

SIDLEY AUSTIN LLP
SIDLEY
盛德国际律师事务所

BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON D.C.
北京 布鲁塞尔 芝加哥 达拉斯 法兰克福 日内瓦 香港 伦敦 洛杉矶 纽约 旧金山 上海 新加坡 悉尼 东京 华盛顿



Global Compliance: Reference Pricing and International Pricing & Reimbursement Considerations

Pharmaceutical Compliance Congress - November 11, 2009

James C. Stansel

202-736-8092

jstansel@sidley.com

Agenda

- International Pricing/Reimbursement Regimes
- Cross-Nation Reference Pricing
- Impact of Comparative Effectiveness Research
- Other Pricing Issues
- A Global Compliance Program

International Pricing/Reimbursement Regimes

- Interrelationship among coverage, coding, reimbursement and pricing
- Compliance concerns in both local jurisdiction and U.S.
- Basic pricing/reimbursement regimes
 - Cost-based system
 - Class-based system
 - Market-basket system
 - Value-based system
 - Risk-sharing
 - Gainsharing
 - Comparative Effectiveness Research
- Most regimes involve a combination of systems
- All involve reference pricing in one form or another

International Pricing/Reimbursement Regimes

Value-based system: Correlation among CER, value-based contracting and price reporting

- Value-based contracting is effectively a risk-sharing arrangement where the manufacturer agrees to pick up (all or part of) the tab for those patients who have not responded to a treatment
- The connection between CER and value-based contracting:
 - Some foreign health systems may not approve a treatment or reimbursement for a treatment without a risk-sharing arrangement that requires reimbursement for patients who do not have a positive outcome
- U.K. Examples:
 - As a condition of NHS coverage for Revlimid, Celgene agreed to pay drug costs for patients who remain on the treatment for more than years
 - The NHS would only agree to coverage of Velcade, after Janssen-Cilag agreed to pay for treating non-responders

International Examples: China

- To receive government reimbursement, drugs must be on Reimbursable Drug List (RDL), which includes:
- First National Essential Drug List (NEDL) issued August 2009
 - 205 chemical/biologic medicines and 120 traditional Chinese medicines
 - Updated every **3** years
 - Must be necessary for basic health care; in proper dosage form; reasonably priced; sufficient supply; affordable and readily available
 - Must be listed in China pharmacopeia
 - Drugs produced by only one manufacturer less likely to be included than drugs with multiple manufacturers

International Examples: China

- MOH will set a ratio of essential drugs v. all drugs to be used
- Reimbursement ratio for essential drugs “**significantly higher**” than non-essential drugs
- Pricing
 - National Development and Reform Commission (NDRC) formulates retail price guidance for RDL and essential drugs
 - Provincial governments determine uniform procurement prices based on NDRC price guidance
 - More scrutiny on costs, tendering prices and logistics fees, to squeeze unnecessary promotional and marketing expenses
- Drugs not on RDL/NEDL are not reimbursed by government, but may still be sold, generally at market rates

China: NDRC Drug Pricing Methodology

Principles

- Recoup reasonable manufacturing costs
- Preserve reasonable profit margins
- Reflect market forces (demand/supply)
- Differentiate by quality & efficacy
- Establish reasonable reference pricing
- Encourage R&D

Criteria for Price Evaluation

- Prices of identical or similar products outside China
- Economic assessment of new drugs
- GMP certification
- Level of innovation
- Novelty and reputation
- Patent status

Reference Pricing

- “Reference Pricing” can refer to any reimbursement/pricing rule used by a third-party payor or regulator that sets the reimbursement or pricing for one product by reference to another product.
- Internal reference pricing
 - Simple: branded product reimbursed at same amount as generic and patient pays the difference
 - Class-based: all products in a class are reimbursed at a certain reference price based on some calculation of manufacturer supply prices (LCA, mean, median, etc.)
- External or cross-nation reference pricing
 - Many variations, but generally limits reimbursement in one country by reference to prices of the same drug in one or more other countries

Reference Pricing

- Internal reference pricing should be familiar to us:
 - Medicare ASP
 - Medicaid AMP, Best Price
 - Federal Supply Schedule non-FAMP, best commercial customer
- Can use *some* of what we know from internal reference pricing to prepare globally – internal and cross-country
 - Need sophisticated systems to track prices
 - Need good processes to ensure accurate and timely reporting
 - Need to audit systems and correct reporting where necessary
 - Need training and policies to ensure appropriate inputs and outputs: garbage in, garbage out
- *But* must know the foreign nuances to adequately cover all potential issues

Cross-Nation Reference Pricing: *Japan*

- Pharmaceuticals and Medical Device Agency (PMDA) determines whether a drug is covered by both public and private insurance plans – approval and coverage merge
- Central Social Insurance Medical Council (Chuikyo) sets reimbursement rates that apply to both public and private plans and all providers are reimbursed equally
 - *Cost consideration as part of a data-driven analysis* designed to offset an historically political approach, although lobbying still permitted
- Marketing Authorization Holders (MAHs) act on behalf of foreign manufacturers to negotiate retail prices with distributors, providers and other purchasers *after coverage and reimbursement rates are established.*

Cross-Nation Reference Pricing: *Japan*

- Central Social Insurance Medical Council divides prescription drugs into three categories:
 - Me-too
 - *Automatically, reimbursement is lower than existing products unless existing product less than three years old or if three or fewer existing products on the market.*
 - New – truly innovative
 - Also requires approval by Medical Economics Division
 - *Surveys market for similar drugs to serve as reimbursement base*
 - Bonus points for innovation, enhanced usefulness, improved marketability, and pediatric use
 - Generic
 - Get 80% of brand reimbursement
 - If 20 or more, get 90% of previous generics

Cross-Nation Reference Pricing: *Japan*

- Reimbursement amount must be less than double the average of prices in:
 - United States
 - United Kingdom
 - France
 - Germany
- All initial reimbursement rates adjusted down every two years
 - Based on foreign and domestic price surveys and overall target spending reduction (2% in recent years)
 - Feedback loop of retail prices set after reimbursement rates creates downward spiral of prices
 - Feedback loop also requires attention to reporting of prices

Cross-Nation Reference Pricing: *Canada*

- Federal Canadian government has drug and device approval authority
- But provincial and territorial governments make the final decision about which drugs and devices will be publicly funded
 - Ministers of health for each of the 10 Canadian provinces and 3 territories decide on funding
 - Inpatient drugs and some devices are covered by the nation's "hospital global budget"
 - Outpatient drugs for patients 65 years or older are publicly reimbursed as long as those drugs are on the approved formulary

Cross-Nation Reference Pricing: *Canada*

- Canadian Expert Drug Advisory Committee (“CEDAC”) makes national cost-effectiveness recommendations about drug coverage based on systematic reviews of clinical evidence and pharmacoeconomic data, known as the Common Drug Review.
- Canadian Patented Medicine Prices Review Board (“PMPRB”) sets prices based on a median price charged in seven countries (France, Germany, Italy, Sweden, Switzerland, U.K. and U.S.).
- The PMPRB monitors to ensure that new patented drug prices are limited to those comparable pharmaceuticals sold in Canada and that existing patented drug prices in that nation cannot increase by more than the Consumer Price Index.

Cross-Nation Reference Pricing: *Importation*

- Pending U.S. legislative proposals to allow importation
- By authorizing importation, the logical next step is to reference drug prices in those “permitted countries” to determine U.S. reimbursement prices
 - How can higher U.S. prices be defended when the product may literally come from a lower-priced country?
- The result will be a U.S. globalization of drug prices, where government reimbursement rates are influenced by ex-U.S.
- Ex-US reimbursement rates will directly depress US market prices
- Compliance issues arise with the reference pricing and reporting obligations, plus diversion concerns

Comparative Effectiveness Research

- Stimulus Law created the Federal Coordinating Council for Comparative Effectiveness Research and authorized \$1.1 billion in CE spending. The law limits use of research . . .
 - Coverage: “Nothing in this section shall be construed to permit the Council to mandate coverage, reimbursement, or other policies for any public or private payer.”
 - Reports and Recommendations: “None of the reports submitted under this section or recommendations made by the Council shall be construed as mandates or clinical guidelines for payment, coverage, or treatment.”
- . . . But . . .
 - AHRQ officials announced that they will study cost.
 - Several NIH priority studies explicitly analyze cost.
 - Remember Germany

Comparative Effectiveness Research

- What does this have to do with international compliance issues?
 - Most of the rest of the world is far ahead of us in use of CER
 - U.S. CER use will likely employ international CER
- Senate Finance Bill specifically allows use of comparative effectiveness research to determine Medicare coverage if “such use is through an iterative and transparent process” where public comment is welcome and CMS considers all other relevant evidence, studies, research.

Comparative Effectiveness Research

- Senate HELP Bill creates a Center for Health Outcomes Research and Evaluation within HHS:
 - Will “coordinate, conduct, support, and synthesize research relevant to the comparative health outcomes and effectiveness of the full spectrum of health care treatments, including pharmaceuticals, medical devices, medical and surgical procedures, screening and diagnostics, behavioral health care, and other health interventions”
 - Circulate findings to providers, patients, and public and private payers, and “develop a publicly available resource database that collects and contains high-quality independent evidence to inform health care decision-makers, which shall include reliable evidence from government and non-government sources”

Comparative Effectiveness Research

- House Bill establishes a Center for Comparative Effectiveness Research at AHRQ that:
 - Conducts systematic review of existing research
 - Develops rigorous methodology for CER
 - Encourages the development and use of registries
 - Develops strategies to disseminate the findings
 - Reports to the Comparative Effectiveness Research Commission
- Stand alone bill would require FDA to issue regulations to expand the label to include all available scientific evidence

Comparative Effectiveness Research

- The globalization of CER will introduce compliance risks in the U.S. and abroad
- Pressure to generate even more data (both clinical and economic) to demonstrate product value and maximize opportunities for approval and coverage
- If CER data is used to make approval, coverage and reimbursement decisions, a good compliance program is key to limiting risk
- Ambiguity in standards to be applied to research and data combined with vast amount of international CER data may lead to challenges in determining which CER to use
 - Appropriate dissemination and use
- Rules may require disclosure of financial ties and other sponsorship considerations
- Ensuring accuracy of data will be key
 - AERs, trial registries, prices
- Coverage of cost of trials (CED, CTP) will be a significant issue and a source of compliance risk

Comparative Effectiveness Research

- A model for compliance in comparative effectiveness research?
- FDA Final Guidance for Industry: Good Reprint Practices
 - Integrity in the Publication of the scientific or medical journal article or reference text
 - Integrity in the Preparation of the Article
 - Integrity in the Science Behind the Article
 - Integrity in the Dissemination of the Article
 - Inclusion of a Disclaimer

Other Pricing Issues: FCPA

- U.S. criminal statute has anti-bribery component that prohibits:
 - A “covered” person / entity
 - From offering or giving something of “value”
 - To a “foreign official”
 - To “obtain or retain business”
 - With “corrupt” intent
- Criminal and civil provisions require companies to:
 - Make and keep books and records to reflect transactions
 - Devise and maintain a system of internal controls of transactions
- Similar statutes have been adopted by 36 countries
- Enforcement against pharmaceutical companies is now common

Other Pricing Issues: Antitrust

- Competition law is crucial in many countries
- EU exemptions from antitrust rules can have a significant impact on prices, trade
- Recent GSK victory in Court of Justice of the EC
 - European Commission had denied GSK an exemption that would have allowed GSK to curb “parallel trading” – essentially importation from a low cost nation to a higher cost one.
 - Court held that Commission failed to adequately weigh GSK’s claim that exploitation of uneven prices in wholesale market ultimately thwarts research and innovation.
 - Dual pricing allowed.
- Compliance must consider specific antitrust rules, which can involve reference pricing issues.

A Global Compliance Program

- Understand and train on specific jurisdictions' laws
- Ensure Integrity in Price Reporting
 - Establish systems to track prices
 - Report prices accurately and timely
 - Monitor and audit systems and reporting
- Ensure Integrity in CER
 - Establish standards for methodology
 - Make appropriate disclosures
 - Disseminate CER in accordance with FDA and other guidelines
 - Limit interactions with CER-generating agencies as appropriate
 - Seek only appropriate reimbursement for costs of research
- Ensure Integrity in Interactions with Foreign Governments
- Ensure Appropriate Price Setting

Questions?

James C. Stansel
Co-head Global Life Sciences Team
Sidley Austin LLP
(202) 736-8092
jstansel@sidley.com