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IN THIS ISSUE

Gottlieb Nomination Moves Forward With a Pledge to Keep Tabs on Devices

The confirmation of Scott Gottlieb as the next FDA commissioner moved one step closer after a Senate panel voted 14-9 in his favor.

The final step in the process, a Senate floor vote, is expected in early May.

Gottlieb has pledged that under his leadership, the FDA will ramp up efforts to keep tabs on medical devices after they are approved. Still, having received hundreds of thousands of dollars in consulting and other fees from the device and pharma industries in recent years, questions about his ability to be objective in this and other areas have dogged his nomination.

The vote was originally scheduled for Wednesday, but Sen. Patty Murray (D-Wa.), the health committee's ranking Democrat, asked for a 24-hour postponement after receiving responses to paperwork

(See **Gottlieb**, *Page 2)*

Lawmakers Consider Adding Four Device Bills to MDUFA Reauthorization

A House subcommittee Tuesday will hold a hearing on the MDUFA reauthorization and four additional device-related measures it is considering attaching to the user fee legislation.

The draft MDUFA bill would extend the existing MDUFA programs to 2022, and include new fees for de novo reviews. Anticipated fees to be collected would increase from $130.2 million for the current fiscal year to $183.3 million in fiscal 2018 and to $213.7 million for fiscal 2022 (*IDDM*, April 17).

One bill the lawmakers may combine with the MDUFA package aims to make hearing aids more accessible over the counter by doing away with the need for an examination or signed waiver in order for a patient to buy or receive the device.

(See **MDUFA**, *Page 4)*

Gottlieb, *from Page 1*

relating to Gottlieb's financial holdings too close to when the vote was set to take place on an otherwise busy day on Capitol Hill.

Two Democrats, Sens. Sheldon Whitehouse of Rhode Island and Michael F. Bennet of Colorado, crossed party lines Thursday to vote in Gottlieb's favor.

But Murray, the committee's ranking member, and other Democrats, voiced concerns about Gottlieb's ability to fairly and objectively lead the FDA even minutes before the vote, citing worries over his "complex financials," potential conflicts of interest and ability to withstand pressure from the Trump administration and corporations as reasons for their no votes.

While Murray has expressed various reservations about Gottlieb as FDA Commissioner, however, she said Thursday that she is confident in his commitment to post-market surveillance of medical devices and upholding the gold standard of FDA approval for devices and drugs.

At his confirmation, Gottlieb answered questions on the agency's standards for safety and effectiveness, and whether he would stand up to the White House on scientific issues. He has also promised to recuse himself from agency decisions related to more than 20 companies where he previously had a financial interest, including global drug makers GlaxoSmithKline, Daiichi Sankyo and Bristol-Myers Squibb (*IDDM*, April 24).

More than 60 drugs currently in development by companies with which Gottlieb has somehow been involved could come before the FDA for approval during his tenure as commissioner, Murray noted.

Committee chairman Lamar Alexander (R-Tenn.) called Gottlieb's experience and contacts in the pharmaceutical and health care industry an asset, saying the FDA and the country need agency leaders who know what they are doing. — Gayle S. Putrich

Federal Communications Commission Seeks Input on Broadband Devices

The Federal Communications Commission has asked for comments on the use of broadband technology in medical devices.

The commission, through its Connect2Health Task Force, says it wants to know how it can help with the adoption and accessibility of broadband-enabled health care, especially in rural and other underserved areas of the country.

The Connect2HealthFCC Task Force, FCC says, is focused on identifying regulatory barriers and incentives to the deployment of radio frequency (RF)- enabled advanced health care technologies and devices; strengthening the nation's telehealth; and enabling the development of broadband health technologies that are designed to be fully accessible to people with disabilities.

Interested parties may file comments on or before May 24, 2017. Comments may be filed online at http://apps.fcc.gov/ecfs/ or by mail or hand delivery to FCC headquarters in Washington, D.C. — William Schulz

Congress Averts Shutdown, for Now

Congress approved a continuing resolution Friday, averting a government shutdown for at least another week.

The measure, approved 382-30 in the House and by voice vote in the Senate, maintains current government funding levels through May 5. That gives lawmakers next week to come to agreement on a budget for the remainder of the current fiscal year, through Sept. 30.

Meanwhile, federal agencies, including the FDA, have been dusting off contingency plans, just in case they are forced to cut back or freeze nearly all work. Plans call for 45 percent of the FDA's more than 17,000 employees to be furloughed in the event a budget agreement cannot be reached.

The FDA's contingency plans for a shutdown, set in fiscal 2016, state that the agency would be forced to cease routine site inspections, some compliance and enforcement efforts and most of its lab work. Vital and emergency work would continue, according to FDA documents, including handling high-risk recalls, civil and criminal investigations and import entry reviews.

Activities related to the agency's user-fee funded programs, such as drug approval, would continue in "limited" fashion, but what that would entail in a shutdown environment is unclear from the FDA contingency plan.

Congress narrowly avoided a shutdown last December, boosting funding for 21st Century Cures by $20 million in the process. But that temporary funding measure only maintained funding at fiscal 2016 levels through April 28.

See the Health and Human Services Department's contingency staffing plan for a fiscal 2017 government shutdown: www.fdanews.com/04-27-17-HHScontingencyplan.pdf.

Read the continuing resolution (H.J. Res. 99) here: https://www.congress.gov/bill/115th-congress/house-joint-resolution/99. — Gayle S. Putrich

House Bill Would Streamline Device Accessory Approval

The FDA lacks a good mechanism for dealing with the hundreds of device accessories currently on the market which may be inappropriately classified, and a new House bill proposes to streamline the process.

The bipartisan Risk Based Classification of Accessories Act would require the FDA to revise regulations for the reclassification of previously approved, low-risk medical devices.

Currently, an accessory like a plastic tray packaged with a medical device is required to comply with the same onerous regulations as medical technology like artificial heart valves, said Rep. Annie Kuster (D-N.H.), who introduced the bill with Rep. Mimi Walters (R.-Calif.).

The bill would clarify that "something like a plastic tray doesn't need to be tested to the same degree as a high-powered eye surgery laser," Walters said. Some of the largest drivers of health care costs are the "antiquated, one-size-fits all regulations that make medical devices and new technologies more expensive to bring to market," she said. It is commonsense that an accessory that does not impact the safety of a device should not need to go through the cumbersome process for FDA approval required for a more sophisticated medical device, Kuster said.

The proposed bill would create an efficient process at FDA for classifying medical device accessories, according to AdvaMed President and CEO Scott Whitaker.

The 21st Century Cures Act included a provision directing the FDA to classify a device accessory independent of its parent device, which corrected a long-standing deficiency in the agency's review process that led to many accessories being unfairly subject to higher-risk classification than was necessary for their safe and effective use, he said.

See the bill (H.R. 2144) here: www.fdanews.com/04-28-17-HR2144.pdf. — William Schulz

MDUFA, *from Page 1*

The bill would:

- Make hearing aids, intended to be used by adults to compensate for mild to moderate hearing impairment, available over the counter;
- Remove requirements that consumers obtain a medical evaluation or sign a waiver of that examination in order to obtain an OTC hearing aid;
- Require the FDA to issue regulations with safety and labeling requirements for this new category of OTC hearing aids;
- Maintain existing safety, labeling, and manufacturing protections; and
- Require the FDA to update its draft guidance on personal sound amplification products — consumer electronics products that may use similar technology to hearing aids, but are intended for use by individuals with normal hearing.

In anticipation of the new law, the change is already underway at the FDA. The agency will not be enforcing the medical evaluation and waiver for people 18 years and older, according to Eric Mann, clinical deputy director for the Division of Ophthalmic, Ear, Nose, and Throat Devices.

The new category of over-the-counter hearing aids that do not require a medical evaluation or signed waiver will be created under the FDA's planned regulatory changes for Class I hearing aid devices.

The House subcommittee will also consider a separate bill that would allow substantial equivalence determinations for diagnostic imaging devices if they do not involve the use of a contrast agent.

A third bill aims to improve inspections of device establishments and the process for granting export certifications. It would call for risk-based inspection and uniform inspection standards for domestic and foreign device establishments.

A fourth bill, drafted but not yet introduced, would require registration with the FDA of establishments involved in the servicing of a medical device.

Read the full text of the hearing aid bill (H.R. 1652) here: www.congress.gov/bill/115th-congress/house-bill/1652.

Read the full text of the diagnostic devices bill (H.R. 2009) here: www.congress.gov/bill/115th-congress/house-bill/2009.

Read the full text of the device inspection bill (H.R. 1736) here: www.congress.gov/bill/115th-congress/house-bill/1736. — William Schulz

PEOPLE ON THE MOVE

Cellectar Biosciences has named **John Friend, M.D.** as chief medical officer. He most recently served as senior vice president of medical and scientific affairs at Helsinn. Prior to his role at Helsinn, Dr. Friend held executive responsibility for clinical research, medical affairs, pharmacovigilance and risk management at various pharmaceutical companies, including Akros Pharma, Actavis, Alpharma, Hospira and Abbott.

Juno Therapeutics has hired **Sunil Agarwal** to lead the company's research and development. Dr. Agarwal previously served as chief medical officer and executive vice president at Ultragenyx. Prior to that role, he held several senior leadership positions at Genentech, most recently as senior vice president in charge of global development for ophthalmology, metabolism, neuroscience, immunology, and infectious diseases.

Bio-Path Holdings has appointed **Dr. William Hahne** as vice president of clinical development. Before joining Bio-Path, Dr. Hahne was a medical consultant for Voisin consulting, Medimmune, Lion Biotechnologies, Seattle Genetics, Aminex Therapeutics, Therakos and Celgene Cellular Therapeutics.

Key Elements for a Successful Internal Audit

Responses to internal audit reports are critical for GMP compliance because they fall under CAPA — so how a company responds to the findings of an internal audit is a key component of an effective audit.

Internal audit SOPs should reference existing CAPA procedures, explains a new FDAnews report on internal auditing, which explores the key elements for a successful audit and how best to respond to an audit's findings.

It's important not to view the internal audit as a "blame and shame" exercise. Many companies struggle with how to avoid situations where the manufacturing site, department or a specific operation is hiding things from the auditor. Internal audits can also help with employee training and identification of gaps.

Department managers shouldn't try to protect their staff from internal auditors, but should allow them free access so each side learns from the other. The auditees need to freely share all pertinent information about their operations, while auditors openly share their observations.

Interviews

Interviews conducted during an internal audit warrant particular attention. It's important not to just talk to department heads, but to include operators and staff that run the equipment, do the design work or write the program codes. This will provide a greater depth of information for the audit, and will prepare the employees for future client or regulatory inspections.

Internal audits need to be forward-thinking. The goal is to look ahead and find issues that the FDA might find when it next comes for an inspection.

Internal audits also need to be very broad—even unlimited—in scope. This can be tedious, time-consuming and even painful, but the approach will help ensure that weak spots are identified and that the facility is well-prepared for its next inspection.

The length of time an internal audit takes will depend primarily on the scope. If it covers a full facility, it could take a week, or even two for more complex sites with multiple operations. The audit can be broken down into more easily managed sections to avoid interruption to normal operations. For instance, an auditor might look at a single process per day, or work in whatever way is most time-efficient for the particular company undergoing the audit.

What a company does after an internal audit is just as important as the steps it takes in conducting the review. In some ways, the post-audit activities could be considered more important, as this is where documentation and corrective actions take place.

There can be a tendency to try to shield problems from upper management, but this is a mistake.

Audit Reports

The formal audit report must be generated and shared with individuals who have direct or indirect responsibility for addressing quality problems as they arise. Once the report has been shared, it must be clearly spelled out who has responsibility for implementing and overseeing any corrective actions. Upper management and QA staff involvement could be critical at this stage, particularly if solutions involve modifying or replacing any equipment or systems.

Established SOPs covering internal audits should detail when and how the audit reports will be issued, as well as to whom they should go. And it's important to comply with the reporting schedule. If a company's SOP requires that an audit report goes to a client being audited as a supplier within 30 days of the audit, for instance, that deadline needs to be met.

The content of the report is critical, and it's important that the observations can be fully understood by anyone reading the report, so straightforward, direct writing using clear language not open to multiple interpretations is recommended.

(See **Audit***, Page 6)*

Audit, *from Page 5*

For every issue noted, the report should spell out what the auditors saw, why it is or could be problematic relative to regulatory compliance or business goals and ways that auditors and auditees think the issues could be corrected or newly identified risks mitigated.

Typically, companies should expect to show their audit tracking logs to regulatory authorities during an inspection or regulatory audit. The tracking log is a schedule, which can be requested as evidence that an established internal audit program exists and is being followed.

A devicemaker may get a request from ISO auditors for the actual audit reports, but the company does not have to provide those reports. An alternative might be to offer a certificate of closure to indicate that it has followed through on any issues discovered during an internal audit.

Since internal audits are mandated in U.S. and international regulations for medical devices, the FDA and other agency investigators will be looking for documentation showing that these self-inspections have been conducted at appropriate periods.

In summary, a successful internal audit will:

- Identify problems—or issues that could become problems later—and fix them promptly;
- Improve existing processes in terms of efficiency and meeting business goals, as well as regulatory compliance;
- Help train and cross-train new and current employees; and
- Provide an opportunity for gap analysis of all processes; and

Develop and apply solutions systemically to address all functions that might be affected by a particular audit observation.

The report, Internal Auditing Basics: A Guide for Drug and Device Manufacturers, will be available in PDF format by May 10 at: www.fdanews.com/products/54252.

483 Roundup: Devicemakers Come Up Short on Documentation, Reporting

The FDA cited four devicemakers for a variety of problems observed during inspections, including a lack of written quality procedures, shipping products prior to approval, inadequate documentation, and failure to report a software change.

Duralife-USA LLC in South Williamsport, Penn., was cited for failing to maintain documentation of quality control procedures or systems. An FDA inspection in late January and early February found the company lacked written quality systems or procedures, according to a Form 483.

Inspectors found the company had no written procedures for: quality control, corrective and preventive actions: MDR procedures: receiving, reviewing and evaluating complaints; device labeling; or evaluation of potential suppliers.

Documentation of device master records, history records or design history records for some products also were nonexistent, according to the Form 483.

Lingraphica America: A February inspection of Lingraphica America Inc. in Parsippany, N.J. revealed the company shipped products before they were approved for distribution. In a least three instances in 2016, Lingraphica shipped its speech pathology devices as much as four weeks ahead of the documented date of approval for distribution.

Inspectors also found problems with document controls in multiple departments and with overall training procedures and documentation, according to the Form 483. Device acceptance procedures also were not properly documented, with inventory and manufacturing dates failing to align in the company's forms.

EMED Technologies Corp.: Design documents were not properly updated and maintained at EMED Technologies Corp. in El Dorado Hills, Calif., the FDA found in an inspection carried out from Jan. 27 through Feb. 7.

The company failed to implement its document control procedures, with inspectors noting that the DCR was approved for a device to be used with a particular drug on Oct. 10, 2016 but FDA clearance for the pairing was not granted until Dec. 1, 2016.

Also, labeling of EMED's marketing materials and on the company's website did not meet regulatory requirements, according to the Form 483.

Hitachi Medical Systems America: A correction made ostensibly to reduce a possible health risk posed by a medical device made by Hitachi Medical Systems America in Twinsburg, Ohio was not properly reported, the FDA found, in a Jan. 18-Feb. 6 inspection. Urgent software changes were sent from the parent company and implemented locally, but the Twinsburg facility failed to notify the FDA of the change, the agency said in the Form 483.

Other corrective actions, made by suppliers, were not made according to the company's CAPA or with proper documentation. Inspectors also found that complaint files were not properly maintained, including risk analysis and risk documents in the design history files.

In addition, the facility failed to identify the root cause of adverse events in 5 of 9 MDR reports of serious industries. The company also failed to update its risk analyses documents with post market data.

The FDA investigator also noted the firm had not initiated a supplier corrective action or properly managed a problem with non-conforming covers for an MRI device. The supplier's drawings of the covers did not align with the Hitachi specifications, but the discrepancies were not documented in the non-conforming system.

The companies did not return requests for comments.

Read the Duralife Form 483 here: www.fdanews.com/04-26-17-duralifeusa483.pdf.

Read the Lingraphica America Form 483 here: www.fdanews.com/04-26-17-lingraphicaamerica483.pdf.

Read the EMED Technologies Form 483 here: www.fdanews.com/04-26-17-emedtechcorp483.pdf.

Read the Hitachi Form 483 here: www.fdanews.com/04-26-17-hitachimedicalsys483.pdf.

APPROVALS

FDA Approves Marketing Of Allergan's True Tear Device

The FDA has approved marketing of Allergan's True Tear intranasal tear neuro-stimulator device. The handheld device was picked up in Allergan's 2015 acquisition of Oculeve.

Bioness Wins EU Approval for L300 Go

Rehabilitation device maker Bioness, Valencia, Calif., announced CE Mark approval for its L300 Go functional electrical stimulation system. The company says it is the first such system to offer comprehensive 3D motion detection of gait events from a 3-axis gyroscope and accelerometer.

Intuitive Surgical Gets EU Approval For daVinci X Surgical System

Intuitive Surgical, Sunnyvale, Calif., a maker of robotic-assisted, minimally invasive surgery devices, has received CE Mark approval in Europe for its da Vinci X Surgical System.

GenMark Secures Updated CE Mark for its ePlex

California–based Genmark has secured an updated CE mark or its ePlex blood culture identification fungal pathogen panel. The ePlex systems support a broad range of molecular diagnostic tests with a compact workstation and disposable test cartridges.

FDA Grants Marketing Clearance To Cardiac Insight's Wearable ECG Sensor

Washington–based Cardiac Insight has gained FDA marketing clearance for its Cardea Solo wearable electrocardiogram sensor. The device is used to assist in the diagnosis of a variety of arrhythmias by recording ECG data and patient symptoms.

Millennium Medical Wins FDA Clearance For Fat Collection and Grafting System

California–based Millennium Medical Technologies has received FDA marketing clearance for its Lipo-Loop system which is a reusable fat collection and transfer system for plastic or reconstructive surgery.

Synaptive Medical Wins CE Mark and Approval in Australia for BrightMatter Plan

Toronto–based Synaptive Medical has received a CE Mark in Europe as well as regulatory approval in Australia for its BrightMatter Plan neurosurgical planning system.

Rivanna Gains Health Canada Clearance For Accuro Spinal Navigation System

Virginia–based Rivanna Medical received Health Canada marketing clearance for its Accuro automatic spinal navigation system for epidural and related neuroaxial anesthesia guidance. The device received FDA clearance in 2015. It will be launched in Canada in May.

LimFlow Wins FDA Approval of IDE For Deep Vein Arterialization System

LimFlow has gained FDA approval for its investigational device exemption for a feasibility study of the percutaneous deep vein arterialization system. The LimFlow system received a CE Mark in October 2016 and is currently available in Europe.

Bausch + Lomb Wins FDA Clearance for Vitesse

Bausch + Lomb has received FDA marketing clearance for Vitesse, a hypersonic device for vitreous removal that uses a single-needle design.

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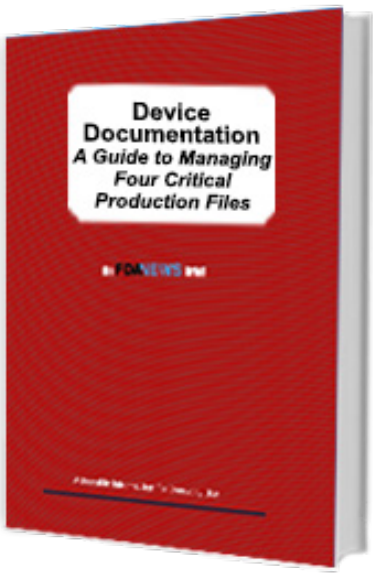

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