FDA and the Federal Advisory Committee Act

AV Health Policy Brief

Re-envisioning how the FDA and other federal agencies engage external scientific experts and the public

The Issue

Every year, the Food and Drug Administration (FDA) reviews medical drug and device products on tight timelines for regulatory approval. To support its decision-making, the FDA has historically used the Federal Advisory Committee Act (FACA), enacted in 1972, to engage outside experts through federal advisory committees. These advisory committees are primarily comprised of technical experts, such as physicians, researchers, biologists, or statisticians, and are convened to offer input on key regulatory questions. However, three sets of concerns continue to be raised: (1) lack of standardization in advisory committee procedures, (2) a recent decline in advisory committee meetings on new drug or device approvals where their expertise would be of value, not only to the FDA, but to providers and to patients and (3) the degree of conflicts of interest among advisory committee members.

The Evidence

While the FDA uses advisory committees to help make policy decisions by weighing available evidence on the safety, effectiveness, and appropriate use of medical products. A survey of advisory committee members showed there is no formal training when serving in this capacity.[1]

With over 50 standing technical and scientific committees and panels, the FDA has sole discretion[2] over which medical products are selected for advisory committee review, the meeting procedures followed,[3] and the discussion topics raised.[4] This variability in the FDA process can, for example, lead to time and discussion dedicated to clinical trial design challenges that should have been addressed before the trial began. The FDA also uses advisory committees to discuss product approval,[5] which can be too late to meaningfully inform the FDA's analysis of a product's safety and efficacy. This illustrates a need for the FDA to establish structured procedures to achieve more uniformity and transparency in advisory committee processes.[6]

Over the past two decades, there has been a substantial increase in the number of drugs and biologics approved using the accelerated approval pathway. Between 2002 and 2011, there were 59 accelerated approvals granted by the FDA,[7] which grew to 278 total accelerated approvals granted by 2021.[8] These expedited review pathways generally offer approval of medical products under shorter review times and based on limited evidence. Therefore, these review processes by design[9] often raise novel regulatory science questions that would benefit from scrutiny by advisory committees.

The use of the FDA expedited approval processes is growing concurrent to a decline in the use of advisory committees by the FDA. However, there has been a significant decline in advisory committee meetings conducted by the FDA. Specifically for drug products reviewed between 2010 and 2021, a high of 50 advisory committee meetings were called by the FDA in 2012 but dropped to a low of 18 in 2020 and 2021, despite a substantial number of accelerated reviews.[10] In 2023, the FDA approved 55 new drugs never before approved or marketed in the U.S., known as "novel" drugs, but only reviewed 11 of them through advisory committees.[11]

While there is a clear unmet need for expert scrutiny, the FDA must balance the availability of technical experts with the conflicted interests in advancing innovative medical product reviews. Conflicts of interest typically disqualify key experts funded directly by manufacturers from providing product approval recommendations and certain conflicts of interest are particularly concerning. In a review of 385 advisory committee meetings, 27% included at least one voting member with a disclosed appearance of conflicted interests.[12]

This appearance of conflict is potentially as concerning as direct conflict, but permissible by the FDA.[13] A review of 1379 advisory committee members from 379 meetings found that advisory committee members with financial interests exclusive to a product's sponsor were more likely to vote in favor of approval for that product.[14] As payments from the industry to clinicians are common[15] and generally normalized,[16] the FDA should be sure to protect technical advice from undue industry influence.

In an advisory committee review, technical advice may come from advisory committee members, as well as from clinicians, researchers, patients, and consumers in public comment. Additionally, researchers examined meetings held by the Anesthetic and Analgesic Drug Products Advisory Committee and found 25% of public commenters had conflicts of interest, which were not disclosed in about 20% of these instances.[17] These public speakers were more likely to support drug approval than those who did not have similar conflicts, raising concerns about a pro-sponsor bias among speakers.

The Solutions

There is a clear need to re-envision how the FDA and other federal agencies engage external scientific experts to adequately preserve the integrity and value of the advisory committee process. Based on the evidence, Congress and the administration can take immediate steps to:

STRENGTHEN FACA FOR EVIDENCE-BASED DECISION MAKING

- The FDA must train advisory committee members on the standards for substantial evidence of safety and effectiveness and the regulatory decision-making process of FDA so that participants have clear expectations for how their advice and expertise can inform product approval.
- The FDA must post publicly the regulatory questions that establish a threshold for requiring an advisory committee meeting.[18]
- Congress must require the FDA to establish a standardized timing and process of convening advisory committees.

USE ADVISORY COMMITTEE MEETINGS TO IMPROVE CLINICAL TRIAL DESIGN

- The FDA must create opportunities for earlier advisory committee meetings around unmet medical needs and clinical trial designs, not just about individual products.[19]
- The FDA must expand advisory committee meetings to confirm validity of surrogate endpoints against patient outcomes if used in product approval.[20]

PROMOTE DISCLOSURE OF POTENTIAL CONFLICTED INTERESTS TO MINIMIZE BIAS IN POLICY DECISIONS

- Executive agencies should update conflict of interest disclosure policies to ensure that they are adequately disclosing the breadth of conflicts by advisory committee participants and patient advocacy groups.[21]
- Executive agencies must eliminate disclosure loopholes that permit public hearing participants from avoiding disclosure of their financial conflicts and require structured disclosure of all speakers selected to present to advisory committees.[22]

ENDNOTES

1 https://fas.org/publication/leveraging-adcomm-membership/

2 https://www.fda.gov/patients/learn-about-fda-advisory-committees

3 https://pubmed.ncbi.nlm.nih.gov/17189031/

4 https://pubmed.ncbi.nlm.nih.gov/37418271/

5 https://www.fda.gov/media/75436/download

6 https://pubmed.ncbi.nlm.nih.gov/16982301/

7 https://pubmed.ncbi.nlm.nih.gov/35900722/

8 https://oig.hhs.gov/documents/evaluation/2622/OEI-01-21-00401-Complete%20Report.pdf

9 https://www.fda.gov/drugs/nda-and-bla-approvals/accelerated-approval-program

10 https://pubmed.ncbi.nlm.nih.gov/37418270/

11 https://www.fda.gov/drugs/novel-drug-approvals-fda/novel-drug-approvals-2023

12 https://pubmed.ncbi.nlm.nih.gov/28464118/

13 https://www.fda.gov/media/98852/download

14 https://www.milbank.org/quarterly/articles/revisiting-financial-conflicts-of-interest-in-fda-advisory-committees/

15 https://openpaymentsdata.cms.gov/

16 https://pubmed.ncbi.nlm.nih.gov/39008322/

17 https://pubmed.ncbi.nlm.nih.gov/29710219/

18 https://www.reliasmedia.com/articles/more-transparency-might-bolster-trust-in-fda-advisory-committees

19 https://www.agencyiq.com/blog/five-key-takeaways-from-fdas-2022-advisory-committee-meetings/

20 https://www.healthaffairs.org/content/forefront/future-fda-advisory-committees-protecting-public-health-and-preserving-public-trust

21 https://www.raps.org/News-and-Articles/News-Articles/2023/7/FDA%E2%80%99s-Marks-weighs-in-on-adcomm-reform

22 https://www.healthaffairs.org/content/forefront/future-fda-advisory-committees-protecting-public-health-and-preserving-public-trust