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CLIENT ALERT

SIUU What? Recent Draft Guidance from the FDA Could Generate Questions from Sales, Marketing, and Medical on Who, How, What, and When SIUU can be Presented

October 2023 saw the release of the FDA's draft guidance on Communications From Firms to Health Care Providers Regarding Scientific Information on Unapproved Uses of Approved/ Cleared Medical Products. This draft guidance provides the FDA's current thinking on the communications from manufacturers to healthcare providers (i.e., those who are licensed or otherwise authorized to prescribe, order, administer, or use medical products in a professional capacity) on scientific information on unapproved use(s) (SIUU) of approved/ cleared medical products.

This draft guidance represents the latest in a series of guidances related to product communications, including:

- 1997 Guidance: Industry Supported Scientific and Educational Activities
- 2009 Guidance: Good Reprint Practices
- 2011 Guidance: Unsolicited Requests
- 2014 Revised Draft Guidance: Reprints
- 2017 FDA Memorandum: Manufacturer Communications Regarding Unapproved Uses of Approved or Cleared Medical Products
- 2018 Guidance: Drug and Device Manufacturer Communications with Payors
- 2021 Final Rule: Intended Use

The science behind many pharmaceutical and device products and practical medical decisions associated with pharmaceutical and device products lends itself to use of products in circumstances that would be considered off-label or not consistent with label. Underlying mechanism of action or applicability in different systems or age groups can support this type of clinical decision making by the learned intermediary.

Manufacturers support clinical exploration of such scientific/ clinical questions through investigator-initiated studies or company-sponsored clinical trials, and the medical community itself may choose to explore uses of products without manufacturer support.

Is the FDA now saying that manufacturers can share relevant information about the use of products in unapproved indication(s)? Yes, BUT…

There are key requirements to be met before a manufacturer can pro-actively disseminate SIUU. These requirements are designed to mitigate risk to patients and keep SIUU within certain safe harbor requirements. The communication must be:

- Truthful
- Non-misleading
- Factual
- Unbiased
- Informative and provide all necessary information for healthcare providers to be able to interpret the strengths and weaknesses and the validity and utility of the information
- Based on a study or analysis described in a source publication (i.e., published reprint, clinical practice guideline, reference text, or material from an independent clinical practice resource) that is scientifically sound and clinically relevant
- Based on a study or analysis that provides clinically relevant information for a clinical decision related to the care of an individual patient
- Provided in a manner that is consistent with medical/ scientific exchange (i.e., not promotional)

The draft guidance further addresses four key questions:

1. What should firms consider when determining whether a source publication is appropriate to serve as the basis for an SIUU communication?

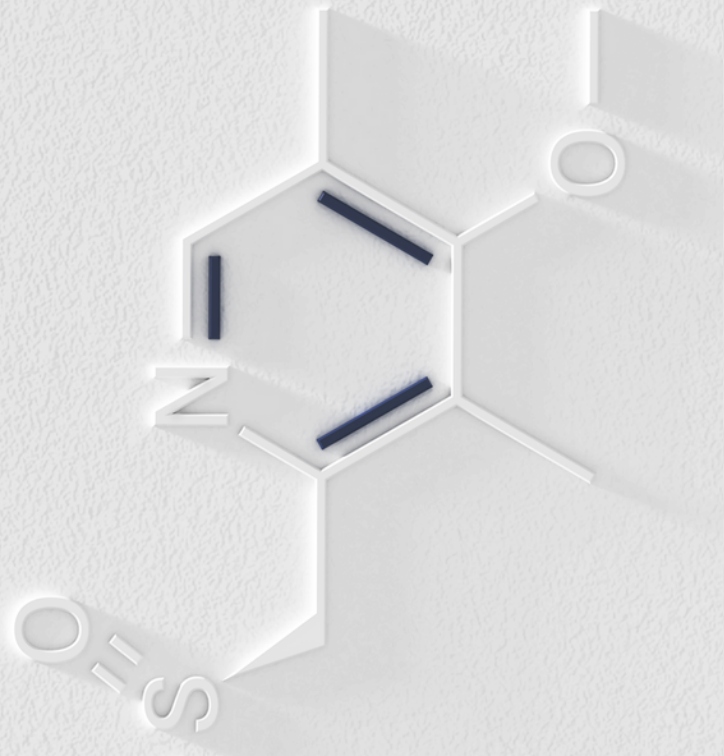
- Key considerations: The data must be scientifically sound and clinically relevant

2. What information should firms include as part of SIUU communications?

- A statement that:
  - States the unapproved use(s) of the medical product has not been approved by the FDA and that the safety and effectiveness of the medical product for the unapproved use(s) has not been established
  - Discloses the FDA-approved use(s) for the product, including any limitations of use specified in the labeling
  - Discloses any limitations, restrictions, cautions, or warnings described in the FDA-required labeling about the unapproved use(s)
  - Describes any contraindication(s) in the FDA-required labeling
  - Describes any serious, life-threatening, or fatal risks that are in the FDA-required labeling
  - Identifies any authors, editors, or other contributors to publication(s) included in the SIUU who were employees of or consultants to or received compensation from the manufacturer
- A copy of the current FDA-required labeling
- All material aspects and limitations of study design, methodology and results
- Publication date of any referenced or included publication(s)

3. What presentational considerations should firms take into account for SIUU communications?

- Clearly and prominently present all disclosures recommended in this draft guidance
- Should not use persuasive marketing techniques – there should be no hint of the manufacturer trying to persuade a healthcare provider to use the product for unapproved use(s)
- SIUU communications should be separate and distinct from promotional communications about approved use(s) of the product. Manufacturers should use vehicles, channels and venues for SIUU that are separate and distinct from promotional communications
- SIUU communications should be shared through media and via platforms that enable alignment with recommendations in this draft guidance
- Use plain language to facilitate comprehension



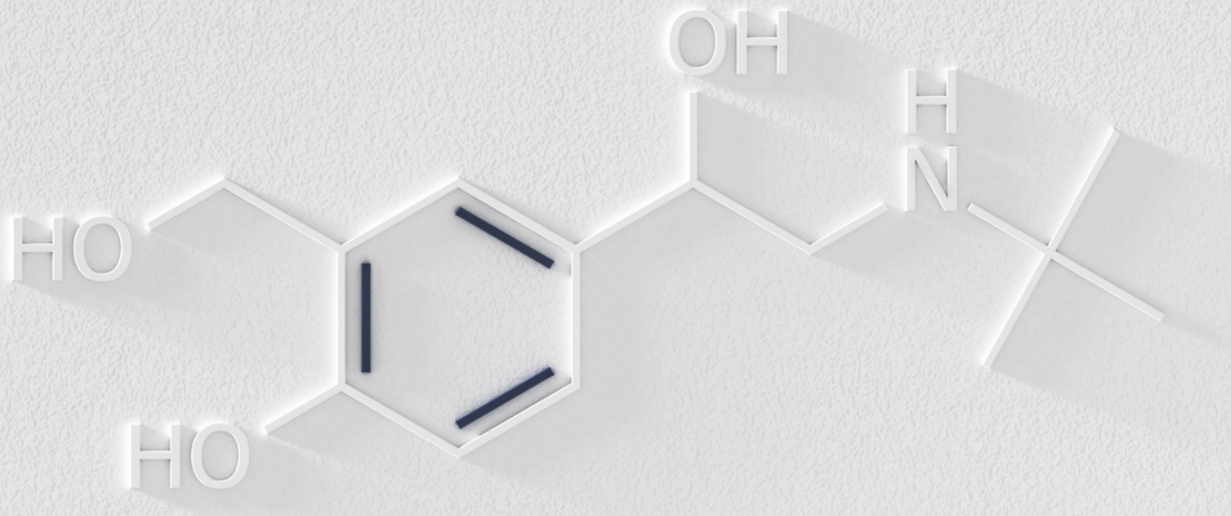
4. What additional recommendations apply to specific types of SIUU communications?

- Reprints must be:
  - A medical or scientific journal
  - Peer-reviewed by experts
  - Generally available through independent channels
  - Described by the study or analysis that is scientifically sound and clinically relevant
  - Unaltered/ unabridged
  - Manufacturer-generated presentations of reprints must be accompanied by the actual reprint, must indicate the name of the manufacturer responsible for the presentation, and must meet the criteria in this draft guidance for SIUU
- Clinical Reference Resources:
  - Clinical Practice Guidelines: from a professional or academic institution, for disease/ condition guidelines where there are few or no approved/ cleared medical products indicated. These should meet the National Academy of Medicine standards for Clinical Practice Guidelines
  - Reference texts: medical or scientific textbooks
  - Materials from Independent Clinical Practice Resources: digital resources developed by experts that contain medical and scientific information
  - Note: each of these types of communications must meet the requirements detailed in questions 1-3 above, with some minor variations based on the type of communication.

Some practical considerations to incorporate into any plans to communicate SIUU:

- This is draft guidance and does not establish any rights and is not considered binding
- Any potential SIUU should go through a medical, legal, and regulatory review and approval before use
- Any SIUU should be shared in a non-promotional setting
- Medical Affairs – gear up for the potential to responsibly and proactively share SIUU
- Compliance – be ready to establish and implement compliance controls related to SIUU communications

The professionals at Epsilon Life Sciences have worked with manufacturers on threading the needle between commercial/ promotional and clinical/ scientific communications, helped establish controls associated with scientific information (from creation through to dissemination), and tested controls to ensure intended outcomes.



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