



## Medicare Part D Pharmacy Updates

### Generic drug controversy

Generic drugs now account for 70 percent of all prescriptions in the U.S. Health plans, third-party payors, and pharmacy benefit managers promote these less-costly bioequivalent medications as a way to reduce health care costs and to facilitate patient access to important treatments. At the same time, generics represent only about 18 to 20 percent of total health care expenditures for pharmaceuticals.

However, controversies surround the use of generics. Examples of current issues that require further discussion include: a) Narrow-therapeutic index medications, b) “Pay-for-delay” settlements, and c) the search for a generic approval process for high-tech bio-similar medications.

### Narrow-therapeutic-index (NTI) medications

A medication has a “narrow therapeutic index” or “therapeutic window” when the serum levels required to exert its desired clinical effect is also close to levels associated with toxic side effects. To use these medications safely and effectively, physicians usually need to follow careful dose titration and regular patient monitoring.

Despite well-documented determinations of statistical bioequivalence, opponents of generic substitution for certain therapeutic drug classes (e.g., immunosuppressants, anticonvulsants, warfarin, digoxin, lithium, etc.) continue to question changes in efficacy and toxicity and have voiced the need for patients to receive consistent products with routine refills. In fact, most experts will warn that the real problem is switching between generic products, not switching between a generic and a brand, since bio-equivalence testing is between the brand and a generic – *not* between generics.

Adding to public fear of generic alternatives is a wave of anti-generic claims in the media that feature patient complaints about significant adverse reactions to generic therapies. Laws and regulations that limit generic substitution at the pharmacy (e.g., dispensing of AB-rated generic products for NTI branded drugs) vary widely by state. For example, North Carolina state law requires that the pharmacist dispense the same drug product from the same manufacturer for each refill of a NTI medication. Documented prescriber and patient consent must also be received prior to any switch in products. California and Texas, on the other hand, have no special regulations when considering the substitution of brand-name NTI products for a generic alternative.

### **“Pay-for-delay” settlements**

Another controversy regarding the approval of generic medications involves efforts by the pharmaceutical industry to either delay or undermine the generic medication approval process. One such effort is the use of “authorized generics.” An authorized generic exists when a pharmaceutical manufacturer sells a drug under both a brand-name and a generic label. Since authorized generics are considered brand products by the FDA, the authorized generic does not have to go through the same rigorous, ANDA approval process required by a true generic. The first generic competitor of a branded drug product is awarded a 180-day period of marketing exclusivity to help “first filers” recoup expensive legal fees. Unfortunately, it does not preclude competition from an authorized generic. Authorized generic entry during this time can reduce the revenues of a first-filer generic firm by 47 to 51 percent. As a result, a generic firm may be willing to agree to defer its market entry in return for a brand manufacturer’s promise not to launch a competing authorized generic during the 180-day marketing exclusivity period.

An example of this practice involves the release of an authorized generic for PROTONIX<sup>®</sup> (pantoprazole). Such practices can harm consumers in two ways. First, generic drugs and the accompanying price discounts would not be available to consumers as soon as otherwise would have been the case. Second, consumers would lose the benefit of price discounts from the authorized generic competition during the 180-day exclusivity period. According to the FTC, between 2004 and 2008, about 25 percent of the final patent settlements reviewed by the FTC contained provisions related to authorized generics and agreements by the brand manufacturer not to launch an authorized generic to compete against the first filer combined with agreements by the first filer to defer entry past the settlement date by an average of 34 months. The FTC has gone to court to block delay settlements, and Congressional leaders may try to curb these deals through legislation.

### **Battle over bio-similars**

Generic manufacturers are looking for expansion in the manufacture of more complex dosage forms such as biologic agents, commonly known as “bio-similars” or “follow-on biologics” (FOBs). Examples of this class of medications include REMICADE<sup>®</sup> (infliximab) and ENBREL<sup>®</sup> (entercept), which are used to treat rheumatoid arthritis. These agents include many important new therapies and constitute the fastest-growing segment (25 percent of total pharmacy costs in 2008) of the pharmaceutical market. As promising as these therapies appear to be, their costs can be substantial, reaching \$200,000 or more annually for treatments such as imiglucerase (CEREZYME<sup>®</sup>), which is used to treat Gaucher disease.

Consumer protection groups, health insurers, and pharmacy benefit managers have supported a five-year period of exclusivity promoted by Rep. Henry Waxman (D-CA). Manufacturers argue that added protection from competition is fair, based on the fact that development costs for biologic products are so much higher than for other medications. Generic manufacturers and consumer groups argue that it would discourage development of generic biologics and reduce the incentive to develop new products. Even the FTC has weighed in on the debate with a study stating that

introduction of bio-similars would lower costs to consumers without hampering drug innovation and development. Industry analysts say that if the law changes to allow bio-similar drugs, the FDA can expect a lot of approval requests. Many biotech drug patents have either expired or will expire in the next five to ten years. When that happens, experts expect bio-similars to cost 20 to 30 percent below the cost of brand-name products. Ultimately, FOBs are a balancing act for lawmakers – balancing the need to control escalating specialty drug costs while making sure it doesn't come at the expense of future new drug research and development.

### **What can we expect from health care reform**

The passage of the Health Care Reform Bill resolved a number of related issues – at least for the foreseeable future. The Health Care and Education Reconciliation Act of 2010 (H.R. 4872) authorizes the FDA to create an approval pathway for FOB products that would guarantee manufacturers 12 years of market exclusivity before any bio-similar product could be approved, even in the absence of a valid patent. In addition, manufacturers could also obtain additional 12-year exclusivity by making minor changes to the structure of an approved product, such as those that could lead to changes in its administration schedule. It remains to be seen how the new law pertains to older products with expired patents.

On the other hand, efforts by consumer groups, senators, and even President Obama to add a pay-for-delay provision to the Senate health care bill failed. The provision, which was based on a bill (S. 369) introduced by Sen. Herb Kohl (D-WI) in February 2009, would have prohibited payments from brand-name to generic-drug manufacturers to prevent or delay the entry of competition from generic drugs.