PREMIER TRANSFORMING HEALTHCARE TOGETHER®

April 9, 2020

Stephen Hahn, M.D.
Commissioner
Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Submitted electronically via: www.regulations.gov

Re: Docket No. FDA-2018-N-2689, Food and Drug Administration/Federal Trade Commission Workshop on a Competitive Marketplace for Biosimilars; Public Workshop; Request for Comments

Dear Commissioner Hahn and Chairman Simons:

The Premier healthcare alliance appreciates the opportunity to submit comments to the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) on the request for comments titled "Food and Drug Administration/Federal Trade Commission Workshop on a Competitive Marketplace for Biosimilars" which was published in the February 4, 2020 Federal Register. In the request for comments, the FDA and FTC seek input to support appropriate adoption of biosimilars, discourage false or misleading communications about biosimilars, and deter anticompetitive behaviors in the biologic product marketplace.

Premier is a leading healthcare improvement company, uniting an alliance of more than 4,000 U.S. hospitals and health systems and approximately 175,000 non-acute providers to transform healthcare. With integrated data and analytics, collaboratives, supply chain solutions, consulting and other services, Premier enables better care and outcomes at a lower cost. A 2006 Malcolm Baldrige National Quality Award recipient, Premier plays a critical role in the rapidly evolving healthcare industry, collaborating with members to co-develop long-term innovations that reinvent and improve the way care is delivered to patients nationwide. A key component of our alliance is our Integrated Pharmacy Program, which combines essential clinical data with purchasing power to deliver reduced costs, improved quality and safety, and increased knowledge-sharing with other healthcare professionals.

Premier strongly supports the creation of a competitive biosimilars marketplace and applauds the FDA and FTC for recognizing the value of biosimilars and their important role in minimizing the time and cost to develop biosimilars and in promoting effective competition. Premier further applauds the FDA and FTC for recent actions such as a joint statement regarding enhanced collaboration in support of a robust marketplace for biosimilars, a draft guidance document on presenting data and information in a truthful and non-misleading way about biosimilars, and a joint public hearing. The collaboration between FDA and FTC is critical to create a competitive biosimilars marketplace and deter anti-competitive behavior.

Premier offers the following comments to further promote a robust biosimilars marketplace, deter anti-competitive behavior, and encourage broader adoption of biosimilars by providers, patients, and payors. Premier's comments include actions that FDA and FTC can take themselves, as well as options FDA and FTC can work collaboratively with Congress and other federal agencies to implement.

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I. Premier is a Leader in Promoting a Competitive Biosimilars Marketplace

Premier views the accessibility of biosimilars as a key element in decreasing the cost of healthcare through the creation of a more competitive drug marketplace in the U.S. and has been a leader in promoting a competitive biosimilars marketplace through our supply chain, clinical support, education, advocacy and thought leadership efforts. Premier currently has all marketed biosimilars on contract and employs a dedicated biosimilars team that works with biosimilar manufacturers through a product's lifecycle, from pre- to post-launch, to ensure continued access to biosimilars. Clinically, Premier develops value analysis toolkits, provides product-specific information, including clinical and financial considerations, and supports its members with reimbursement considerations for biosimilars within the Medicare and 340B programs. Regarding education, Premier maintains a dedicated website on biosimilars for health system pharmacy members that provides factual and un-biased information on biologics and biosimilars. In addition, Premier has developed several continuing education programs and outreach efforts for healthcare providers and health system stakeholders to educate and promote the adoption of biosimilars. From an advocacy perspective, Premier has been actively engaged in ongoing efforts with Congress, the FDA, the Centers for Medicare & Medicaid Services (CMS) and other stakeholders to ensure the pathway to market for biosimilars prioritizes patient access and safety and encourages development of these cost-saving medicines. Finally, Premier has authored several peer-reviewed journal articles, white papers and blog posts discussing the current biosimilars landscape and encouraging adoption and serves on the advisory board for *The Center for Biosimilars*.

II. Improving the Efficiency of the Biosimilar and Interchangeable Product Development and Approval Process

To improve the efficiency of biosimilar and interchangeable product development and approval as an overarching principle, the FDA should permit a designation of biosimilarity parallel to granting an interchangeability designation if the applicant seeks both. The FDA has previously advised that applicants should seek designation of biosimilarity first and then subsequently seek interchangeability designation, a bifurcated process that creates procedural inefficiencies and potentially delays the introduction of interchangeable biosimilars to the marketplace. Therefore, ***Premier recommends the FDA create a parallel review process to permit applicants to seek a simultaneous designation of biosimilarity and interchangeability to create procedural efficiencies and improve access to interchangeable biosimilars***.

To incentivize biosimilar manufacturers to enter the marketplace and create predictability in the regulatory process, ***Premier urges the FDA to consider an accelerated approval pathway for biosimilars, similar to accelerated pathways available for brand and generic medications***. For example, the Competitive Generics Therapy (CGT) pathway was created to expedite the development and review of a generic drug for products that have three or less generic competitors. The CGT pathway allows for expedited review of Abbreviated New Drug Applications (ANDA) and provides for a 180-day exclusivity period for the first approved applicant. To prevent gaming of the CGT pathway, there is a special forfeiture rule that requires applicants to commercially market the product within 75 days of the approval date of the ANDA or forfeit its exclusivity. A similar pathway for biosimilars could encourage manufacturers to enter the marketplace due to the expedited review and exclusivity while fostering competition due to the forfeiture rules. Furthermore, an accelerated approval pathway for biosimilars will also help address the issue of carve outs where an indication for a biosimilar may need to be added or removed after initial FDA-approval due to patent or exclusivity issues protecting one or more of the FDA-approved indications for a reference biologic product. An accelerated pathway will allow the FDA to efficiently approve these additional indications once the reference biological's protection lapses and further the establishment of a competitive biosimilars marketplace. ***Premier also urges FDA to expedite review for biosimilars manufactured at the same facility and on the same line as an already internationally approved biosimilar***.

In addition, biosimilar licensure is currently based on comparison between a reference biologic product and a biosimilar. However, there is increasing interest in understanding how one biosimilar compares to another biosimilar

for the same reference biologic product, especially in regards to switching and automatic substitution. Furthermore, understanding the ability to interchange one biosimilar for another biosimilar is important if the reference biologic is no longer marketed or if there is a drug shortage for one of the biosimilars. Therefore, ***Premier urges the FDA to release clear policies and guidance that facilitate and promote biosimilar to biosimilar interchangeability.***

Furthermore, the current naming convention finalized by the FDA in January 2017 adds complexity to the healthcare system. This could lead to errors in prescribing medications and poses a risk to patient safety, hampers clinical decision-making and the ability to identify lower cost therapeutic alternatives, and causes unnecessary confusion among patients and providers – all issues that do not lend themselves to increasing the adoption of biosimilars. ***Premier urges the FDA to rescind the current naming guidance and reissue guidance that uses the same international non-proprietary name (INN) for biosimilars as the reference biologic product.*** At minimum, if the FDA is unwilling to rescind the current naming guidance, the FDA should provide results from cognition testing on health care providers and patients demonstrating that the naming framework adds value to the public safety, is easily understood and comprehended by health care providers, and does not result in increased confusion.

Finally, ***FDA should develop clear recommendations regarding what constitutes a medication error for biosimilars***. For example, Premier hospitals cite confusion on how to address a situation where a patient receives the wrong manufacturer of a biosimilar due to confusion with naming. The patient receives the correct molecule, but the wrong manufacturer. Currently, hospitals are reporting these as medication errors, but it is creating significant confusion for patients when they are informed that a medication error occurred, but they did receive the right drug at the right dose. There are also significant concerns that the naming convention is resulting in liability concerns for providers due to the confusion it is creating in practice.

Some additional opportunities for the FDA to improve the efficiency of biosimilar and interchangeable product development include: prioritizing inspection of facilities for biosimilar applicants; developing product-specific guidance for biologics as the FDA currently does for brand small-molecular products to encourage generic drug development and increase patient access to generic and complex drugs; completing hiring of staff allocated under the Biosimilar User Fee Amendments of 2017 (BsUFA II); developing recommendations for how biosimilar shortages will be addressed and mitigated in an expeditious manner; and guidance regarding the safety concerns associated with white-bagging of biosimilars.

III. Discouraging False or Misleading Communications About Biosimilars

Premier supports the FDA draft guidance on truthful and non-misleading communications regarding biosimilars and encourages FDA to finalize the guidance expeditiously.

In addition to the draft guidance, ***Premier encourages FDA to act upon its intent highlighted in the Biosimilars Action Plan (BAP) to gather real-world evidence (RWE) to monitor for ongoing safety and efficacy of both biologics and biosimilars***. RWE is integral to understanding the long-term safety of switching a patient from a reference biologic product to a biosimilar, switching a patient from one biosimilar to another biosimilar and understanding any safety or efficacy implications associated with maintaining a patient on a reference biologic as variations in lots may occur. RWE is also valuable in conducting comparative effectiveness research to determine which products have the best outcomes for subsets of patients and can potentially be used in the regulatory decision-making process. Finally, RWE is important for assessing the cost-effectiveness of a product and understanding the total cost of care for specific disease states often treated with biologics and biosimilars. Gaining insight into safety, efficacy, patient outcomes and cost-effectiveness of both biologicals and biosimilars are all integral elements to discouraging false or misleading communications about biosimilars and encouraging their adoption.

The Premier Healthcare Database (PHD) is one of the most comprehensive electronic healthcare databases containing robust data on more than 108 million inpatient admissions and 765 million outpatient encounters for over 208 million unique patients. The PHD has been leveraged by hospitals, health systems, academia, pharmaceutical manufacturers, the Centers for Disease Control and Prevention (CDC), CMS, the National Institutes of Health (NIH) and others to use real-world data to conduct evidence-based and population-based analyses of drugs, devices, other treatments, disease states, epidemiology, resource utilization, healthcare economics and clinical outcomes. ***Premier welcomes the opportunity to discuss how the Premier Healthcare Database and its dedicated staff of skilled professionals trained in medicine, pharmacy, epidemiology, public health, economics and statistics can partner with the FDA to support the development of RWE for biologics and biosimilars.***

To further discourage false and misleading communications, ***Premier believes that it is critical to educate healthcare professionals and other stakeholders***. Premier applauds the FDA on their efforts thus far with the *Biosimilar Education and Outreach Campaign* and their commitment to creating additional innovative educational materials to explain biosimilars and interchangeability. Some specific areas where Premier believes additional educational materials would be beneficial to strengthen confidence in biosimilars include:

- Enhanced education around interchangeability to convey that in the U.S. interchangeability is a regulatory term that essentially signifies the ability to perform pharmacist-level substitution and does not represent a higher standard or higher quality product. ***Premier believes it is imperative for the FDA to dispel misnomers that interchangeability designation is superior to biosimilarity designation and convey that all biosimilars approved by the FDA are safe and effective.***

- Education around extrapolation to convey that extrapolation is supported by scientific data, does not represent an inferior product, and is safe and effective. Specifically, education should articulate that extrapolation is not automatic and is considered only after biosimilarity to the reference biologic product has been established by a comprehensive comparability program, including safety, efficacy and immunogenicity in a key indication that is suitable to detect potentially clinically relevant differences, and there is sufficient scientific justification for extrapolation. ***Premier believes education on extrapolation is critical to increase provider confidence in prescribing a biosimilar for all FDA-approved indications.***

- Education that highlights data regarding the safety and efficacy of biosimilars in the European Union. While biosimilars are relatively new to the U.S. market, they have been available in Europe for many years and there is robust European data demonstrating their long-term safety and efficacy. ***Premier believes the FDA has a significant opportunity to highlight data from the European experience to enhance provider confidence in prescribing biosimilars as well as patient acceptance in utilizing biosimilars*****.**

Furthermore, ***Premier encourages the FDA to ensure all educational materials intended for patients account for varying health literacy rates throughout the country and align with the Agency for Healthcare Research and Quality (AHRQ) Health Literacy Universal Precautions***.[1]

IV. Deterring Anticompetitive Behaviors in the Biologic Product Marketplace

To support market competition, Premier agrees that it is necessary to reduce the gaming of FDA requirements or other attempts to unfairly delay competition. Premier offers several specific recommendations to help improve market competition.

[1] Agency for Healthcare Research and Quality Healthy (AHRQ) Health Literacy Universal Precaution Toolkit, 2nd Edition. Last updated. May 2017. Available at: https://www.ahrq.gov/professionals/quality-patient-safety/qualityresources/tools/literacy-toolkit/index.html

First, concerns have been raised about the potential abuse of the Orphan Drug Act by manufacturers that initially apply for a single indication that qualifies for orphan drug status but then apply for broader non-orphan indications once the product is approved by the FDA. This practice delays the introduction of generic and biosimilar alternatives to the marketplace, as the product is protected under extended exclusivity given its orphan drug status. To combat this practice, ***Premier urges the FDA and FTC to work with Congress to consider changes to the Orphan Drug Act to ensure it is meeting its original intent of fostering the development of innovative drugs for rare conditions and not unintentionally delaying competition for biosimilars*.** While awaiting legislative change, in the interim, the FDA can request additional information of manufacturers seeking orphan drug status, such as disclosing additional indications the manufacturer intends to seek FDA approval for. Requiring disclosure of this information may deter some manufacturers from abusing the Orphan Drug Act.

Second, in recent years, manufacturers have begun to file for multiple patents for their products that cover not only the active ingredient but also cover manufacturing, delivery systems and other elements. This extends exclusivity for the product beyond the patent for the active ingredient alone, thereby delaying introduction of alternatives to the marketplace. Often referred to as evergreening, this practice permits manufacturers to extend monopolies by tacking on additional patents or making minor changes to drugs. ***Premier urges the FDA and FTC to work with Congress to pass legislation to end the practice of evergreening.***[2]

Third, manufacturers will sometimes make minor changes to their product, such as an extended release formulation or once a day vs. twice a day dosing and seek additional patent protection to extend exclusivity for their product. To help combat these practices that delay the introduction of alternatives to the marketplace, ***Premier urges the FDA and FTC to work with the United States Patent and Trademark Office (USPTO) to ensure that patents are appropriately awarded for truly innovative and new discoveries.***

Fourth, manufacturers often enter into patent settlements to delay the introduction of generics and biosimilars to the market at the expense of consumers. Referred to as "pay-for-delay" arrangements, these contractual agreements maintain monopolies and artificially extend market exclusivity thereby denying patients access to less expensive alternatives. ***Premier urges the FDA and FTC to work with Congress to pass legislation to end pay-for-delay arrangements***.[3]

Fifth, the FDA and FTC announced a partnership in February 2020 where they will be working closer together on anticompetitive behavior, such as the filing on sham citizen petitions for the sole purpose of delaying competition. However, FTC does not have the authority to take civil action against a manufacturer that is a bad actor. Therefore, ***Premier urges the FDA and FTC to work with Congress to pass legislation that allows the FTC to take civil action to deter drug companies from filing sham citizen petitions to delay approval of competing generics or biosimilars.***[4]

Sixth, there is currently a lack of transparency regarding when certain patents and exclusivity periods expire for biologics. This makes it difficult for a biosimilar manufacturer to enter the marketplace not understanding what intellectual property barriers may exist barring market entry of a biosimilars. Therefore***, Premier urges FDA and FTC to work with Congress to pass legislation to create greater transparency to help biosimilar***

[2] Congress is currently considering *S.1209 - Reforming Evergreening and Manipulation that Extends Drug Years Act* to end the practice of evergreening.
[3] Congress is currently considering *H.R. 2375/S.64 - Preserve Access to Affordable Generics and Biosimilars Act* to end pay-for-delay arrangements.
[4] Congress is currently considering *H.R.2374/S.1224 - Stop STALLING Act* to allow the FTC to take civil action to deter drug companies from filing sham citizen petitions to delay approval of competing generics or biosimilars.

manufacturers understand when certain patents and exclusivity periods expire to encourage the entry of less costly products into the marketplace.[5]

Finally, one tactic that has been used by manufacturers to incentivize payors and pharmacy benefit managers (PBMs) to prefer a biologic over a biosimilar is the use of rebates. In the case of biologics, manufacturers have been offering steep rebates upon market entry of a competitor biosimilar to maintain the biologic as the preferred product on a payor or PBMs formulary. This discourages adoption of the biosimilar and often prohibits patients from accessing the lower cost biosimilar. In some cases, rebates are thought to help the biologic product maintain upwards of 97% of market share years after a biosimilar is available.

The Centers for Medicare and Medicaid Services (CMS) had proposed a rule that would have prohibited the use of all rebates; but it was later withdrawn in July 2019. While the rebate rule was withdrawn, there is still some interest to act in this space on a smaller scale by CMS and Congress to prevent anti-competitive behavior. ***Premier urges FDA and FTC to work with Congress and CMS to prohibit rebates on biologics for a period of three years upon the market entry of a competitor biosimilar***. ***Premier believes this proposal would create a level playing field for biosimilars to compete with biologics based upon their scientific integrity, cost effectiveness, and patient outcomes***. The three-year timeframe is suggested to align with the three-year timeframe for pass-thru status for biosimilars, but additional timeframes can be considered.

V. Strengthening Payor Adoption of Biosimilars

A major challenge noted by Premier members is the complexity that biosimilars have introduced into the pharmacy dispensing workflow. Much of this is attributed to the confusion created by the current naming convention as noted earlier, but another key factor is payor preference for a single biosimilar and a lack of parity across biosimilars. In comparison, in the brand and generic drug space, if a generic is covered by a payor, then all manufacturers of the generic drug are typically covered. In the case of biosimilars, many payors are selecting only a single biosimilar to place on formulary. This is resulting in the need for pharmacies to create extensive workflows to ensure patients receive the right drug based upon their payor preference. For example, one Premier hospital has a 30-step workflow process to dispense pegfilgrastim and similarly lengthy workflows exist for each additional biosimilar.

Furthermore, payor preference is inhibiting hospitals and healthcare providers from creating their own institutional formularies. This is resulting in pharmacies being required to carry a biologic and all biosimilars to the reference product. This creates severe inefficiencies for a pharmacy to manage their inventory effectively, especially given the expense of these products and refrigerator space required for storage.

Finally, payor preference is creating delays in patient care as pharmacists work to understand which product is covered by each patient's individual insurance. This often requires the reissuance of a prescription to align with the exact biosimilar that is covered due to the naming convention and lack of biosimilar to biosimilar interchangeability guidance. As a result, patients may be asked to return to receive their treatment.

While Premier recognizes that payment policy is outside the scope of the FDA, Premier believes the FTC can play a role in ensuring payment policies are equitable and competitive. Therefore, ***Premier urges the FTC to work with CMS and Congress to elevate policy proposals to further encourage the adoption of biosimilars and ensure payment policies are fair and unbiased***. Some considerations include:

[5] Congress is currently considering *H.R.1520 - Purple Book Continuity Act of 2019* to create greater transparency to help biosimilar manufacturers understand when certain patents and exclusivity periods expire to encourage the entry of less costly products into the marketplace.

- Increasing reimbursement for biosimilars in Medicare Part B at ASP + 8% of originator's average sales price (ASP) for five years
- Creating a CMMI demonstration model for biosimilar use as a shared savings model
- Leveraging Medication Therapy Management (MTM) programs to educate patients on biosimilars
- Creating a preferred tier for biosimilars
- Eliminating fail first protocols that require use of the biologic first prior to using a biosimilar. This is counterintuitive as a patient who fails therapy with a biologic would not be placed on its biosimilar.
- Eliminating double prior authorizations that require prior authorization for the molecule first and then a second prior authorization for the specific product. This is resulting in increased administrative burden and delays in patient care.
- Creating parity for biosimilars

VI. Conclusion

In closing, the Premier healthcare alliance appreciates the opportunity to submit comments on FDA-2018-N-2689. Premier looks forward to working with the FDA and other stakeholders to encourage a robust biosimilars marketplace by striking the appropriate balance between innovation, access and competition for biosimilars.

If you have any questions regarding our comments or need more information, please contact Soumi Saha, Senior Director of Advocacy, at soumi_saha@premierinc.com or 202-879-8005.

Sincerely,

Blair Childs
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Premier Inc.