



# The Effect of REMS on Product Commercialization

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I am **NOT** a **Lawyer**... I **AM** a **Pharmacist**

Everything I say is based on experience with Lawyers....

I am merely a humble common sense business consultant... looking out for the patients that need to access medications. I consult with a number of parties, etc. I like **MOST** everyone and enjoy my work.

Disclaimer !!!

One Thought... CMS and CAP



# Our Agenda for Today



- The View from the Top
- Commercialization Changes to:
  - Access,
  - Reimbursement,
  - Distribution and
  - Risk
- The Fallacy of REMS Standardization



Why are we talking about this?

REMS

Is the most misunderstood term in Healthcare Today.

# Regulations Related to Risk Management



- **ICH\* E2E Guideline for Pharmacovigilance Planning**
  - November 2004
  - Adopted as regulations by the EMEA and FDA
- **Three FDA Guidance Documents on Good Risk Management Practices - March 2005**
  - Pre-marketing Risk Assessment
  - Development and Use of a Risk Minimization Action Plan (RiskMAP)
  - Good Pharmacovigilance and Pharmacoepidemiologic Assessment
- **FDAAA of 2007, Title IX... LEARN THIS!**





## What is a REMS?

- **A REMS is a formal Risk Evaluation and Mitigation Strategy\***
  - It is requested by FDA
  - RMP is required by FDA
- **FDA may require the sponsor to develop a REMS in order to ensure that the benefits of a drug outweigh its risks**
  - May be required at the time of submission
  - May also be required based on “new safety information” received post-marketing

\* FDAAA Title IX

REMS does not mean a death sentence for your product... *Only you can kill it with your tactics!*



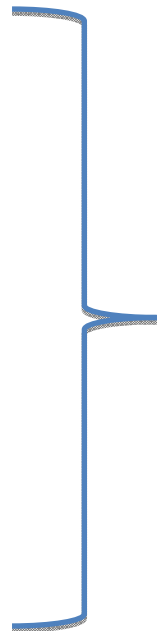
- REMS is a responsible methodology to allow patients access to a drug or biologic...
- One must prudently balance
  - Risk Mitigation and Surveillance
  - Commercial Reasonableness
  - Legal Opinion
  - Financial Burden of the System implemented
- The idea is simple

*Minimize Risk, while preserving access and sales.*

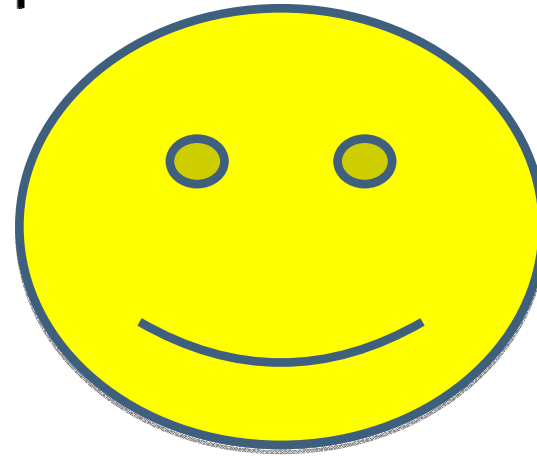
# Understanding REMS, includes understanding other aspects of commercialization



- Reimbursement
- Market Access
- Risk
- Distribution
  - Wholesaler
  - Distributor
  - Pharmacy
  - Facility
  - Physician



**A Happy Marketer**



*All Four are interdependent...  
think of the cross section of departments involved*

# REMS adds incremental cost to the commercialization of a product



- **Incremental has variations**
  - Medication Guide - Lower Cost
  - Implementation Systems - Highest Cost
- **REMS may include an Implementation System related to ETASU in**
  - certification of pharmacies and hospitals,
  - dispense only in certain healthcare settings, and
  - safe use conditions
- **May require applicant to take reasonable steps to**
  - monitor and evaluate implementation by health care providers, who are responsible for implementing such elements; and
  - work to improve implementation of such elements by such persons.



## What about Market Access and REMS?

Intersection  
of  
Reimbursement, Distribution and Access

## Simply put, REMS programs can effect Market Access strategy and tactics



- REMS costs more for every stakeholder in the channel
- These costs need to be addressed sufficiently to mitigate the negative effects on trial and uptake
- Minor tweaks to Market Access programs can greatly enhance the effectiveness of:
  - REMS and
  - Sales
- Examples... Opioids vs. Tysabri



The Difference between a Drug and a Poison is  
**HOW MUCH YOU TAKE!\***

\* G. Victor Rossi, PhD -- PROFESSOR EMERITUS OF PHARMACOLOGY, USP - PCPS

Generally, FDA has a good understanding of what it wants from REMS except...



- Opioid...
  - The conundrum continues.
    - misuse and abuse, and of accidental overdose of opioids, have risen over the past decade
  - The key is to develop that system to define the ONE true indicator of success.
    - Is it long term use?
    - Is it physical dependence?
    - Is it diversion?
  - I am not sure...
  - There are many chefs in the kitchen... eg., FDA, DEA, states, market

# REMS Assessment is as challenging as defining a program design



- Remember, that REMS crosses borders and oceans.
  - EMA is concerned about its citizens also!
    - Adverse Events
    - Pharmacoepidemiology and
    - Clinical Outcome need be considered
- Understanding the effectiveness lies in understanding how to detect the triggers that drive up risk.
- Take *Tysabri*... finding JC Virus first is how a patient can be protected from PML... an increase in JC detection is good



How do I pay for these services?

Is anything fair?

## It is important to recognize we live in parallel universes



- Is your product a WAC/AWP/ASP universe player?
- How is your product reimbursed?
- What Metric is used to pay providers?
- What is likely to be the out-of-pocket expense?
- What is the cost of my REMS program dev/management?
- What is the cost of my Reimbursement and PAP?
- One must understand Fair Market Value...



## What makes up a Service?

- It must be bona fide... got to love Latin “in good faith”
- A bona fide service fees will not be treated as price concessions if it meets all the following elements of the Bona Fide Service test:
  - Services must be of value to and performed on behalf of the manufacturer.
  - Fair market value for bona fide itemized services
  - Service, which the manufacturer would otherwise perform or contract for
  - Not passed on in whole or in part to a customer (generally submitting a claim to a Federally funded program)

## The Core vs. Value-Added Conundrum



- Who defines the difference?
- Why define the difference?
- When to define the difference?
- The devil is the detail!

## Ah... but that is not all!



- Legal counsel has an obligation to identify and mitigate Risk to the company
- FMV determined using Two Methods
- Cost Build-up Approach which includes a reasonable profit margin...
- PBM/Pharmacies have HIPAA/HITECH regulations issued on July 14, 2010 to consider.
  - HITECH Act prohibits covered entities from disclosing PHI for marketing purposes, unless authorization is provided by the patient
- Market Value Approach

## Commercial Reasonableness is separate, but part of the FMV assessment



- In theory, most business transactions must be commercially reasonable or there would be no reason for them to occur.
- For health care transactions, specifically those between manufacturer and distributor and the distributor and the physician purchasing,
  - Commercially reasonable requires a unique determination based on the facts likely to be present at the time of the transaction.



Why is everyone doing the same thing?

Orphan Drugs... by definition not standardized

# What happens if everyone offers the same service?



- Well, why should I pay for it if it is expected... everybody does it... You're a commodity
- Typically services that are "not services"
  - Distribution
  - Prescription fulfillment
  - Compliance Calls
  - Coordination of Benefits
- Compliance and Persistency? Maybe
- Enhanced DATA? Sure
- Outcomes? Emerging!

*The good news is Orphan Drugs do not lend themselves to standards... by their nature they require custom work*

## REMS the Hot Topic in FMV.



- Remember, REMS was developed to specifically address the issue of “product specific” interventions
- Expect a little sympathy for “standards” for REMS
- FDA perspective is... if everyone did what they were supposed to do then there would be no need for REMS
- REMS forces providers to communicate with patients &
- Forces the manufacturer to support Federal oversight of its sales channels... Lot's of implications

## Summary... REMS can have positive effects on Commercialization



- Sometimes without REMS, it is more likely your product would not be on the market for an orphan disease
- Market Access can be enhanced by REMS in the Orphan Markets...
- FMV... if you do it every day during the normal course of business, it is unlikely you can be paid for it.
- REMS requirements force one to consider the entire market access program
- REMS is one component of driving toward safe and individualized use of medications.



Humbled to Present!

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