



Draft Standard Memorandum of Understanding (MOU)

Statutory Basis for MOU

- Section 503A: Unless the drug product is compounded in a state that has entered into an MOU with FDA, a pharmacist, pharmacy, or physician cannot distribute or cause to be distributed compounded drug products outside of the state in which they are compounded in quantities that exceed 5% of the total prescription orders dispensed or distributed by that pharmacy or physician

Statutory Basis for MOU (cont'd)

- The MOU must: address “the distribution of inordinate amounts of compounded drug products interstate” and provide “for appropriate investigation by a State agency of complaints relating to compounded drug products distributed outside such State”
- FDA directed to develop standard MOU in consultation with NABP

MOU History

- 1999 - FDA published a draft standard MOU for comment
- FDA received over 6,000 comments on the draft
- Because of the Supreme Court decision in 2002, MOU was never finalized
- When DQSA enacted, FDA began again to implement this condition of 503A
- Interstate distribution conditions do not apply to 503B outsourcing facilities

Why is interstate distribution a concern?

- State-licensed pharmacies primarily overseen by states
- Congress did not intend for compounders operating under the exemptions in section 503A to grow into conventional manufacturing operations making unapproved drugs and operating a substantial portion of their business interstate
- If a substantial proportion of a compounder's drugs are distributed outside of a State's borders, adequate regulation of those drugs can pose logistical, regulatory, and financial challenges to State regulators; can be difficult to investigate and address multi-state outbreaks
- If a poor performing pharmacy locates in a state with inadequate controls, patients in other states are at risk

Provisions of Draft Standard MOU

- With regard to investigation of complaints, states that sign MOU would agree to:
 - Investigate complaints about compounded drugs made in the state and distributed outside the state (previous MOU said all complaints, not just interstate)
 - Complaints to be investigated include adverse drug experiences and product quality issues that, if left uncorrected, could lead to potential public health risks or safety concerns
 - Details of investigation left to the states

Provisions of Draft Standard MOU (cont'd 2)

- State would agree to:
 - Take action if the complaint is found to be valid, to make sure compounder determines root cause of the problem and addresses it
 - Notify FDA within 72 hours of any complaint involving a public health risk or immediate safety concern
 - Provide FDA with an initial assessment of the validity of the complaint, and actions taken or planned to address the complaint, and certain other information about the complaint

Provisions of Draft Standard MOU (cont'd 3)

- With regard to “inordinate amounts” of drugs shipped interstate, states that sign MOU would agree to:
 - Review records during inspections of compounding pharmacies, determine whether the pharmacy, compounding pharmacist, or physician is distributing inordinate amounts of compounded drug interstate
 - Notify FDA of inordinate distributions, and provide information about the compounder, the evidence of interstate shipment, and a description of any action taken
 - Take action regarding that entity

Provisions of Draft Standard MOU (cont'd 4)

Inordinate amount: if number of units of compounded human drug products distributed interstate during any calendar MONTH is $\geq 30\%$ of the number of units of compounded and non-compounded drug products distributed or dispensed both intrastate and interstate by pharmacy during that calendar month

Calculation of Inordinate Amounts

*units of compounded human drug products
distributed interstate*

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≤ 30%

*units of compounded and non-compounded
drug products
distributed or dispensed
intrastate and interstate*

Provisions of Draft Standard MOU (cont'd 5)

- FDA does not intend to include in the calculation of inordinate amounts those prescriptions dispensed to a patient or patient's agent where the patient or patient's agent carries the drug across state lines after it has been dispensed at the facility in which it is compounded
- FDA did not provide for an exception for drugs distributed within 50 mile radius to contiguous states because it included higher percentage for inordinate amounts and clarified that carrying across state lines was excluded from the calculation

How does the MOU address concerns?

- Law creates a baseline 5% limit on interstate distribution under 503A
- FDA has proposed a 30% upper limit for pharmacies operating under 503A and located in a state that signs the MOU
- Outsourcing facilities operating under section 503B are not subject to volume restrictions on interstate distribution but are registered with FDA, will be inspected on a risk-based schedule, and are subject to CGMP and other requirements; this could mitigate access concerns associated with the 30% limit

Summary

- 30% limit on inordinate amounts is proposed to balance the benefits of access to compounded drug products with the need to protect the public health and the approval system

Distribution

- For purposes of the draft standard MOU, distribution occurs when a compounded drug product leaves the facility in which the drug was compounded
- Distribution includes delivery or shipment to a physician's office, hospital, or other health care setting for administration and dispensing to an agent of a patient or a patient for own use

MOU - Next Steps

- Comment period closes June 19, 2015
- We will evaluate all comments received and prepare final standard MOU in consultation with NABP
- When we publish final standard MOU, we will provide a period of time for states to sign before we begin enforcing the 5% limit.
 - Considering 180 days, but seeking comment on how long is reasonable period to give states opportunity to decide whether to sign