Too Much FDA Intervention Equals Too Few Drugs: Ramesh Ponnuru

By Ramesh Ponnuru - June 21, 2011

The Food and Drug Administration reports that the U.S. has shortages of 246 drugs -- a record number. Oncologists and anesthesiologists are increasingly concerned, with more than 90 percent of the latter saying they have experienced shortages.

In a September 2010 survey, by the Institute for Safe Medication Practices, one in four respondents reported that shortages had caused medical errors during the previous year. More alarmingly, one in five reported adverse patient outcomes.

Doctors have had to respond to shortages by substituting drugs that are not as effective, and by making wrenching decisions about which patients get access to which drugs. The consequences can be dire. Cytarabine is a drug that is effective in the treatment of leukemia and lymphoma -- but it has to be administered quickly, and it's one of the drugs in short supply. One middle-aged woman reportedly fell into a persistent vegetative state because anesthesiologists ran out of epinephrine. There are also anecdotal reports of "gray markets," which charge high prices for the affected drugs.

What's behind this shortage? Blame a combination of low profit margins and government activism.

Organizations for anesthesiologists, oncologists and pharmacists, together with the ISMP, issued a report in November that gently points a finger at the FDA. Several drug shortages, it said, "have been precipitated by actual or anticipated action by the FDA as part of the Unapproved Drugs Initiative," a plan that largely goes after medicines that were on the market before the Food, Drug and Cosmetic Act of 1938 gave the agency its modern powers. "Some participants noted that the cost and complexity of completing a New Drug Application (NDA) for those unapproved drugs is a disincentive for entering or maintaining a market presence." The report also cited the "lengthy and unpredictable" process of getting the FDA to approve changes in the way medicines are manufactured.

Stepped-Up Enforcement

The FDA, trying to avoid any more of the "tainted drug" stories that made headlines several years ago, has stepped up its enforcement of "good manufacturing practices." In 2009, for example, the agency announced that companies would have only 15 days to respond to official complaints about their practices. In 2010, the government said that failure to adhere to good

practices could amount to health-care fraud for which corporate officers could be held criminally liable.

Libertarians such as John Goodman, the president of the National Center for Policy Analysis, say these policies deserve a large share of the blame for the shortages. He lays out the indictment on his blog: "A drug manufacturer must get approval for how much of a drug it plans to produce, as well as the timeframe. If a shortage develops (because, say, the FDA shuts down a competitor's plant), a drug manufacturer cannot increase its output of that drug without another round of approvals. Nor can it alter its timetable production (producing a shortage drug earlier than planned) without FDA approval."

Acute Shortages

The shortages are most acute for sterile injectable drugs, such as the anesthesia drugs thiopental and propofol. On its website, the FDA suggests that the special characteristics of the market for these drugs have caused shortages, and not anything the agency has done. It points out that these products are complex and require a long lead time to make, and are also generic medicines that generate a low profit margin for manufacturers. Unsurprisingly, competition is not robust in this field, and with few participants the supply can easily be disrupted.

An inference the FDA fails to draw is that the fewer companies there are in the market, the more consequential the FDA's decision is to saddle them with added administrative requirements, and the more likely its enforcement actions will shrink the number of participants still further.

New Legislation

Congress is considering legislation to address drug shortages. Senators Bob Casey and Amy Klobuchar have introduced a bill to require drugmakers to notify the FDA when shortages are possible. Yet presumably the companies aren't going to draw unwanted attention by notifying the FDA that its own ham-handed enforcement is going to lead to shortages. The companies are also likely to fail to foresee some shortages -- at which point they can look forward to congressional hearings on their failure to obey the law. CEOs may well decide that a low-margin line of business isn't worth the trouble.

The FDA itself is subject to perverse incentives. Critics have long noted that it has a bias toward caution in letting new drugs on the market: It is more likely to get criticized if an approved drug causes deaths than if the agency indirectly causes deaths by refusing to approve a drug. Loosening enforcement of good manufacturing practices for established drugs might reduce the number of shortages, and thereby save lives. But if it also leads to a deadly error, people at the FDA are still going to be fired.

Piecemeal Solutions

It's hard to think of any simple and comprehensive solution to counteract this bias, or to address the low profit margins that also seem to be responsible for shortages. But some piecemeal efforts

could do some good. The FDA's drug-shortage experts should be consulted before any product lines are shut down. The agency should work more closely with the Drug Enforcement Administration, whose approval is needed to increase the supply of ingredients for certain medicines. And the FDA should get out of the business of telling companies what quantities to produce -- if it declares a product safe, the company ought to be allowed to make as much as it wants.

Nobody is yet accusing the FDA of being a death panel. But the ISMP reports that its respondents "feel unsupported" by the FDA "and perplexed regarding why the US is experiencing drug shortages of epic proportion that are often associated with third-world countries."

That perplexity is likely to increase. Based on current trends, today's record number of drug shortages is going to be broken soon.

(Ramesh Ponnuru is a Bloomberg View columnist. The opinions expressed are his own.)