

# FDA Cracks Down on Unapproved Rx Drugs

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The Food and Drug Administration announced that it is renewing efforts to ensure that all drugs currently sold by prescription either go through its formal approval process or be taken off the market.

The agency has periodically targeted some of these products using its existing authority. Now, the FDA has issued more formal guidance that spells out for manufacturers how it will prioritize enforcement, and what route they can take to prove safety and efficacy of their products.

There are many reasons why unapproved products are on the market, said Dr. Steven Galson, director of the FDA's Center for Drug Evaluation and Research, at a press briefing sponsored by the agency.

Most were marketed before passage of the 1962 Food, Drug, and Cosmetic Act, which required formal proof of safety and efficacy. Or their makers may simply have begun selling the products without seeking the agency's approval, he said, noting that the FDA will issue a new drug code (NDC) number for a product even if it was never approved. In very few cases, the products are grandfathered in under existing laws, agency officials said.

Many of the unapproved drugs are listed in the Physicians' Desk Reference. Some are advertised in medical journals.

Those initially flagged for attention include products that are potentially hazardous, lack evidence of effectiveness, or appear to be fraudulent.

If the manufacturers don't seek approval, they will be subject to enforcement action, Dr. Galson said. But in most cases, the FDA will not remove a drug from the market if it has been shown to have some medical utility. Examples include some manufacturers' levothyroxine and phenobarbital products.

"While we want to ensure continued patient access to necessary treatments, as a physician I feel strongly that patients expect and deserve all their prescription medicines to be FDA approved," said Dr. Andrew C. von Eschenbach, acting FDA commissioner, in a statement.

The agency estimates that less than 2% of prescription drugs have not received its imprimatur. That still means potentially thousands of products that aren't approved.

Many of the drugs are cough and cold preparations that include pheniramine maleate and dexbrompheniramine maleate, or single-ingredient narcotics such as codeine phosphate and oxycodone HCl. Sedatives like chloral hydrate are also unapproved.

Go to the FDA's Web site ([www.accessdata.fda.gov/scripts/cder/drugsatfda](http://www.accessdata.fda.gov/scripts/cder/drugsatfda)) to determine if a drug is approved. The database includes only approved medications, so unapproved products will not be listed. ■

## POLICY & PRACTICE

### In-Office AIDS Test, Please

Americans would much prefer to be tested for AIDS in a physician's office or clinic, instead of performing a home test, according to a survey of 2,500 adults by the Kaiser Family Foundation. Overall, 62% of respondents preferred a doctor's office or clinic, compared with 26% who preferred home testing; only 10% said the location did not matter. However, respondents did think home tests should be an option; 65% said home tests help people who otherwise would not learn their HIV status. On the other hand, 27% agreed with the statement that home tests are "a bad idea" because people need counseling that is available only in a physician's office or clinic. HIV testing should be treated like any routine screening and included as part of regular check-ups and exams, according to 65% of respondents. Slightly more than one-fourth (27%) of respondents disagreed; instead, they agreed with the statement that HIV testing is different and requires special procedures such as written permission from the patient.

### MinuteClinic: Quality Council

MinuteClinic, the nation's largest provider of retail-based health care, has created a National Clinical Quality Advisory Council. The eight-member council has five physicians, including a representative of the American Academy of Family Physicians. To develop its own standards, MinuteClinic uses quality guidance from AAFP and the American Academy of Pediatrics Red Book as well as the Midwestern Institute for Clinical Systems Improvement. Dr. James Woodburn, chief medical officer, said in an interview. Dr. Ari Brown, a spokesperson for the Texas Pediatrics Society, said that she was surprised that MinuteClinic was creating a quality council after the company was already up and running. Dr. Brown questioned the retail clinic's role in providing a quality "medical home" to patients. Dr. Woodburn said patients should have a medical home, but about 30% of the time, MinuteClinic patients either have no regular doctor or else do not want to reveal the name. If the patient does have a regular physician, the MinuteClinic mails a record of the visit to that office, Dr. Woodburn said.

### Maine PBM Law Stands

The U.S. Supreme Court rejected a challenge to Maine's pharmacy benefit management company law. The Maine statute requires PBMs to disclose "all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefits manager and any prescription drug manufacturer or labeler, including ... formulary management and drug-switch programs, educational support, claims processing and pharmacy network fees that are charged from retail pharmacies, and data sales fees." The PBM trade group Pharmaceutical Care Management Association (PCMA) sued Maine when it enacted the law in 2003, claiming that it overstepped federal, state, and con-

tract boundaries. But an independent pharmacy group hailed the high court's decision. "The decision to affirm the state's right to regulate PBMs is a major victory for consumers in Maine and many other states" the National Community Pharmacists Association said in a June statement. PBMs were disappointed. The state pushed into the "contractual relationship" between PBMs and their customers, Stephanie Kanwit, special counsel to PCMA, said in an interview. She noted that physicians might have fewer choices when writing prescriptions, because weaker PBMs could lead to higher drug prices.

### Chiropractors Sue Insurers

Chiropractors, podiatrists, and others have petitioned the U.S. District Court in Miami to join *Solomon vs. Anthem*, a class-action suit by nonphysician providers against insurance companies, charging that the companies conspired to systematically underpay providers and deny medically necessary care to patients. The American Chiropractic Association (ACA) also asked that ACN Group Inc. and United Healthcare Services Inc. be named as additional defendants. The suit seeks unspecified monetary damages and changes in the companies' practices. A similar class-action suit by physicians—known as the consolidated *Provider Track* cases—has been in that same court. The next steps in the *Solomon* case may depend upon resolution of the *Provider Track* cases, Thomas Daly, counsel for ACA, said in an interview. On June 19, Judge Federico A. Moreno dismissed United Healthcare from the *Provider Track* cases. "There is simply insufficient evidence of the wrongdoing claimed, i.e. agreeing with their competitors to defraud the doctors," Judge Moreno wrote. Two other insurers in the *Provider Track* cases, Aetna and Cigna, settled in 2003, agreeing to change their coding and claims procedures.

### Marlboro Case at Supreme Court

The U.S. Supreme Court has agreed to hear Philip Morris USA's appeal of an \$80 million punitive damage award involving the death of a Marlboro smoker, raising concerns about the future of punitive damages in tobacco and other public health matters. The estate of Oregon resident Jesse Williams was awarded the money in a fraud and negligence suit against the tobacco maker. Mr. Williams, who died of lung cancer, was a heavy smoker of Marlboros, and his estate argued that his smoking habit killed him. The estate urged the jury to award punitive damages based on the estimated number of Marlboro smokers in Oregon. The high court agreed to address due process of law and punitive damage amount questions. Now that the states have signed the master settlement agreement, individual suits are one of the remaining vital weapons against tobacco products, David Dobbins, deputy general counsel of the American Legacy Foundation said.

—Nancy Nickell

## Carbinoxamine Products Targeted

As part of a wider crackdown on the marketing of unapproved drugs, the Food and Drug Administration has notified manufacturers of many unapproved carbinoxamine-containing products that they must submit safety and efficacy data by September or be subject to enforcement action, which could include a forced recall.

The FDA said it was targeting carbinoxamine because of safety concerns, including 21 deaths since 1983 in children under age 2 that may be related to the ingredient. Infants and young children are vulnerable to adverse events with products containing the drug because there are so many different strengths, formulations, and combinations of active ingredients, according to the FDA.

Carbinoxamine, a sedating antihistamine, was first marketed in 1953. Four products are FDA-approved to treat allergic reactions: Palgic Carbinoxamine Maleate Oral Solution (4 mg/5 mL), PamLab LLC; Palgic Carbinoxamine Maleate Tablets (4 mg), PamLab LLC; Carbinox Maleate Solution, Physicians Total Care; and Palgic Carbinoxamine Maleate Tablets USP (4 mg), Physicians Total Care. All four are manufactured by Mikart Inc. of Atlanta, and

were approved in 2003.

"We are satisfied that [these products] meet the FDA approval requirements," said Deborah M. Autor, FDA associate director for compliance policy, at a press briefing sponsored by the agency.

But as many as 120 carbinoxamine-containing drugs are being marketed without the agency's approval, Ms. Autor said, adding that there may be more not listed with the FDA.

Many are sold as prescription cough and cold formulations, but the FDA has not found carbinoxamine to be safe or effective for that indication. And they are often labeled for use in children under age 2, even as young as 1-3 months, said the agency.

Under the new directive, unapproved carbinoxamine products will be allowed to stay on pharmacy shelves through September, said Ms. Autor. But the companies must submit new drug applications by that time.

Before prescribing an unapproved carbinoxamine preparation, physicians should consider the patient's medical condition, previous response to the drug, and whether approved alternatives might be more suitable, according to the FDA.

—Alicia Ault