



cutting through complexity

Mini-Summit XII: Patient Support Programs Part 2: Privacy and Pharmacovigilance Considerations

16th Annual Pharmaceutical Regulatory and
Compliance Congress and Best Practices
Forum

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Panelists

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This session is a companion to Mini Summit VI: Patient Support Programs Part 1: Getting Closer to the Patient. Part 1 covered:

- Large v. small company approach
- Legal considerations around:
 - Providing value to patients
 - Providing support/services to HCPs
 - Communications with patients

What is a PSP?

Patient Support Programs

“...a PSP is defined as a service for direct patient or patient carer interaction/engagement designed to help management of medication and/or disease outcomes (e.g., adherence, awareness and education), or to provide healthcare professionals (HCPs) with support for their patients. A PSP definition will only apply if there is direct contact with patients or patient carers. The intent is to support patient care provided by the MAH [Marketing Authorization Holder] or by a third party on the MAH’s behalf. Patients need to provide informed consent prior to enrolling on PSPs where they will be directly contacted.”

Source: The ABPI Pharmacovigilance Expert Network, ABPI Guidance Notes for Patient Safety and Pharmacovigilance in Patient Support Programmes (2011)

“A patient support programme is an organised system where a marketing authorization holder receives and collects information relating to the use of its medicinal products. Examples are post-authorisation patient support and disease management programmes, surveys of patients and healthcare providers, information gathering on patient compliance, or compensation/reimbursement schemes.”

Source: European Medicines Agency, Guideline on Good Pharmacovigilance Practices (GVP) – Module VI – Management and reporting of adverse reactions to medicinal products at 29 (2012)

Product Support Services

“Product Support Services. Pharmaceutical manufacturers sometimes offer purchasers certain support services in connection with the sale of their products. These services may include billing assistance tailored to the purchased products, reimbursement consultation, and other programs specifically tied to support of the purchased product. Standing alone, services that have no substantial independent value to the purchaser may not implicate the anti-kickback statute. However, if a manufacturer provides a service having no independent value (such as limited reimbursement support services in connection with its own products) in tandem with another service or program that confers a benefit on a referring provider (such as a reimbursement guarantee that eliminates normal financial risks), the arrangement would raise kickback concerns. For example, the anti-kickback statute would be implicated if a manufacturer were to couple a reimbursement support service with a promise that a purchaser will pay for ordered products only if the purchaser is reimbursed by a federal health care program.”

Source: HHS-OIG, *OIG Compliance Program Guidance for Pharmaceutical Manufacturers*, 68 Fed. Reg. 23,731 at 23,735 (May 5, 2003)

Examples of PSPs

- Appeals support
 - Appointment scheduling and reminders
 - Benefits Verification/Insurance Counseling
 - Co-pay cards, vouchers, coupons
 - Disease information and resources
- Nurse educators
 - Patient surveys/rewards programs
 - Prior authorization support
 - Product Reimbursement Information
 - Tele- or online-support (e.g., calls from or access to nurses, PAs)

Polling Question #1

What is your functional area?

- A. Compliance
- B. Legal
- C. Internal Audit
- D. Clinical/Medical Affairs
- E. Quality
- F. Other

Polling Question #2

Does your company have some type of Patient Support Program in place?

- A. Yes – have active PSP in place
- B. No – but business is considering PSP
- C. No – I'm here out of curiosity

Polling Question #3

If your company has a PSP in place or is considering one, how is it managed and operated?

- A. Through internal resources
- B. Outsourced to a third-party vendor(s)
- C. Hybrid approach (internal and external resources)
- D. I don't know

Polling Question #4

If your company has a PSP in place or is considering one, what type of PSP do you have or are you considering?

- A. Reimbursement information support (*e.g.*, benefits verification/insurance counseling, appeals support, prior authorization support)
- B. Direct contact with patients (*e.g.*, appointment scheduling and reminders, nurse educator visits, tele- or online-support from nurses or physician assistants)
- C. Co-pay cards, vouchers, coupons
- D. Unbranded disease information and resources
- E. All of the above (A, B, C and D)
- F. Some combination of A, B, C or D (but not all)

Select the one answer that most closely matches your company's current PSP approach.

Polling Question #5

If your company has a PSP in place or is considering one, which functional area in your company has (or will have) compliance oversight responsibility for PSPs?

- A. Compliance
- B. Legal
- C. Internal Audit
- D. Clinical/Medical Affairs
- E. Quality
- F. Other

Polling Question #6

Do you have (or will you have) any compliance oversight responsibility for your company's PSP?

- A. Yes
- B. No
- C. I don't know

Polling Question #7

With respect to PSPs, what legal risk is of greatest concern to you?

- A. Data Privacy / Data Protection
- B. Kickbacks / Items or services of value
- C. Off-label promotion
- D. Adverse event handling
- E. Don't know

PRIVACY

Megan Mikkelsen

US Chief Privacy Officer, Teva Pharmaceuticals

Consent/Authorization Considerations

- Common practice for PSPs to incorporate Consent/Authorization language into their “enrollment” forms
 - Allows the HCP to disclose the health information in a compliant manner to the PSP
 - Allows the PSP to receive and process the health information for certain identified purposes
- Perform an analysis to determine which national and state laws may apply to your program regarding privacy regarding consent and authorization.
 - Many U.S. state laws have more stringent requirements than HIPAA.

Authorization Elements

- Things to consider when drafting an authorization:
 - Who will be disclosing the patient information to the PSP – HCPs, health plans?
 - Who will be receiving the patient information – the PSP, affiliates, business partners, vendors, agents or representatives of the PSP?
 - What patient information will be disclosed? Must provide a meaningful description.
 - How will the information be used? Must describe purposes.
 - Will you want to use information for marketing purposes or communications?
 - What rights does the patient have over their health information – correction, access, revocation?
 - Are there any required disclosures under applicable law or regulation?
 - When does the authorization expire?

Polling Question #8

Your company knows that there have been pain points with processing new patients or providing services and they are looking for ways to improve the program. The marketing department has proposed to establish a mechanism for sales representatives to obtain patient information while out in the field so that they can share patient status updates with the patient's physician.

Polling Question #8 (cont'd)

Q: How do you respond?

- A. Implement the solution because your Patient Authorization already covers uses and disclosures by “affiliates and representatives” of your company.
- B. Modify your Patient Authorization to specifically identify sales representatives as a recipient of the protected health information
- C. Deny the request because it is inappropriate for sales representatives to be exposed to protected health information
- D. I’m not sure
- E. Other

Secondary Uses of Data



Polling Question #9

Let's say your company has implemented a Patient Authorization with language that permits the use and disclosure of the patient's information for the following purposes: (1) therapy support, (2) financial assistance support, (3) nursing services and (4) co-pay assistance. Later that year the Marketing department asks for a file of all patients currently on therapy so that they can send them a promotional communication about the new co-pay program they are launching next month.

Polling Question #9 (cont'd)

Q: What do you do?

A. Give them the file because the authorization states that “co-pay assistance” is a purpose.

B. Do not share the patient information with Marketing because the authorization does not cover “marketing purposes.”

C. I don't know

Privacy/HIPAA – Contractual Arrangements

Stephanie Wisdo – Otsuka Pharmaceutical Development & Commercialization, Inc.

Business Associate Agreements

•Parties

- Covered Entity
- Business Associate

•Definitions

- 45 C.F.R. 160.103

•Privacy Rule

- 45 C.F.R. Parts 160 and 164, Subparts A and E

•Security Rule

- 45 C.F.R. § 164 Subparts A and C

•Permitted Uses

•Breach Notification

•Term/Termination/Survival

Agreements with Third Parties

•Vendors

- Administrator of PSP
- Call Center
- Specialty Pharmacy
- Data Aggregator

•Confidentiality/Privacy/Data Security

•Reports

- What is being reported?
- Who needs this data? Permissible Uses.

•Training

- Whose policies/SOPs?
- Business rules/work instructions

•Monitoring

•Auditing



PSP, Quality, and Adverse Events

Assurance programs to drive quality and monitor vendor and non-traditional sources of adverse events

SIXTEENTH ANNUAL
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Mini Summit XII

October 2015

William Greenrose

Director

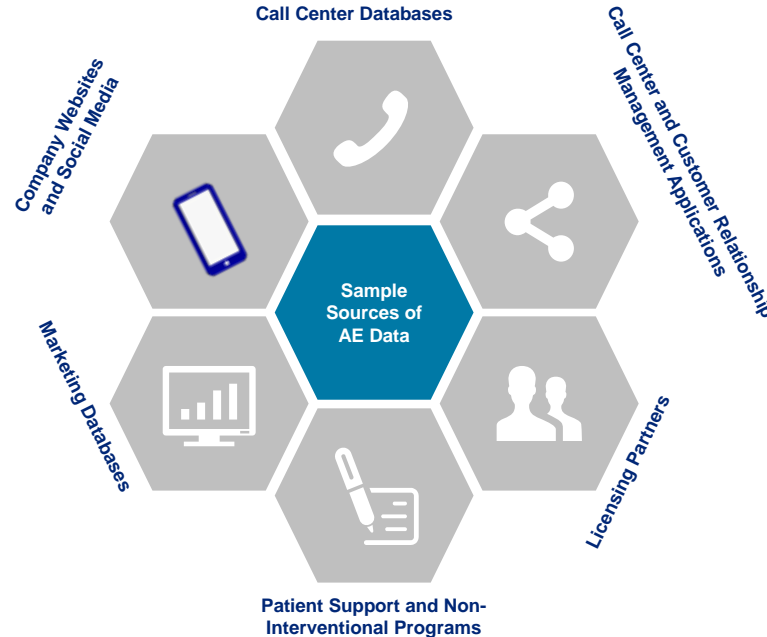
Advisory

Deloitte & Touche



Adverse event information exists in a variety of sources not traditionally monitored for adverse events

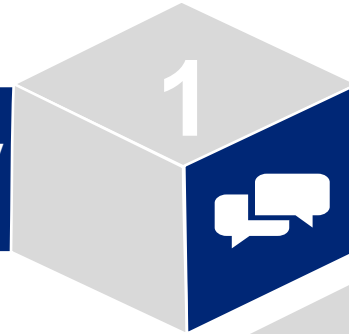
There is an upward trend in Health Authority findings, 483s and Warning Letters related to unreported adverse events found at vendors and non-safety departments at pharmaceutical companies. This increased enforcement is driving companies to examine the way they are assessing non-traditional sources of adverse events. These non-traditional sources of adverse events include non-interventional programs (PSPs), research vendors, marketing programs, insurance assistance centers, and other sites.



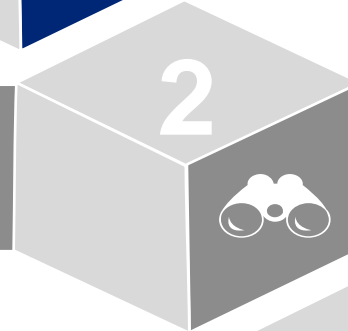
Lessons learned

Be sure all internal stakeholders are aligned – IT, legal, QA/QC/Regulatory, medical affairs, business unit stakeholders, who “own” the activities - It usually takes more internal resources and time than anticipated to stand up a program

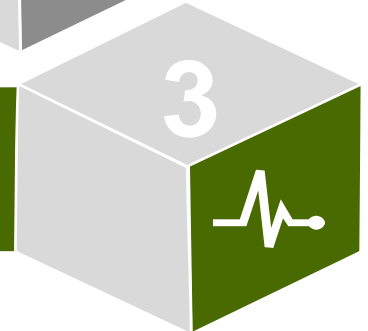
Data are part of the supply chain and need to be treated as such!



Risks come in many forms and the universe of data sources needs to be inventoried and risks associated with each need to be understood (e.g. paper vs. digital data in PSPs, use of leading questions in MR surveys, vendor use of sub-contractors for both)

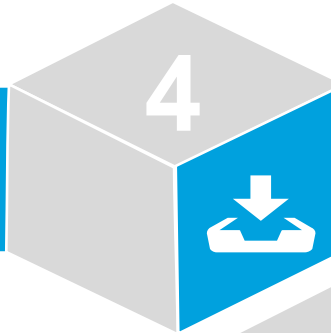


While a risk-based approach can and should be employed typically, a foundation should be built by assessing all data once from a defined time period (and which Health Authorities have mandated in the past) – which means effort up front to justify less work going forward



Lessons learned

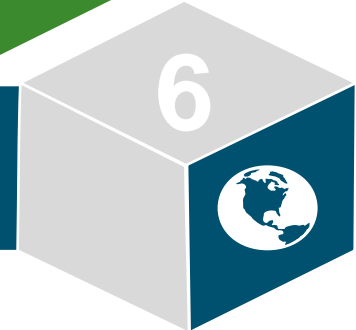
Obtaining data can be very challenging – whether from third parties or internal systems, it takes time; data may be sent in the wrong format and some data may be unavailable from some vendors and sub-contractors – but the good news is that it does get better over time



Not all relationships are created equal – you need to understand how you interact with internal and external groups, including what sub-contractor relationships are in place, ensuring they have contractual obligations and necessary training to report information and retain records



Not all local markets are the same – programs and regulations vary and relationships and responsibilities in local markets (e.g., Patient Privacy Laws) need to be understood and a plan for engagement with local markets should be developed





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Polling Question #11

Do you have well-established processes for the collection of safety information from any and all PSPs?

A.Yes

B.No

C.I don't know

Polling Question #12

Same question with an additional angle:

Do you have well-established processes for the collection of safety information from any and all PSPs... including the collection of off-label information for periodic aggregate safety reports?

A.Yes

B.No

C.I don't know

D.Not applicable (company is not a MAH in Europe)

Polling Question #13

In the event a prescriber independently writes a script for an off-label use, will your company's PSP offerings be available to the prescriber and/or patient?

A.Yes

B.No

C.I don't know

EU Pharmacovigilance Legislation

Off-label Use is required to be collected & reported – even without an Adverse Drug Experience

EMA logo

Q1: Does a MAH need to collect individual cases of off label use without an adverse reaction? (1)

- Art 23 (2) of DIR 2001/83/EC requires the MAH to report to the competent authorities "any other new information which might influence the evaluation of the benefits and risks of the medicinal product concerned", including "data on the use of the medicinal product where such use is outside the terms of the marketing authorisation".

2 Q&A on Off-Label Use

EMA logo

Q3: Is there a requirement to train staff on collecting cases of off label use without an adverse reaction?

- Yes there is a requirement to train staff, as part of the routine operation of the pharmacovigilance system as referred to in Art 101 of DIR 2001/81/EC.
- This applies where the MAH becomes aware of this information.

6 Q&A on Off-Label Use

EMA logo

Q4: How should MAHs collect and monitor the information on off label use that is required for PSURs and applicable RMPs? (2)

The expectations for the collection of off label use reports without adverse reaction are as follows:

- Confirmed reports of off-label use e.g. "Use in an unauthorised indication":
 - These reports should be collected as part of the pharmacovigilance system in order that they may be easily collated for analysis and presentations during the production of a PSUR or RMP. In general, there is no expectation to follow-up on these reports except where they may be associated with an adverse reaction or on prospective reports of pregnancy.

Note: Guidance on the presentation and evaluation of off label use in PSURs and RMPs is provided in GVP V and VII.

8 Q&A on Off-Label Use

Sources:

Guideline on good pharmacovigilance practice (GVP) - Module VII – Periodic safety update report (Rev 1); EMA/816292/2011 Rev 1* (December 13, 2012)

Q&A on Off-Label Use

Proposal in response to EFPIA paper of 3rd October 2014

EMA Industry Stakeholder Platform - Operation of EU Pharmacovigilance Legislation 12 January 2015

Presented by Sabine Brosch (EMA) and Anja van Haren (MEB) on 12 January 2015

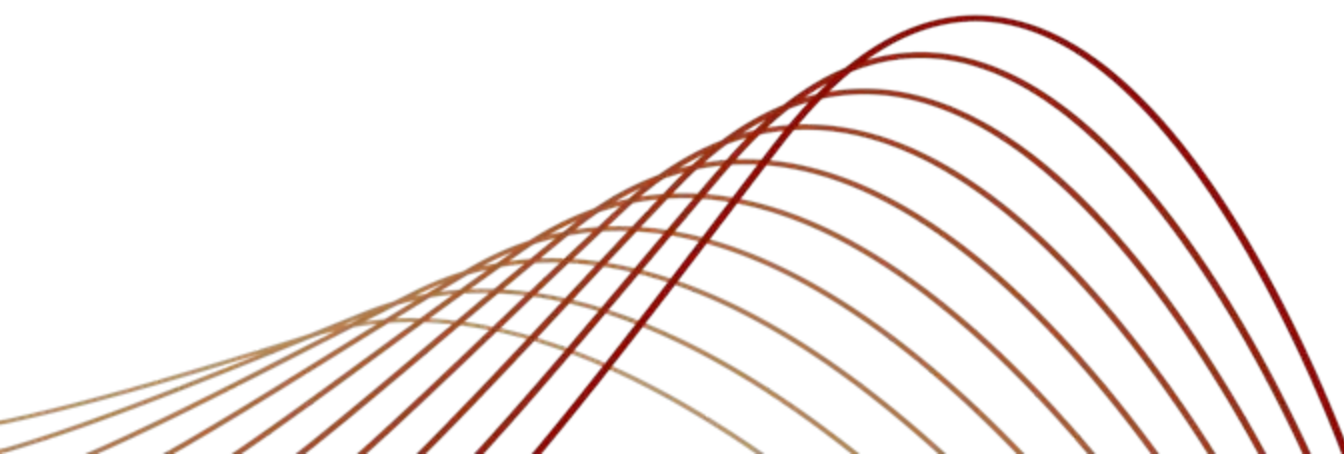
HANDLING OF SAFETY INFORMATION: THE NOVARTIS *QUI TAM* & THE ROCHE INFRINGEMENT PROCEEDING

Terra Reynolds

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THE NOVARTIS *QUI TAM*



NOVARTIS QUI TAM ALLEGATIONS

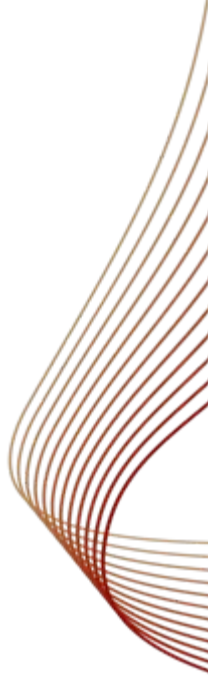
(U.S. V. NOVARTIS, 11-CV-8196 (SDNY))

- Novartis paid kickbacks to certain specialty pharmacies within its exclusive distribution network in order to drive refills of Novartis' products Exjade and Myfortic
- Pharmacies were selected, in part, on the number of Medicare and Medicaid patients served
- Novartis provided rebates and patient referrals in exchange for the pharmacy implementing a "clinical counseling" and "education" program for Novartis' product
- Novartis funneled patient referrals to pharmacies with high "adherence scores" which measured how long patients continued to order refills
- In an effort to improve adherence scores, pharmacies' counseling and education program did not address serious, life-threatening side effects, even after January 2010 FDA requirement for black box warning to the Exjade label

- Bioscrip and Accredo have entered into civil settlements with the DOJ and states
 - Bioscrip settlement in January 2014 for \$15 million
 - Accredo settlement in May 2015 for \$60 million
- Bioscrip and Accredo made extensive factual admissions
 - Bioscrip and Accredo employees making calls to Exjade patients emphasized the importance of refills, but ignored Exjade's serious, potentially life-threatening side effects, such as kidney failure and gastrointestinal hemorrhage
 - Novartis' incentives caused Bioscrip and Accredo to focus exclusively on getting Exjade patients to order refills, rather than caring for patients
- Claims against CVS Caremark dismissed by agreement of the parties on October 6, 2015
- Novartis is scheduled to proceed to trial on November 2, 2015



- Lessons from the Novartis *Qui Tam*
 - PSPs should monitor patient adherence for a legitimate purpose, not as a means of rewarding or punishing stakeholders involved with the PSP
 - Audit clinical counseling and education programs to ensure that patients are informed of both common and severe, possibly life-threatening side-effects
 - Consider the high costs of misconduct
 - Damages & Fines – the Novartis *Qui Tam* involves more than 166,000 Medicare and Medicaid Claims
 - Damages of \$1.5 billion (value of claims x 3)
 - Fines of \$1.83 billion (between \$5,000 to \$11,000 per claim)
 - Investigations & Litigation (government and shareholder)
 - Reputational Harm



THE ROCHE INFRINGEMENT PROCEEDING – A CASE STUDY IN EUROPEAN LITIGATION REGARDING PSPs

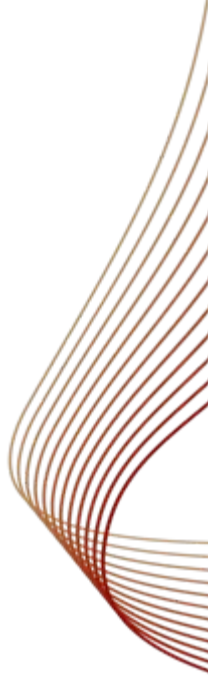
- In early 2012, the United Kingdom Medicines and Healthcare Products Regulatory Agency (MHRA), carried out a pharmacovigilance inspection, which identified serious shortcomings in Roche's reporting of adverse events with respect to its 19 centrally authorized medicines
 - Linked to non-interventional programs (in particular a PSP run by Genetech) in the U.S. which provided advice relating to insurance and funding of products also marketed in the EU
 - MHRA's initial report estimated that Roche failed to report over 80,000 adverse events, including 15,000 deaths and 23,000 suspected adverse reactions



- In June 2012, the European Medicines Agency (EMA) began to investigate Roche's non-compliance with its pharmacovigilance obligations
- On October 23, 2012, the EMA initiated an infringement proceeding against Roche under European Commission Regulation No. 658/2007 (Penalties Regulation)
 - The results of the proceeding are reported to the European Commission, which may in turn impose fines or periodic penalty payments if it finds a company has committed an infringement of its obligations
- On November 19, 2013, the EMA announced the results of its investigation into Roche's 19 centrally authorized medicines, which identified no new safety concerns
 - "The balance of benefits and risks of these medicines has not been affected and there is no new advice regarding their use. Patients should continue to take these medicines as previously advised."



- In October and November 2013, the MHRA re-inspected Roche's pharmacovigilance systems
 - Roche believed that this re-inspection was routine, and not done in conjunction with the EMA
- In early 2014, the MHRA provided a report of its re-inspection to the EMA
 - MHRA's report noted Roche's full cooperation and two continuing deficiencies
- On April 14, 2014, the EMA announced that it had sent its report regarding Roche's non-compliance with pharmacovigilance obligations to the European Commission
- The European Commission will decide whether the matter should be pursued and financial penalties will be imposed
 - Under the Penalties Regulation, an infringement procedure is carried out subject to the principles of confidentiality and professional secrecy.



- In the interim, Roche challenged certain conduct of the MHRA relating to its fall 2013 re-inspection of Roche before the English Administrative Court (the Court)
 - On July 9, 2014, the Court rejected Roche's arguments and found that the MHRA had lawfully carried out a re-inspection of Roche
- Lessons from the Roche Infringement Proceeding
 - Pharmacovigilance reporting obligations in the E.U. extend to information obtained through U.S.-based PSPs
 - Under the Penalty Regulation, a company can face further inquiry and fines even if there are no safety concerns stemming from the failure to report adverse events
 - Any company subject to an infringement proceeding should assume that information provided to a national authority in the E.U. may be passed to the EMA and then used in the proceeding

Handling of Safety Information by Third Parties

Stephanie Wisdo – Otsuka Pharmaceutical Development & Commercialization, Inc.

- **Overarching Pharmacovigilance Agreement with another pharma company**
 - Joint Venture
 - Drug product has been in-licensed
 - Information Exchange and Reporting Responsibilities
- **Agreements with vendors providing services for PSP**
 - General Terms and Conditions
 - Description of the services – Is the vendor in a position to receive an AE?
 - Compensation – Includes training? Reporting? Monitoring?
 - Confidentiality/Data protection
 - Reporting
 - What is being reported? Is definition broader than AE or PQC?
 - Time frame? Twenty-four (24) hours, one (1) business day
 - Training
 - Monitoring
 - Auditing

Polling Question #14

We hope you found this session to be informative and valuable. Regarding the topics covered, please identify an area you would like to learn more about:

- A. Privacy considerations
- B. Secondary use of data
- C. Business Associate Agreements
- D. Pharmacovigilance considerations
- E. Oversight of third parties
- F. Specific types of PSPs and controls to mitigate risk