Pharmaceutical Compounding Quality and Accountability Act

Summary of the Bipartisan Senate Legislation

This legislation establishes a clear boundary between traditional compounders and compounding manufacturers, which make sterile human drug products without or in advance of a prescription and sell those products across state lines. It clarifies a national, uniform set of rules for compounding manufacturers while preserving the states' primary role in traditional pharmacy regulation.

Section 2: Regulation of Drug Compounding

Clarification of New Drug Status

This section clarifies that compounded drugs are new drugs, and therefore the Federal Food, Drug, and Cosmetic Act (FFDCA) applies.

Section 503A: Drug Compounding

This section replaces section 503A in the current FFDCA. It defines compounding manufacturers and traditional compounders and the requirements on those entities; provides for exemptions from specified sections of the FFDCA for entities that comply with this section; creates a process for the Secretary to prohibit compounding of certain drug products; refines rules around the bulk chemicals that can be used in compounding; and establishes a fee structure to cover oversight of compounding manufacturers.

Scope and Definitions

The scope of traditional pharmacy compounding is drawn from current FFDCA section 503A. A compounding manufacturer is defined as an entity that compounds a sterile drug prior to or without receiving a prescription and introduces such drug into interstate commerce, with the exception that interstate shipment within a hospital system will not cause a hospital pharmacy to be considered a compounding manufacturer. Any entity other than a hospital or health system that pools sterile products or that repackages sterile, preservative-free vials would also be considered a compounding manufacturer. In order to maintain clear accountability, compounding manufacturers may not be licensed as pharmacies. Any entity compounding a product that is not a registered compounding manufacturer or a licensed traditional pharmacy would be operating outside of this act and would not qualify for the exemptions making it subject to the requirements of the FFDCA.

Exemptions from Requirements of FFDCA

Drugs compounded by traditional compounders that meet the requirements set forth in the revised FFDCA section 503A are exempt from the FFDCA requirements regarding Good Manufacturing Practices (Sec. 501(a)(2)(B)), adequate directions for use (Sec. 502(f)(1)), and the new drug provisions (Sec. 505). Prescription drugs compounded by compounding manufacturers that meet the requirements set forth in the revised FFDCA section 503A are exempt from the FFDCA requirements regarding adequate directions for use (Sec. 502(f)(1)) and the new drug provisions (Sec. 505), but are subject to applicable Good Manufacturing Practices.

Drugs That May Not Be Compounded

After consulting with relevant stakeholders, the Secretary may promulgate through notice and comment a regulation that designates drugs that may not be compounded due to the demonstrable difficulty of safely compounding these drugs, such as certain complex dosage forms and biologics. Until the regulation is finalized, the Secretary can designate products by notice following a 60-day comment period. This

interim provision sunsets when the final regulation is effective or 5 years after the date of enactment, whichever occurs sooner. Every 5 years, the Secretary must seek public input on the need for compounded drugs to be included or excluded from the list of drugs that may not be compounded, although submissions and notices are also permitted between the 5-year intervals.

Drugs removed from the market for safety and effectiveness reasons may not be compounded.

Marketed FDA-approved drugs may not be compounded except in the case of a drug shortage. Variations of marketed-FDA approved drugs may be compounded only upon receipt of a prescription and if that variation provides a clinical difference for that patient, as determined by the prescribing practitioner, between the compounded drug and the comparable marketed FDA approved drug.

Biologics may only be compounded from a licensed approved biologic for a patient for whom the biological product produces a clinical benefit, as determined by the prescribing practitioner, upon receipt of a prescription or medical order specifying that the product may be compounded, or, for emergent use in pediatric patients, in anticipation of such a prescription.

Products subject to Risk Evaluation and Mitigation Strategies (REMS) with elements to assure safe use can only be compounded for an identified individual patient under these exceptions if the compounder shows the Secretary it utilizes controls that are comparable to those in the REMS.

Bulk Ingredient Qualifications and Restriction on Wholesaling

The bulk requirements in current section 503A are preserved, with one modification. Current law requires that any drug compounded from bulk must use bulk active pharmaceutical ingredient that 1) either complies with an applicable United States Pharmacopoeia (USP) or National Formulary (NF) monograph, is part of an FDA-approved drug, or appears on a list established by the Secretary; 2) is manufactured in a registered establishment; and 3) is accompanied by a valid certificate of analysis. The revised section 503A would permit the Secretary to identify a drug that only has an applicable USP or NF monograph as not suitable for compounding due to public health concerns following the publication of the reasoning and consideration of comments submitted to a docket open for at least 60 days. Inactive ingredients also must comply with USP or NF.

Wholesaling is not allowed for compounded drugs. Compounded drugs may only be sold by the entity that compounded that product, and all must be labeled "not for resale". It is a prohibited act to resell a product labeled "not for resale".

Compounding Manufacturer Requirements

A compounding manufacturer must:

- Give a pharmacist licensed in the state where the compounding manufacturer is located direct oversight over the products compounded
- Register with FDA and report to the Secretary every 6 months the drugs sold in the previous 6 months
- Be inspected by FDA according to a risk-based inspection schedule
- Report serious adverse event experiences to FDA within 15 days, and do follow up investigation and reporting similar to current drug manufacturers
- Label products with a statement identifying it as compounded drug and other specified information about the drug.

Compounding Manufacturer Establishment and Reinspection Fees

A compounding manufacturer would pay an annual establishment fee to defray the cost of compounding oversight (e.g. inspections). If a reinspection is required, the establishment would pay a reinspection fee.

The annual establishment fee is $15,000 per year with an inflation adjustment, and the reinspection fee is the same amount as the annual establishment fee. Small businesses, defined as compounding manufacturers with no more than $1 million in gross annual sales, would pay one-third of the establishment fee. FDA would then adjust the establishment fee for the larger facilities based on the number of small businesses. Fees can only be used for the costs of oversight of compounding manufacturers.

The Secretary will provide an annual report to Congress on the fees collected from registration and reinspections, and the number of inspections completed in that fiscal year.

Increasing State and FDA Communication

The Secretary will encourage States to identify entities licensed by the State that appear to be entities required to be registered as compounding manufacturers, and shall designate a point of contact and establish a process for States to notify the Secretary of such entities. If the Secretary determines that the entity is a compounding manufacturer it will notify the State within 15 days, and will make the determination available on FDA's website. The Secretary will encourage direct communication between the states regarding traditional compounders.

Section 3: Other Requirements Relating To Compounding Manufacturers

This section clarifies that a drug is misbranded if it is not labeled in accordance with this Act, if the labeling or advertising or promotion of such drug is false or misleading in any particular, or if it is made by a compounding manufacturer that has not paid fees as required. It also clarifies the pharmacy exemption in Sec. 704 inspection authorities would not apply to compounding manufacturers.

Section 4: Implementation

The Secretary must consult with stakeholders regarding implementation of this Act. Any regulations promulgated under this Act must be done through the notice and comment rulemaking process (no interim final rules) and the final regulation must be published within 18 months of the proposed regulation.