

of frauds against American manufacturers and has provided the cover for the importation of foreign counterfeit drugs.

“(6) The existing system of providing drug samples to physicians through manufacturer’s representatives has been abused for decades and has resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

“(7) The bulk resale of below wholesale priced prescription drugs by health care entities, for ultimate sale at retail, helps fuel the diversion market and is an unfair form of competition to wholesalers and retailers that must pay otherwise prevailing market prices.

“(8) The effect of these several practices and conditions is to create an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs will be sold to American consumers.”

§ 353a. Pharmacy compounding

(a) In general

Sections 351(a)(2)(B), 352(f)(1), and 355 of this title shall not apply to a drug product if the drug product is compounded for an identified individual patient based on the unsolicited receipt of a valid prescription order or a notation, approved by the prescribing practitioner, on the prescription order that a compounded product is necessary for the identified patient, if the drug product meets the requirements of this section, and if the compounding—

(1) is by—

- (A) a licensed pharmacist in a State licensed pharmacy or a Federal facility, or
- (B) a licensed physician,

on the prescription order for such individual patient made by a licensed physician or other licensed practitioner authorized by State law to prescribe drugs; or

(2)(A) is by a licensed pharmacist or licensed physician in limited quantities before the receipt of a valid prescription order for such individual patient; and

(B) is based on a history of the licensed pharmacist or licensed physician receiving valid prescription orders for the compounding of the drug product, which orders have been generated solely within an established relationship between—

- (i) the licensed pharmacist or licensed physician; and
- (ii)(I) such individual patient for whom the prescription order will be provided; or
- (II) the physician or other licensed practitioner who will write such prescription order.

(b) Compounded drug

(1) Licensed pharmacist and licensed physician

A drug product may be compounded under subsection (a) of this section if the licensed pharmacist or licensed physician—

(A) compounds the drug product using bulk drug substances, as defined in regulations of the Secretary published at section 207.3(a)(4) of title 21 of the Code of Federal Regulations—

(i) that—

- (I) comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists, and the United States

Pharmacopoeia chapter on pharmacy compounding;

(II) if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary; or

(III) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, that appear on a list developed by the Secretary through regulations issued by the Secretary under subsection (d) of this section;

(ii) that are manufactured by an establishment that is registered under section 360 of this title (including a foreign establishment that is registered under section 360(i) of this title); and

(iii) that are accompanied by valid certificates of analysis for each bulk drug substance;

(B) compounds the drug product using ingredients (other than bulk drug substances) that comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists, and the United States Pharmacopoeia chapter on pharmacy compounding;

(C) does not compound a drug product that appears on a list published by the Secretary in the Federal Register of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective; and

(D) does not compound regularly or in inordinate amounts (as defined by the Secretary) any drug products that are essentially copies of a commercially available drug product.

(2) Definition

For purposes of paragraph (1)(D), the term “essentially a copy of a commercially available drug product” does not include a drug product in which there is a change, made for an identified individual patient, which produces for that patient a significant difference, as determined by the prescribing practitioner, between the compounded drug and the comparable commercially available drug product.

(3) Drug product

A drug product may be compounded under subsection (a) only if—

(A) such drug product is not a drug product identified by the Secretary by regulation as a drug product that presents demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product; and

(B) such drug product is compounded in a State—

- (i) that has entered into a memorandum of understanding with the Secretary which addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to compounded drug products distributed outside such State; or

(ii) that has not entered into the memorandum of understanding described in clause (i) and the licensed pharmacist, licensed pharmacy, or licensed physician distributes (or causes to be distributed) compounded drug products out of the State in which they are compounded in quantities that do not exceed 5 percent of the total prescription orders dispensed or distributed by such pharmacy or physician.

The Secretary shall, in consultation with the National Association of Boards of Pharmacy, develop a standard memorandum of understanding for use by the States in complying with subparagraph (B)(i).

(c) Advertising and promotion

A drug may be compounded under subsection (a) of this section only if the pharmacy, licensed pharmacist, or licensed physician does not advertise or promote the compounding of any particular drug, class of drug, or type of drug. The pharmacy, licensed pharmacist, or licensed physician may advertise and promote the compounding service provided by the licensed pharmacist or licensed physician.

(d) Regulations

(1) In general

The Secretary shall issue regulations to implement this section. Before issuing regulations to implement subsections (b)(1)(A)(i)(III), (b)(1)(C), or (b)(3)(A) of this section, the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health. The advisory committee shall include representatives from the National Association of Boards of Pharmacy, the United States Pharmacopoeia, pharmacy, physician, and consumer organizations, and other experts selected by the Secretary.

(2) Limiting compounding

The Secretary, in consultation with the United States Pharmacopoeia Convention, Incorporated, shall promulgate regulations identifying drug substances that may be used in compounding under subsection (b)(1)(A)(i)(III) of this section for which a monograph does not exist or which are not components of drug products approved by the Secretary. The Secretary shall include in the regulation the criteria for such substances, which shall include historical use, reports in peer reviewed medical literature, or other criteria the Secretary may identify.

(e) Application

This section shall not apply to—

- (1) compounded positron emission tomography drugs as defined in section 321(ii) of this title; or
- (2) radiopharmaceuticals.

(f) “Compounding” defined

As used in this section, the term “compounding” does not include mixing, reconstituting, or other such acts that are performed in accord-

ance with directions contained in approved labeling provided by the product’s manufacturer and other manufacturer directions consistent with that labeling.

(June 25, 1938, ch. 675, § 503A, as added Pub. L. 105–115, title I, § 127(a), Nov. 21, 1997, 111 Stat. 2328.)

EFFECTIVE DATE

Section 127(b) of Pub. L. 105–115 provided that: “Section 503A of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 353a], added by subsection (a), shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [Nov. 21, 1997].”

§ 353b. Prereview of television advertisements

(a) In general

The Secretary may require the submission of any television advertisement for a drug (including any script, story board, rough, or a completed video production of the television advertisement) to the Secretary for review under this section not later than 45 days before dissemination of the television advertisement.

(b) Review

In conducting a review of a television advertisement under this section, the Secretary may make recommendations with respect to information included in the label of the drug—

- (1) on changes that are—
 - (A) necessary to protect the consumer good and well-being; or
 - (B) consistent with prescribing information for the product under review; and

- (2) if appropriate and if information exists, on statements for inclusion in the advertisement to address the specific efficacy of the drug as it relates to specific population groups, including elderly populations, children, and racial and ethnic minorities.

(c) No authority to require changes

Except as provided by subsection (e), this section does not authorize the Secretary to make or direct changes in any material submitted pursuant to subsection (a).

(d) Elderly populations, children, racially and ethnically diverse communities

In formulating recommendations under subsection (b), the Secretary shall take into consideration the impact of the advertised drug on elderly populations, children, and racially and ethnically diverse communities.

(e) Specific disclosures

(1) Serious risk; safety protocol

In conducting a review of a television advertisement under this section, if the Secretary determines that the advertisement would be false or misleading without a specific disclosure about a serious risk listed in the labeling of the drug involved, the Secretary may require inclusion of such disclosure in the advertisement.

(2) Date of approval

In conducting a review of a television advertisement under this section, the Secretary