STUDY BY INSTITUTE OF MEDICINE OF POSTMARKET SURVEILLANCE REGARDING PEDIATRIC POPULATIONS

Pub. L. 107–250, title II, § 212, Oct. 26, 2002, 116 Stat. 1614, as amended by Pub. L. 108–214, § 2(d)(3)(C), Apr. 1, 2004, 118 Stat. 577, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall request the Institute of Medicine to enter into an agreement with the Secretary under which such Institute conducts a study for the purpose of determining whether the system under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] for the postmarket surveillance of medical devices provides adequate safeguards regarding the use of devices in pediatric populations.

''(b) CERTAIN MATTERS.—The Secretary shall ensure that determinations made in the study under subsection (a) include determinations of—

''(1) whether postmarket surveillance studies of implanted medical devices are of long enough duration to evaluate the impact of growth and development for the number of years that the child will have the implant, and whether the studies are adequate to evaluate how children's active lifestyles may affect the failure rate and longevity of the implant; and

''(2) whether the postmarket surveillance by the Food and Drug Administration of medical devices used in pediatric populations is sufficient to provide adequate safeguards for such populations, taking into account the Secretary's monitoring of commitments made at the time of approval of medical devices and the Secretary's monitoring and use of adverse reaction reports, registries, and other postmarket surveillance activities.

''(c) REPORT TO CONGRESS.—The Secretary shall ensure that, not later than four years after the date of the enactment of this Act [Oct. 26, 2002], a report describing the findings of the study under subsection (a) is submitted to the Congress. The report shall include any recommendations of the Secretary for administrative or legislative changes to the system of postmarket surveillance referred to in such subsection.''

§ 360m. Accredited persons

(a) In general

(1) Review and classification of devices

Not later than 1 year after November 21, 1997, the Secretary shall, subject to paragraph (3), accredit persons for the purpose of reviewing reports submitted under section 360(k) of this title and making recommendations to the Secretary regarding the initial classification of devices under section 360c(f)(1) of this title.

(2) Requirements regarding review

(A) In general

In making a recommendation to the Secretary under paragraph (1), an accredited person shall notify the Secretary in writing of the reasons for the recommendation.

(B) Time period for review

Not later than 30 days after the date on which the Secretary is notified under subparagraph (A) by an accredited person with respect to a recommendation of an initial classification of a device, the Secretary shall make a determination with respect to the initial classification.

(C) Special rule

The Secretary may change the initial classification under section 360c(f)(1) of this title that is recommended under paragraph (1) by an accredited person, and in such case shall provide to such person, and the person who submitted the report under section 360(k) of this title for the device, a statement explaining in detail the reasons for the change.

(3) Certain devices

(A) In general

An accredited person may not be used to perform a review of—

(i) a class III device;

(ii) a class II device which is intended to be permanently implantable or life sustaining or life supporting; or

(iii) a class II device which requires clinical data in the report submitted under section 360(k) of this title for the device, except that the number of class II devices to which the Secretary applies this clause for a year, less the number of such reports to which clauses (i) and (ii) apply, may not exceed 6 percent of the number that is equal to the total number of reports submitted to the Secretary under such section for such year less the number of such reports to which such clauses apply for such year.

(B) Adjustment

In determining for a year the ratio described in subparagraph (A)(iii), the Secretary shall not include in the numerator class III devices that the Secretary reclassified into class II, and the Secretary shall include in the denominator class II devices for which reports under section 360(k) of this title were not required to be submitted by reason of the operation of section 360(m) of this title.

(b) Accreditation

(1) Programs

The Secretary shall provide for such accreditation through programs administered by the Food and Drug Administration, other government agencies, or by other qualified nongovernment organizations.

(2) Accreditation

(A) In general

Not later than 180 days after November 21, 1997, the Secretary shall establish and publish in the Federal Register criteria to accredit or deny accreditation to persons who request to perform the duties specified in subsection (a) of this section. The Secretary shall respond to a request for accreditation within 60 days of the receipt of the request. The accreditation of such person shall specify the particular activities under subsection (a) of this section for which such person is accredited.

(B) Withdrawal of accreditation

The Secretary may suspend or withdraw accreditation of any person accredited under this paragraph, after providing notice and an opportunity for an informal hearing, when such person is substantially not in compliance with the requirements of this section or poses a threat to public health or fails to act in a manner that is consistent with the purposes of this section.

(C) Performance auditing

To ensure that persons accredited under this section will continue to meet the standards of accreditation, the Secretary shall—

(i) make onsite visits on a periodic basis to each accredited person to audit the performance of such person; and

(ii) take such additional measures as the Secretary determines to be appropriate.

(D) Annual report

The Secretary shall include in the annual report required under section 393(g) of this title the names of all accredited persons and the particular activities under subsection (a) of this section for which each such person is accredited and the name of each accredited person whose accreditation has been withdrawn during the year.

(3) Qualifications

An accredited person shall, at a minimum, meet the following requirements:

(A) Such person may not be an employee of the Federal Government.

(B) Such person shall be an independent organization which is not owned or controlled by a manufacturer, supplier, or vendor of devices and which has no organizational, material, or financial affiliation with such a manufacturer, supplier, or vendor.

(C) Such person shall be a legally constituted entity permitted to conduct the activities for which it seeks accreditation.

(D) Such person shall not engage in the design, manufacture, promotion, or sale of devices.

(E) The operations of such person shall be in accordance with generally accepted professional and ethical business practices and shall agree in writing that as a minimum it will—

(i) certify that reported information accurately reflects data reviewed;

(ii) limit work to that for which competence and capacity are available;

(iii) treat information received, records, reports, and recommendations as proprietary information;

(iv) promptly respond and attempt to resolve complaints regarding its activities for which it is accredited; and

(v) protect against the use, in carrying out subsection (a) of this section with respect to a device, of any officer or employee of the person who has a financial conflict of interest regarding the device, and annually make available to the public disclosures of the extent to which the person, and the officers and employees of the person, have maintained compliance with requirements under this clause relating to financial conflicts of interest.

(4) Selection of accredited persons

The Secretary shall provide each person who chooses to use an accredited person to receive a section 360(k) of this title report a panel of at least two or more accredited persons from which the regulated person may select one for a specific regulatory function.

(5) Compensation of accredited persons

Compensation for an accredited person shall be determined by agreement between the accredited person and the person who engages the services of the accredited person, and shall be paid by the person who engages such services.

(c) Duration

The authority provided by this section terminates October 1, 2012.

(d) Report

Not later than January 10, 2007, the Secretary shall conduct a study based on the experience under the program under this section and submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report describing the findings of the study. The objectives of the study shall include determining—

(1) the number of devices reviewed under this section;

(2) the number of devices reviewed under this section that were ultimately cleared by the Secretary;

(3) the number of devices reviewed under this section that were ultimately not cleared by the Secretary;

(4) the average time period for a review under this section (including the time it takes for the Secretary to review a recommendation of an accredited person under subsection (a) of this section and determine the initial device classification);

(5) the average time period identified in paragraph (4) compared to the average time period for review of devices solely by the Secretary pursuant to section 360(k) of this title;

(6) if there is a difference in the average time period under paragraph (4) and the average time period under paragraph (5), the reasons for such difference;

(7) whether the quality of reviews under this section for devices for which no guidance has been issued is qualitatively inferior to reviews by the Secretary for devices for which no guidance has been issued;

(8) whether the quality of reviews under this section of devices for which no guidance has been issued is qualitatively inferior to reviews under this section of devices for which guidance has been issued;

(9) whether this section has in any way jeopardized or improved the public health;

(10) any impact of this section on resources available to the Secretary to review reports under section 360(k) of this title; and

(11) any suggestions for continuation, modification (including contraction or expansion of device eligibility), or termination of this section that the Secretary determines to be appropriate.

(June 25, 1938, ch. 675, §523, as added Pub. L. 105–115, title II, §210(a), Nov. 21, 1997, 111 Stat. 2342; amended Pub. L. 107–250, title II, §202, Oct. 26, 2002, 116 Stat. 1609; Pub. L. 110–85, title II, §221, Sept. 27, 2007, 121 Stat. 852; Pub. L. 111–31, div. A, title I, §103(f), June 22, 2009, 123 Stat. 1837.)

AMENDMENTS

2009—Subsec. (b)(2)(D). Pub. L. 111–31 made technical amendment to reference in original act which appears in text as reference to section 393(g) of this title.

2007—Subsec. (c). Pub. L. 110–85 substituted ''2012'' for ''2007''.

2002—Subsec. (c). Pub. L. 107–250, § 202(1), substituted ''The authority provided by this section terminates October 1, 2007.'' for ''The authority provided by this section terminates—

''(1) 5 years after the date on which the Secretary notifies Congress that at least 2 persons accredited under subsection (b) of this section are available to review at least 60 percent of the submissions under section 360(k) of this title, or

''(2) 4 years after the date on which the Secretary notifies Congress that the Secretary has made a determination described in paragraph (2)(B) of subsection (a) of this section for at least 35 percent of the devices that are subject to review under paragraph (1) of such subsection,

whichever occurs first.''

Subsec. (d). Pub. L. 107–250, § 202(2), added subsec. (d).

EFFECTIVE DATE

Section effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of this title.

REPORTS ON PROGRAM OF ACCREDITATION

Pub. L. 105–115, title II, § 210(d), Nov. 21, 1997, 111 Stat. 2345, provided that:

''(1) COMPTROLLER GENERAL.—

''(A) IMPLEMENTATION OF PROGRAM.—Not later than 5 years after the date of the enactment of this Act [Nov. 21, 1997], the Comptroller General of the United States shall submit to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate a report describing the extent to which the program of accreditation required by the amendment made by subsection (a) [enacting this section] has been implemented.

''(B) EVALUATION OF PROGRAM.—Not later than 6 months prior to the date on which, pursuant to subsection (c) of section 523 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360m(c)] (as added by subsection (a)), the authority provided under subsection (a) of such section will terminate, the Comptroller General shall submit to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate a report describing the use of accredited persons under such section 523, including an evaluation of the extent to which such use assisted the Secretary in carrying out the duties of the Secretary under such Act [21 U.S.C. 301 et seq.] with respect to devices, and the extent to which such use promoted actions which are contrary to the purposes of such Act.

''(2) INCLUSION OF CERTAIN DEVICES WITHIN PROGRAM.—Not later than 3 years after the date of the enactment of this Act [Nov. 21, 1997], the Secretary of Health and Human Services shall submit to the Committee on Commerce of the House of Representatives and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate a report providing a determination by the Secretary of whether, in the program of accreditation established pursuant to the amendment made by subsection (a), the limitation established in clause (iii) of section 523(a)(3)(A) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360m(a)(3)(A)] (relating to class II devices for which clinical data are required in reports under section 510(k) [21 U.S.C. 360(k)]) should be removed.''

§ 360n. Priority review to encourage treatments for tropical diseases

(a) Definitions

In this section:

(1) Priority review

The term ''priority review'', with respect to a human drug application as defined in section 379g(1) of this title, means review and action by the Secretary on such application not later than 6 months after receipt by the Secretary of such application, as described in the Manual of Policies and Procedures of the Food and Drug Administration and goals identified in the letters described in section 101(c) of the Food and Drug Administration Amendments Act of 2007.

(2) Priority review voucher

The term ''priority review voucher'' means a voucher issued by the Secretary to the sponsor of a tropical disease product application that entitles the holder of such voucher to priority review of a single human drug application submitted under section 355(b)(1) of this title or section 262 of title 42 after the date of approval of the tropical disease product application.

(3) Tropical disease

The term ''tropical disease'' means any of the following:

(A) Tuberculosis.
(B) Malaria.
(C) Blinding trachoma.
(D) Buruli Ulcer.
(E) Cholera.
(F) Dengue/dengue haemorrhagic fever.
(G) Dracunculiasis (guinea-worm disease).
(H) Fascioliasis.
(I) Human African trypanosomiasis.
(J) Leishmaniasis.
(K) Leprosy.
(L) Lymphatic filariasis.
(M) Onchocerciasis.
(N) Schistosomiasis.
(O) Soil transmitted helmithiasis.
(P) Yaws.
(Q) Any other infectious disease for which there is no significant market in developed nations and that disproportionately affects poor and marginalized populations, designated by regulation by the Secretary.

(4) Tropical disease product application

The term ''tropical disease product application'' means an application that—

(A) is a human drug application as defined in section 379g(1) of this title—

(i) for prevention or treatment of a tropical disease; and

(ii) the Secretary deems eligible for priority review;

(B) is approved after September 27, 2007, by the Secretary for use in the prevention, detection, or treatment of a tropical disease; and

(C) is for a human drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under section 355(b)(1) of this title or section 262 of title 42.