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CFDA Releases Groundbreaking Drug and Device Policies for Public Comment

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Food, Drugs, and Devices

On May 11 and 12, 2017, the China Food and Drug Administration ("CFDA") published drafts of four proposed policies in the form of circulars (or notices) for public comment. These "Proposed Policies" include significant reforms in the areas of the new drug and device approval process ("Circular 52"), clinical trial regulation ("Circular 53"), life-cycle management and post-marketing surveillance ("Circular 54"), and regulatory data protection and patent linkage ("Circular 55"). Comments for each circular are due on June 10, 2017, but CFDA recommends that the comments be submitted by email before May 25, 2017.

This alert discusses some of the key points of Proposed Policies. (Covington's translations of the policies can be found here: Circular 52, Circular 53, Circular 54, Circular 55.)

Circular 52: Encouraging Innovation through Reform to the New Drug and Device Approval Processes

Accelerating approval for drugs and medical device meeting urgent clinical needs

Circular 52 continues to expand the categories and procedures for expedited review. The State Council and CFDA created priority review procedures in 2015-2016 to ensure that drugs and devices that serve unmet medical needs, such as oncology, geriatrics, orphan, and pediatric indications, get to market more quickly. Under the Proposed Policies, drugs and medical devices that meet urgent clinical needs may receive conditional approval, if the early and middle stage clinical trials show positive results and there is anticipated clinical value. If CFDA grants the conditional approval, the applicant must continue development with a confirmatory clinical trial and complete the clinical study after the approval is granted.

The Proposed Policies also encourage priority review status for new drugs and medical devices that are developed under a National Science and Technology Prominent Project or a National Prominent Research and Development Plan. These are generally government issued plans indicating priority areas of study.

Encouraging development for new drugs and medical devices for orphan diseases

The National Health and Family Planning Commission ("NHFPC"), China's chief healthcare regulatory agency, will publish the list of orphan diseases and establish a patient registration system. Applicants with drugs or devices that treat these disease may apply for a clinical trial waiver. If a new drug and medical device for orphan diseases has been approved overseas,

CFDA may grant a conditional approval, and the applicant must complete a study in China within a prescribed timeframe after approval.

Priority review status for drugs granted compulsory licenses

Under China's Patent Law, compulsory licenses will be granted in case of material threats to public health or public security. If a drug or medical device is developed under a compulsory license, CFDA will grant priority review status to that product. NHFPC will issue more detailed rules on initiating the compulsory license process and the criteria to determine "material threats" to health or public security.

Circular 53: Encouraging Innovation Through Reform of Clinical Trial Management

A New Approach to Clinical Development

CFDA has proposed a new approach to clinical development with greater flexibility to encourage innovation. CFDA will no longer issue accreditation to clinical trial sites and will instead allow any site that meets the criteria to conduct a clinical trial after submitting a notification to CFDA. Sites must also pass a CFDA inspection before the data they generate will be accepted by CFDA. Circular 53 also encourages private investment in clinical trial sites. This proposed change could expand the network of sites available to sponsors and thereby reduce delays in clinical development.

Another measure to reduce delay is the adoption of a notification system for clinical trial applications. The sponsor is required to meet with the Center for Drug Evaluation ("CDE") or Center for Medical Device Evaluation ("CMDE"), CFDA's two technical review institutions, prior to submitting applications for Phase I and III drug trials or trials for Class III medical devices that require pre-approval. Once the applicant has submitted an application for a trial, if CDE or CMDE fail to object or raise questions on the application within 60 days after receiving it, CDE or CMDE will be deemed to have agreed to the clinical trial application, and the applicant may proceed in accordance with the protocol. This change could help to avoid the lengthy approval processes that have delayed some trials for months or years.

In this Circular and in Circular 52, CFDA calls for measures to improve its communication with applicants by allowing them to meet with the CDE or CMDE before or after different phases of trials. Applicants can also request other meetings. This reform will provide a channel between the applicants and the review agencies on issues of trial design and progress. Amendments to the protocol that are not safety-related may be reported to the ethics committee without stopping the trial. Currently the lack of an amendment system can disrupt the trial at times for smaller, relatively low-risk changes.

This Circular also proposes clarifications and reforms for the Ethics Committee ("EC") review process, including requiring that ethics committee review take place before the applicant submits a clinical trial application. In case of a multi-region clinical trial ("MRCT"), once the ethics committee review is completed by the principal site, the ECs of other participating sites can follow that conclusion without conducting their own complete review of the trial.

Acceptance of Foreign Data

Another significant development is CFDA's proposal to take a clearer position on the acceptance of foreign data. CFDA has accepted foreign data in the past, but has not taken an express position in regulations or policy documents. Under the Proposed Policies, if the clinical data generated in an overseas clinical trial satisfy the requirements to register the drug or medical device in China, those data can be used to support a market authorization application in China, after there has been an onsite inspection. Bioequivalence clinical data for generics registered in Europe, USA and Japan may support applications in China, provided that the data meet all requirements and there has been a satisfactory site inspection. It is not clear whether CFDA will accept onsite inspection results from foreign health authorities without CFDA itself conducting the inspection.

For medical devices approved overseas (except for certain Class III devices for which CFDA requires pre-approved trials), the clinical data submitted for overseas registration can be used for the market authorization application in China.

Circular 54: Life Cycle Management of Drugs and Devices

Reforming post-marketing surveillance

CFDA proposes to expand the marketing authorization holder ("MAH") system that it began as a pilot in 2016 by combining the system with the amendments to the Drug Administration Law ("DAL") and implementing it across the country. The Circular does not make it clear whether the expansion would need to wait for an amendment to the DAL. Although it does not mention amendments to the device regulations, Circular 54 also notes that MAH program will be implemented for device license holders. The MAH holder will bear responsibility for the quality of the product and be the primary entity responsible for post-marketing surveillance activities, such as adverse reaction and event reporting.

Both drug and device license holders will be held responsible not only for reporting adverse reactions/events, but also for using that information to take measures to improve quality control and to apply to amend labels and instructions for use. Device manufacturers must improve their re-evaluation systems. They must have a system in place to evaluate the safety and effectiveness of their products based on adverse events and other related information that they collect.

Reform of Drug Promotion

This Circular also proposes changes to the system for promoting drugs. Specifically, company medical representatives will be responsible for disseminating new medical knowledge, introducing information about new drugs to clinicians, and listening to opinions on new clinical uses, but they may not be involved in sales responsibilities or have private contact with physicians. Academic promotional activities must be held in public. No hospital personnel may provide the information about the number of prescriptions from a doctor to medical representatives or employees of drug manufacturers or distributors. Medical representative activities must be filed with the designated departments of hospitals, and MAHs/manufacturers must also submit record filings of medical representatives' names with CFDA. This name list will be publicized. More details about these proposed changes to promotional activities can be found here.

Reform of clinical trial sample testing

CFDA also proposes to let the applicant do its own testing of clinical trial samples or use a CFDA-accredited testing institution. Permitting an applicant to perform its own tests could reduce delays and conserve resources as compared with the current system in which accredited testing resources are scarce.

Circular 55: Encouraging Innovation by Protecting Drug Innovators' Rights

Establishing a patent linkage system

Circular 55 proposes to build on the existing requirement that drug applicants submit a patent statement with their marketing applications and expands it to create a more concrete patent linkage framework. This framework will stay CFDA approval of a drug while a patent dispute related to a previously approved drug is litigated.

The Circular lays out the mechanics of this system. When submitting the market authorization application, the applicant must submit a statement regarding relevant patents that the applicant knows about or should know about. If the applicant challenges the patent, it must state that there is no infringement and must notify the holders of the patents that cover the drug within 20 days of submission.

The patent holder will have 20 days to file an infringement claim and notify CDE of the case. In that case, CDE will continue its review of the registration application but will not issue an approval for either 24 months or until the patent case is resolved, whichever is shorter. If the the court rules that the patent is not infringed, then CFDA will approve the drug once its review is complete.

Refining Regulatory Data Protection for Drugs

The Proposed Policies create a more concrete framework for implementing regulatory data protection ("RDP"). A basic outline of this type of protection has existed in the Drug Administration Law Implementation Regulation since 2002; however, that provision has not been implemented in practice. The Proposed Policies offer more detail and procedures and specify different levels of protection for different drugs. The applicant may submit a clinical data protection application together with the market authorization application. Innovative new drugs are eligible for six years of data protection. An innovative new drug that is for an orphan indication or specially treats children is eligible for ten years. An innovative therapeutic biologic is eligible for ten years, and new improvements to an existing orphan or pediatric drug are eligible for three years. In case of a drug marketed abroad for which there is a successful patent challenge, a 1.5-year protection period will be granted to the first generic of that drug in China.

If an applicant submits a marketing authorization application and a data protection application for a new drug within one year following an approval for marketing by the European Medicines Agency, the United States, or Japan, CFDA will grant the data protection for the corresponding category. If the market authorization application is submitted after this one-year period, any time exceeding such one-year period will be deducted from the data protection period. Nevertheless, if after the deduction, the period of protection is less than 1.5 years, the applicant will receive 1.5 years of protection.

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The Proposed Policies represent important reforms to the existing drug and medical device regulatory regime and reduce obstacles that have previously caused delays in bringing innovative medicines to China, although further guidance and clarification on certain points will be needed to implement these proposals. Pharmaceutical companies should continue to monitor this area Proposed Policies and consider submitting comments to CFDA.

If you have any questions concerning the material discussed in this client alert, please contact the following China-focused members of our Food, Drugs, and Devices practice:

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