and efficacy of all medical devices brought to market. Of note, MDUFA IV does not contain any changes to the established fee structure. FDA expects to collect $145 million in medical device user fees in 2017.[1] MDUFA IV contains many other modifications from MDUFA III which have been previously deliberated and agreed upon by both FDA and industry. Major modifications are discussed in further detail below.

A. Resources and Increased Staffing

[1] Department of Health and Human Services, *HHS FY 2017 Budget in Brief – FDA* (Mar. 2017).

Under MDUFA IV, FDA will apply user fee revenues to reduce the ratio of review staff to front line supervisors in the premarket review program. User fee revenues will also enhance scientific review capacity by retaining and hiring more device application reviewers and, as needed, external experts to assist in the review process. Under MDUFA IV, the medical device industry will pay up to $213 million annually, or $999.5 million over five years, a $320 million dollar increase over MDUFA III.[2] The Center for Devices and Radiological health (CDRH) intends to enter into an Inter-Agency Agreement (IAA) with the Office of Personnel Management (OPM) to obtain more staffing support throughout MDUFA IV with the agreement to hire up 217 full-time equivalent (FTE) employees by the end of FY 2022.

B. Changes to Review Timelines

The table below describes the review timelines as agreed upon in MDUFA IV.[3] Overall, one of the key goals of MDUFA IV was moving towards a shorter total time to decision.

Category	Timeline
Pre-Submissions	• Within 15 calendar days of receipt of a Pre-Submission, FDA will notify the applicant as to whether the application has been accepted and, if applicable, discuss the scheduling of a meeting/teleconference. • FDA intends to reach agreement with the applicant regarding a meeting date within 30 days from receipt of accepted submission. • FDA will provide written feedback addressing any issues raised in the pre-submission request within 70 calendar days of receipt or five calendar days prior to a scheduled meeting for at least: o 1,530 Pre-Submissions received in FY 2018 o 1,645 Pre-Submissions received in FY 2019 o 1,765 Pre-Submissions received in FY 2020 o 1,880 Pre-Submissions received in FY 2021 o 1,950 Pre-Submissions received in FY 2022 • By October 1, 2018, FDA will update Guidance on "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with FDA Staff." FDA will provide an opportunity for public comment, and no later than 12 months after the close of the public comment period the Agency will issue a final guidance. The updated guidance will include: additional information to assist applicants in determining the need for a Pre-Submission; an

[2] U.S. Food and Drug Administration, *Medical Device User Fee Amendments (MDUFA IV): Public Meeting – November 2, 2016* (Nov. 2, 2016) (https://www.fda.gov/downloads/MedicalDevices/NewsEvents/WorkshopsConferences/UCM527974.pdf).

[3] U.S. Food and Drug Administration, *MDUFA Performance Goals and Procedures, Fiscal Years 2018 through 2022* (Dec. 2, 2016) (https://www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM535548.pdf).

	enhanced Pre-Submission acceptance checklist; and examples of frequently asked Pre-Submission questions.
Original Premarket Approval (PMA), Panel-Track Supplements, and Premarket Report Applications	• Within 15 calendar days of receipt, FDA will notify the applicant regarding whether the application has been accepted for filing review. Filing status of accepted applications will be posted within 45 calendar days of receipt of the application. • FDA will communicate with the applicant through a Substantive Interaction within 90 calendar days of the filing date of the application for 95 percent of submissions. • For submissions that do not require Advisory Committee input, FDA will issue a MDUFA decision within 180 FDA Days for 90 percent of submissions. • For submissions that require Advisory Committee input, FDA will issue a MDUFA decision within 320 FDA Days from receipt of the accepted submission for 90 percent of submissions. • For all PMA submissions that do not reach a MDUFA decision by 20 days after the applicable FDA Day goal, FDA will provide written feedback to the applicant discussing all outstanding issues. • For approved PMA submissions, FDA will issue a decision within 60 days of the sponsor's response to the Approvable letter, resources permitting. Information about submissions that miss the FDA Day goal will included in FDA's Performance Reports.
De Novo Submissions	• FDA will issue draft and final guidance that includes a submission checklist. • Upon complete review of the submission, deficiencies will be identified in a letter. Deficiency letters will provide scientific or regulatory explanation for the pertinent issue and will undergo supervisory review prior to issuance. • MDUFA decisions will be issued within 150 FDA days or receipt of submission for: o 50% of de novo requests received in FY 2018. o 55% of de novo requests received in FY 2019. o 60% of de novo requests received in FY 2020. o 65% of de novo requests received in FY 2021. o 70% of de novo requests received in FY 2022. • If a final decision is not rendered within 180 FDA days then FDA will discuss all outstanding issues with the applicant.
510(k)	• Within 15 calendar days of receipt, FDA will notify the applicant whether the application has been accepted for filing review. • FDA will communicate with the applicant through a Substantive Interaction within 60 calendar days of the receipt of the submission for 95 percent of submissions. • FDA will issue a MDUFA decision within 90 days for 95 percent of submissions.

C. The National Evaluation System for health Technology and Real World Evidence

Real-world evidence (RWE), while lacking a formal definition, consists of the data and information gathered outside of randomized, controlled clinical trials. This could include electronic health records (EHRs), claims data, disease registries or data from personal devices or health applications. RWE has potential value in the medical device approval process, but there are challenges to appropriately applying this type of information. To improve the quality of RWE, FDA is establishing the National Evaluation System for health Technology (NEST). NEST is a collaborative national evaluation system that synthesizes data from multiple sources across the medical device landscape. As part of MDUFA IV, FDA has committed to enhancing NEST with the following activities:[4]

- FDA will contract with an organization to serve as the NEST Coordinating Center. The agency will provide funding for the NEST Coordinating Center and will hire FDA staff with RWE expertise.
- A framework will be established to fund pilot projects to determine the usability of RWE for pre-market purposes, such as expanded indications for use, new clearances/approvals, and improved malfunction reporting.
    - The pilots will take place over a period of three years. The Coordinating Center will issue a publicly available report of the results.
    - The pilots will include devices not currently subject to a registry.
    - An independent third-party will conduct assessments at the end of each pilot to evaluate the strengths, limitations, and appropriate use of RWE for informing regulatory decision-making.
    - If necessary, FDA will revise its guidance on the use of RWE to reflect what has been learned from the pilots.
- By October 1, 2020, the Coordinating Center will hold a public meeting to review and evaluate the progress and outcomes of the pilots.[5]

The governing board of NEST will have no fewer than 4 representatives from trade associations that participated in MDUFA IV negotiations (AdvaMed, MDMA, MITA, and ACLAI), with one representative appointed by each association. Industry representation will make up at least 25 percent of governing board membership. The governing board will also include representation from patient organizations. Moving forward the NEST Coordinating Center will seek to make NEST financially self-sustaining, eliminating Center reliance on MDUFA user fees.[6]

D. Third Party Review

[4] *See* note 3.

[5] *Id.*

[6] *Id.*

In 1997, the Accredited Persons Program was established to allow third party reviewers to participate in the 510(k) process. The 510(k) process is the process through which most medical devices come to market. Under the program, third parties are authorized to conduct the primary review of 510(k) applications for eligible devices. Once the primary review is completed, it is forwarded to FDA, where a final determination will be issued within 30 days of receipt. While the intent of the program has been to allow FDA to prioritize the agency's resources for high-risk device reviews, the agency has been routinely re-reviewing 501(k) applications reviewed by third parties as a result of a lack of consistency or because the particular device may have been inappropriate for a third party review. With the goal of eliminating routine re-review of 501(k) applications by FDA, the Agency will conduct the following activities to improve the third party review program:

- Strengthen the process for accreditation of third parties.
    - Provide training for third parties seeking accreditation by FDA.
    - Establish a communication process to convey information to third parties when FDA expectations for a particular device type change.
- By end of FY 2018, establish a plan for eliminating routine re-review by FDA and implement plan within 12 months.
- Implement a program to audit reviews conducted by third parties, and provide re-training to third parties if necessary.
- By end of FY 2018, issue draft guidance outlining criteria for reaccreditation, suspension, or withdrawal of accreditation of a third party. Final guidance will be issued within 12 months of the conclusion of the public comment period.
- Performance of individual accredited third parties with at least five completed submissions will be published online.
- The Third Party Review Program will undergo independent assessment to evaluate efficiency and find best practices, including circumstances in which FDA re-reviews were conducted.[7]

FDA also intends to tailor the scope of the Third Party Review Program and will list on the FDA's website the devices or categories of devices that FDA has determined eligible or not eligible for a third party review. This list will be updated following the issuance of guidance by the agency outlining the factors FDA will take into consideration when determining eligibility.

E. Quality Management Enhancements

Quality management is key to ensuring safety and consistency in the medical device review process. As such, the agency will establish a dedicated Quality Management (QM) Unit reporting to CDRH and will develop a quality management framework for the premarket submission process. The framework will include infrastructure, senior management responsibility, resource management, lifecycle management, and quality management system evaluation. The effectiveness of the QM framework will later be evaluated.

[7] *Id.*

Quality audits are already a regular feature of the quality management program. To enhance the auditing process, FDA and industry will work together to identify areas to audit (including the effectiveness of CDRH's Corrective and Preventive Action process). At minimum, FDA will complete audits in deficiency letters and pre-submissions by end of FY 2020. Audits to be completed by end of FY 2022 include submission issue meetings, interactive review, withdrawals and special 510(k) conversions.[8]

As auditing capability builds, FDA will expand the scope of annual audits. IT infrastructure will be enhanced to support the auditing process, and training for new and existing reviewers will be improved. Furthermore, best practices regarding high-performing premarket review processes will be identified during audits and shared with appropriate divisions to improve efficiency.

F. Digital Health Development

Because many medical devices are now designed to communicate with other devices or systems, digital health is a key area of focus for FDA. Software as a Medical Device (SaMD) and Software inside of Medical Devices (SiMD) are two specific areas addressed in MDUFA IV. FDA has committed to building expertise and streamlining FDA review processes for SaMD and SiMD with the following activities:

- A central digital health unit will be established in CDRH's Office of the Center Director to ensure proper coordination and consistency across the Agency. The digital health unit is tasked with the following:
    - Developing software and digital health technical expertise to provide assistance for premarket submissions that include SaMD, SiMD, or other digital health technologies;
    - Utilizing Technical Experts as appropriate or when requested by the manufacturer, and;
    - Incorporating appropriate metrics for digital health improvements to monitor, track, analyze and report the results of digital health premarket review timelines.
- FDA will publish final guidance addressing when to submit a 510(k) for a software modification to an existing device within 18 months of the close of the comment period.[9]

FDA will also explore opportunities to establish premarket approval/clearance pathways tailored to SaMD and SiMD technologies that take into account RWE and the principles of international harmonization. To do so, FDA will engage with stakeholders, hold a public workshop, and revise or publish relevant guidance by the end of FY 2019. It should be noted that a revised draft of the Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices will be issued by end of FY 2019.[10]

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[8] *Id.*

[9] *Id.*

[10] *Id.*

III. WITNESSES

Panel I:

Jeffrey E. Shuren, MD, JD
Director, Center for Devices and Radiological Health (CDRH)
Food and Drug Administration

Panel II:

Cynthia Bens
Vice President of Public Policy
Alliance for Aging Research

Robert Kieval
Founder, Chief Development Officer
CVRx
Representing Medical Device Manufacturers Association (MDMA)

Patrick Daly
President & CEO
Cohera Medical
Representing AdvaMed

Diane Wurzburger
Executive, Regulatory Affairs US & Canada, Global Strategic Policy & Programs
GE Healthcare
Representing Medical Imaging and Technology Alliance (MITA)