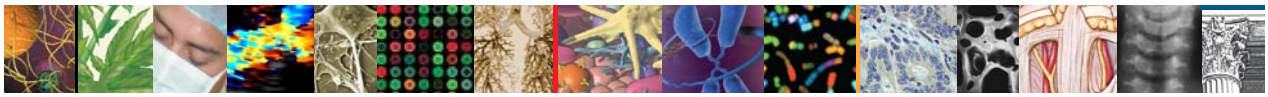

The NEW ENGLAND JOURNAL of MEDICINE

Perspective

Transparency at the Food and Drug Administration

Afia K. Asamoah, J.D., and Joshua M. Sharfstein, M.D.

On his first full day in office, President Barack Obama issued a memorandum calling for "creating an unprecedented level of openness in Government." The Department of Health and Human Services embraced this goal, and in June 2009, the new commissioner of the Food and Drug Administration (FDA), Dr. Margaret Hamburg, announced a major transparency initiative. The goal of this initiative was to better explain the FDA's actions by providing information that supports clinical medicine, biomedical innovation, and public health.

The FDA already makes substantial amounts of information about the regulatory process for medical products publicly available. For example, extensive summary data on drugs and devices are released for public advisory committee meetings before approval, and detailed reviews of drugs are released after approval. However, many aspects of the FDA's work remain unknown to the public. Few people understand the basic processes followed within the FDA, such as how the agency monitors medical products for safety after they have been approved or how the device-approval process works for products in various risk categories.

In addition, the FDA generally does not disclose certain information, including whether a drug or device is under development, when an application is withdrawn by a sponsor, whether the agency has placed a hold on clinical studies, whether it agrees with reports published by others about products with pending applications not yet approved by the FDA, and why it does not approve a marketing application. The FDA does not routinely post on its Web site the dates when facilities are inspected or the results of these inspections. Regulated companies have expressed interest in additional transparency about the standards to which their products are held, the process for soliciting guidance from the agency, and the progress of regulatory efforts at the agency.

Through its transparency initiative, the FDA has considered a wide range of options for increasing transparency about these and other aspects of its work. The agency has held two public meetings, participated in multiple listening sessions, launched an online blog, and established a docket (public record) to solicit ideas from the public. The agency has received more than 1500 comments.

A task force that includes senior leaders at the agency has reviewed the public input and discussed how best to balance the

Examples of Draft Proposals for Public Comment.

Elaborate on the FDA's decisions

At the time the FDA issues a refuse-to-file or complete response letter in response to an original new-drug application, biologics-licensing application, or efficacy supplement for such applications, the agency should disclose that it has done so and should simultaneously disclose the refuse-to-file or complete response letter, which contains the reasons for issuing the letter.

Provide increased access to important data

The agency should disclose relevant summary safety and effectiveness information from an investigational application or a pending marketing application, if the agency concludes that disclosure is in the interest of the public health, including when it believes that doing so is necessary to correct misleading information about the product that is the subject of the application.

Illuminate enforcement efforts

The agency should disclose the name and address of the entity inspected, the date or dates of inspection, the type or types of FDA-regulated product involved, and the final inspectional classification — official action indicated, voluntary action indicated, or no action indicated — for inspections conducted of clinical trial investigators, institutional review boards, and facilities that manufacture, process, pack, or hold an FDA-regulated product that is currently marketed. The disclosure of this information should be timed so as not to interfere with planned enforcement actions.

Support innovation

When an application for a designated orphan human drug or a designated minor-use or minor-species animal drug has been withdrawn, terminated, or abandoned, the agency should disclose, if it so determines through its review, that the application was not withdrawn, terminated, or abandoned for safety reasons and that the product, if approved, could represent a significant therapeutic advance for a rare disease or for a minor animal species. A disclaimer should accompany the disclosure of this information, indicating that the agency's expressed views about the product do not reflect whether a subsequent application involving the product will be accepted for filing or will be approved by the FDA.

important and often dueling considerations of transparency and confidentiality. With the support of Dr. Hamburg, the agency is moving forward to implement a series of changes and propose others for further public dialogue.

The first step came in January 2010, when the FDA released a Web-based resource called FDA Basics (www.fda.gov/fdabasics). This site aims to answer fundamental questions about how the agency does its work, covering such topics as the product-approval process, inspections, and adverse-event reporting. To date, the site has had more than 165,000 unique visitors, who have left more than 4000 comments.

The second step came in April 2010, when, as part of the open-government efforts of the Department of Health and Human Services, the FDA launched a program-performance system called FDA-TRACK (www.fda.gov/fdatrack). This system discloses specific measures of workload and results for more than 100 offices at the FDA. Data on nearly all these measures are calculated on a monthly basis. These include the backlog in reviews of applications for approval of generic drugs, the extent to which approvals are meeting goals for review time, and whether complaints about drug advertising are found to have merit. The agency is also tracking more than 50 key projects, including ones that are fostering the development of medical devices to respond to unmet public health needs, recruiting new advisory committee members, and identifying faster ways to determine whether salmonella is present in food.

The third step begins on May 19, 2010, with the release of a report from the Transparency Task Force containing 21 draft proposals for expanding the disclosure of information by the agency while maintaining confidentiality for trade secrets and individually identifiable patient information (see box). Not all these proposals will necessarily be implemented. Some may require changes in law or regulation, and some may require substantial amounts of resources. The agency is now accepting public comment on the content of

10.1056/NEJMp1005202 NEJM.ORG

the proposals, as well as on which draft proposals should be given priority.

If the proposals were to be adopted and implemented, the FDA would make substantially more information about the regulatory process available to the public. The agency would disclose, among other things, when a drug or device is being studied and for what indication, when an application for a new drug or device has been submitted or withdrawn by the sponsor, whether there was a significant safety concern associated with the drug or device that caused the sponsor to withdraw an application, and why the agency did not approve an application. If a report that is published by a sponsor were to contain an incomplete picture about the safety or efficacy of a product, the FDA would be able to provide its analysis to contribute to the scientific discussion.

The task force believes that implementing some of the proposals would accelerate the development process for medical products by allowing companies to learn from the successes and failures of other products. One proposal, for example, would allow the FDA to explain that an orphan drug whose application was abandoned or withdrawn by the sponsor for business reasons may nevertheless represent an important therapeutic advance for a rare disease. This information would be of substantial interest to patients with that disease, their families, and their clinicians. It could also encourage additional investment for development of that drug or provide another company with the incentive to purchase and continue with the application.

The task force is also proposing further public discussions on the appropriate release of certain raw data, without patient identifiers, to allow for additional study of, and new insights into, the safety and efficacy of drugs and devices.

Implementing other proposals would illuminate the agency's enforcement efforts by having the FDA post the classification of every facility inspection it performs. The final inspectional classification is based on the inspectors' observations and reflects the degree to which the establishment is out of compliance with laws and regulations designed to ensure the safety of FDA-regulated products. Another proposal would have the FDA generate and share with the public information about the most common objectionable conditions or practices found by agency staff during inspections. This information could be very useful to consumers and purchasers of medical products and food.

More than 30 years ago, FDA Commissioner Donald Kennedy noted "a basic principle of our political system [is] that people affected by governmental decisions have a right to know the basis on which they are made." With the daily practice of medicine routinely affected by the decisions of the FDA, the medical community has a large stake in transparency at the agency. The full set of draft proposals can be found on the FDA's Web site (www.fda.gov/transparency). The agency is accepting comment on the proposals until July 20, 2010.

Disclosure forms provided by the authors are available with the full text of this article at NEJM.org.

Ms. Asamoah is the director of the FDA's Transparency Initiative, Silver Spring, MD, and Dr. Sharfstein is the FDA's principal deputy commissioner and chair of its Transparency Task Force.

This article (10.1056/NEJMp1005202) was published on May 19, 2010, at NEJM.org.