

Follow-on Biologics: Legislative Background

Charles A. Carter, PharmD, MBA

Health care reform is a national issue of tremendous discussion and debate. Intermixed with the issues of health care reform are bills that may impact the availability of follow-on biologics. However, several compounds that are biologic or 'biologic-like' from a pharmacologic perspective are not categorized as biologics from a regulatory perspective.

The proposed Affordable Health Care for America Act (H.R. 3962) is a bill that was adopted by the United States House of Representatives in November 2009. The bill is a revised version of an earlier bill, the proposed America's Affordable Health Choices Act of 2009 (H.R. 3200). The revisions included refinements designed to meet the goals outlined in the President's address to a joint session of Congress in September, 2009 concerning health care reform. On December 24, 2009, the Senate passed an alternative health care bill, the proposed Patient Protection and Affordable Care Act (S. 3590), with a vote of 60-39 along party lines. Both bills amend Section 351 of the Public Health Service Act (PHS Act). (At the time of the preparation of this document, no bill has been approved by Congress.)

From the perspective of development of pharmacologic agents, chemical drugs and biologic products are reviewed and approved by the United States Food and Drug Administration by two distinct and separate mechanisms. Biologic products are regulated and licensed by the Center for Biologic Evaluation and Research (CBER) under Section 351 of the Public Health Service Act (PHS Act). Chemical drugs are regulated and approved by the Center for Drug Evaluation and Research (CDER) under Section 505 of the Food, Drug, and Cosmetic Act (FD&C Act). The distinction between these approval processes in terms of assignment of products is not absolute, and some biologic products are regulated by CDER under the FD&C Act. Unfractionated heparin (UFH) and the low-molecular-weight heparins (LMWHs) are examples of agents that are considered biologic 'or biologic-like' but regulated under CDER.

Congress passed the well-known Hatch-Waxman Act over 25 years ago. This law allows the FDA to approve abbreviated new drug applications (ANDA) for generic versions of an approved reference drug by relying on prior determination of efficacy and safety of the reference product. The abbreviated approval mechanism under Section 505(j) of the FD&C Act eliminates the need for duplicative clinical trials. Under this pathway, bioequivalence must be demonstrated. Specifically, bioequivalence indicates that the rate and extent of absorption are not statistically different when administered to patients or subjects at the same molar dose under similar experimental conditions. Most drug products approved under Section 505(j) are therapeutically equivalent to reference products—that is, they have the same clinical effect and safety profile when administered as indicated and can be substituted for the branded product.