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FDA Issues Draft Guidance on "Emerging Signals"

On December 31, 2015, FDA announced the availability of the draft guidance document, Public Notification of Emerging Postmarket Medical Device Signals ("Emerging Signals") for comments. The draft guidance would allow FDA to publish new postmarket information about a medical device that has not yet been analyzed for its impact on the overall benefit-risk ratio.

What are "Emerging Signals"?

According to the draft guidance document, an emerging signal is:

> [N]ew information about a medical device used in clinical practice: (1) that the Agency is monitoring or analyzing, (2) that has the potential to impact patient management decisions and/or alter the known risk-benefit profile of the device, (3) that has not yet been fully validated or confirmed, and (4) for which the Agency does not yet have specific recommendations.[1]

In other words, an emerging signal is postmarket information that could affect patient or device safety. Some examples of emerging signals are a new adverse event, an increase in reporting or the severity of a known adverse event and new a product interaction that was unknown before.

FDA has always monitored this type of information, but it historically studied and analyzed the information, communicating with the manufacturer for clarification, before communicating to the public. This previous approach has avoided publication of erroneous or misleading information, but prevented information about dangerous devices that did not come to light before a significant number of individuals were already at risk. FDA is attempting to solve this issue by communicating about these emerging signals to better inform the public and their healthcare providers.

What Would FDA Communicate?

When determining what and how to communicate, FDA would weigh different factors about the information:

- Seriousness of the adverse events with respect to the benefit-risk ratio for the device
- Magnitude of the risk and benefit (e.g., the likelihood that a risk will occur and the scale of the benefit)
- Strength of the evidence that the device caused the adverse event
- Extent of patient exposure (e.g., number of patients exposed)
- If the device disproportionately affects vulnerable populations
- Potential for preventing, identifying, monitoring or mitigating risks
- Availability of alternative therapies
- Implications for similar or related devices
- Anticipated time for FDA to complete its initial assessment and develop recommendations
- The accuracy and availability of information already in the public domain

Based on its initial analysis of these factors, FDA would communicate the information to the public in a simple form, giving the date, the name of the device, the emerging signal, any additional information and what the FDA is doing with respect to the signal. FDA would post these communications to its website at least twice per year, or more often as necessary and appropriate. FDA would most likely communicate when:

- The information represents a new, potentially causal association, or a new aspect of a known association between a medical device and one or more adverse events or clinical outcomes
- The available information is reliable and supported by sufficient strength of evidence
- The information could have important clinical implications for patient management decisions and/or it could significantly alter the known benefit-risk profile of the device

FDA would perform its initial analysis within 30 days of receiving the information, and may provide updates once more information or analysis becomes available.

What Does This Mean?

Communicating about emerging signals is, according to FDA, necessary to notify the public, "even when the information has not been fully analyzed, validated, or confirmed, and for which the Agency does not yet have specific recommendations." [2] Not all risks or benefits are known when a medical device is first put on the market, although manufactures and regulators try to have as complete a picture as possible. Regardless, use in a tightly-controlled clinical study is very different from use in the "real world," and risks (and benefits) inevitably arise after a device is on the market. Sometimes new risks arise, and sometimes risks are far more serious than the manufacturers and regulators initially thought. Communicating about these emerging signals, according to FDA, would give patients and healthcare providers a more complete picture about therapy options and help them to make the best choice for themselves.

1 U.S. Food & Drug Ass'n, Notification of Emerging Partomarket Medical Device Signals ("Emerging Signals"): Draft Guidance for Industry and Food and Drug Administration Staff (2015), 80 Fed. Reg. 81829, 81830 (proposed Dec. 31, 2015).

2 Draft Guidance Document at 4.

Early communication comes with various risks that may be heightened by the nature of the information. While FDA acknowledges some of these risks in its draft guidance document, it does not necessarily provide many examples of how it would mitigate such risks. The obvious example that it cites is communicating with the public about potential risks without confirming and evaluating the data. This could, in fact, cause a patient and doctor to determine that an otherwise safe and effective therapy would not be safe. While FDA reiterates its commitment to careful communication about emerging signals, the draft guidance document does not detail how FDA could mitigate the potential for lay people to misinterpret emerging signals, or even if mitigation is possible at the stage the emerging signals arise.

Another example the FDA cites as one that could influence its communication about emerging signals is the information the public receives through sources other than FDA, such as social media sources. Anyone who engages in social media knows that for every good and careful doctor, there are at least two influential "experts" (usually lacking a medical degree or training) who disseminate their own information. For an example of how this information can affect the public's view of a medical therapy or treatment, one only needs to look at the ongoing vaccine culture wars. The draft guidance document states that FDA could issue a statement or communicate in a different way to clarify or correct such information.[3]

Next Steps

This draft guidance document was published for commenting purposes only, and does not establish any rights or requirements for anyone, and is not binding on FDA or the public. Comments are accepted on this draft guidance document until February 29, 2016. Interested parties can comment electronically on regulations.gov, or send their written comments to FDA at: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Make sure to cite Docket Number FDA-2015-D-4803 when sending written comments about this draft guidance document.

Our lawyers have significant experience advising clients on FDA issues related to medical devices and continue to monitor regulatory changes in this area. For more information on these and other healthcare and life sciences regulatory matters, please contact your principal Squire Patton Boggs lawyer or any of the lawyers listed in this publication.

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