FDA User Fees Pass House, Senate Is Next

Dx Test FDA Requirements Likely Watered Down, Positive for Industry

- **Last night, the House floor voted 392-28 to pass its FDA User Fee legislative package** (here). A key component, the VALID Act, is missing from House passed version, while the Senate struggles to finalize key FDA riders. The Senate Dx Reform bill will likely serve as the final version for passage

- **We expect Senate FDA User Fee text as soon this weekend for markup next week.** The HELP Committee markup that was originally scheduled for yesterday was postponed to June 14th. We understand Senate bill's delay was due to modification to the VALID Act. The Senate markup next week will provide a clearer picture on VALID and other key provisions, like equity, real world evidence and accelerated approvals.

- **The Senate FDA Accelerated Approval council would slow the use of accelerated approval outside of cancer but the pathways fate is fine**. The Senate version released on May 27th included the creation of a new Accelerated Approval coordinating Council. This provision provides further FDA oversight over the accelerated approval pathway by bringing together different FDA directors to discuss AAs. This is likely to stay in the final draft and has drawn industry attention, but this is just noise in our view. Individual decisions may be controversial, but the pathway isn't. The council, if it makes it through to the final bill, will likely coordinate AA guidelines between FDA agencies, but will likely not have the teeth to influence individual approvals.

- **The Senate is taking the lead on VALID Act diagnostic pathway reforms, and we will see updated requirements as soon as this coming weekend.** The Senate will mark up on June 14. Hence language would need to be released by Sunday June 12.

- **VALID Act may be neutralized to the point where only a tiny % of so-called LDTs on the market are required to go through regulatory review**. We noted that the Senate draft's exemptions for tests were fairly generous, including low volume IVCTs, modified IVCTs, and IVCTs used for research purposes. The Senate also detailed the premarket, abbreviated premarket, and supplemental application review process, provide exemptions (low-risk, humanitarian use, custom and low volume), and describe the technology certification pathway for moderate risk products to be certified to offer multiple tests.

- **Academic medical center labs may be excluded from VALID, which is helpful for Johns Hopkins, Mayo Clinic and all AMCs across the country (that widely utilize their own tests).** FDA approval pathway exclusions for the following are possible.
    - academic medical centers,
    - hospital-based labs,
    - public labs.

  NOTE: Should all of the above exclusions come into play, there would be almost no tests required to undergo FDA clearance. We would question the purpose of the VALUD Act.

- **ARPA-H codification will likely pass the Congress with User Fees in 2022**. The House floor vote was primarily concerned with user fee passage. We believe ARPA-H is still a slam dunk. The House bill would set it as an independent agency within HHS and the Director would be presidentially-appointed and Senate confirmed. It would entail a public-private partnership model

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and helps life sciences, tools, digital health and medical technologies, including emerging technologies.

- **OUR TAKE / NEXT STEPS:** Senate FDA User Fee text is expected this weekend with usually 48 hours between manager Amendment release and committee markup. Following passage from Senate HELP committee, the bill would head to the Senate floor for passage. We expect updated VALID Act language to make it for inclusion, or possibly be added during the amendment process next week. The entire FDA User Fee/VALID Act/ARPA-H package is expected to pass by Oct 1, 2022 (UFA expiration date) or potentially sooner. See below for main provisions in House passed bill.

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Background

- **OVERALL: FDA User fees policy relating to Drugs, Medical Devices, Generics, and Biosimilars are included in the package. This includes PDUFA VII, MDUFA V, GDUFA III, BsUFA III**. All programs will be funded 2023-2027 with the existing fee structure and Congressional reporting requirements. Commitments on product review timelines, hiring estimates, and program enhancements are taken directly from the FDA's performance goal letter.

- **INFECTIOUS DISEASE DRUGS**: **Allows for biological products to qualify as Qualified Infectious Disease Product (QIDP) and allows for priority review** of innovative biological antifungal such products if such products require clinical data to demonstrate safety or effectiveness. The policy does not extend QIDP exclusivity to biological products, however.

- **ORPHAN Reauthorizes orphan drug grants through 2027** & **asks FDA to report on orphan progress.** Bill expands uses of such grants to include the development of regulatory science and manufacturing and controls related to individualized medical products to treat those with rare diseases or conditions. Requires HHS to submit a report summarizing FDA's activities relating to designating, approving, and licensing drugs used to treat rare diseases no later than 4 years after enactment. Requires FDA to study processes for evaluating drugs for rare diseases in the United States and the European Union. Requires FDA to convene public meetings to solicit input from stakeholders regarding approaches to improving engagement with rare disease condition patients, patient groups, and experts.

- **CELL & GENE THERAPIES**: Requires FDA to convene a public workshop on best practices on generating scientific data necessary to facilitate development of human cell-, tissue-, and cellular-based medical products, and the latest scientific information about such products.

- **GENERICS: Generic manufacturers will receive more color on ingredients and flexibilities in approvals**. FDA would provide generic sponsors, upon request, information regarding any differences in ingredients between their generic drug and the reference listed drug to which they are compared. This is expected to simplify the application process by taking the guesswork out of the generic formulation. Generic drug approval will be allowed even if its proposed labeling differs from that of the brand drug if the differences are limited to FDA-approved changes made within 90 days.

- **MEDICAL DEVICES: Manufacturers will be required to develop processes to address cybersecurity vulnerabilities**. Manufacturers must provide a software bill of materials in their labeling, and submit this information to the FDA in premarket submissions. Failure to comply will be a prohibited act and 510(k) clearance may be denied if security info is inadequate.

CLINICAL TRIALS: ACCELERATED APPROVAL, DIVERSITY & MODERNIZATION

- **DRUGS: Clinical trial diversity provides a reasonable equity approach & echoes FDA Commissioner Califf priorities.** Manufacturers will be required to submit a diversity action plan that includes the sponsor's goals for enrollment in the clinical trial, rationale for such goals, and an explanation for how the sponsor intends to meet such goals. Diversity plans will be required to be published no later than 2024. FDA will also be required to provide guidance on the enactment of plans and considerations for decentralized CTs, and host public workshops to enhance clinical trial diversity.

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- **DRUGS**: **Accelerated approval reform gives FDA ability to withdraw approvals, request status reports.** FDA would be authorized to require post-approval studies, which may be supported by real-world evidence, to be underway at the time of approval and allows the FDA to withdraw approvals where sponsors fail to conduct studies with due diligence (after a public meeting, dialogue with FDA commissioner). The bill also codifies labeling requirements for accelerated approval and information on surrogate endpoints and requires more frequent reports on post-approval study progress. This stops short of setting limitations on how long drugs can stay on the market as suggested in Rep Pallone's (D-NJ) bill.

- **DRUGS & DEVICES: Real-World Evidence includes lessons learned from PHE.** FDA will be required to issue guidance addressing the use of real-world evidence and real-world data, including that obtained for drugs and devices authorized for emergency use during the PHE. This requirement is specifically intended to support drug and device approvals and clearances, which signals to the FDA and manufacturers that real-world evidence may become increasingly important in submission packages.

- **DRUGS & DEVICES: Modernization of the FDA trials with cell-based assays, organ chips and microphysiological systems, and sophisticated computer modeling**. The new modalities move away from animal based pre-clinical models.

- **DEVICES**: **Addressing dual submission for certain devices**. A device authorized under an EUA with a laboratory procedure that has a minimal risk of errors may submit a single submission that includes information on the laboratory procedure when applying for a De Novo classification.

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