Biosimilar Red Tape Elimination Act

Biosimilars, which are "generic" alternatives to name-brand complex biologic drugs, have the potential to significantly reduce costs through increased competition. A recent RAND Corporation study estimates that biosimilars are on track to save Americans $38.4 billion over five years.[1] While the future looks promising, major obstacles remain to biosimilars achieving their full cost-saving potential. The FDA's two-tiered system for approval has confused physicians, patients, and states about biosimilars' safety and efficacy.

To gain approval a biosimilar must undergo clinical testing to establish its safety and efficacy.[2] The FDA's standard for approving a biosimilar is that there must be "no clinically meaningful difference" between the biosimilar and its reference biologic. Bringing a new biosimilar to market costs as much as $250 million and can take as long as 8 years.[3]

However, even after approval, patients may not be able to access biosimilars because Congress created a separate designation called *interchangeability*.[4] The interchangeable designation has confused physicians, patients, and states by signaling that biosimilars are significantly different from their reference products if they haven't been deemed "interchangeable" with their name-brand counterpart. Some states have passed laws that disallow pharmacists from automatically substituting a biosimilar for its reference biologic unless they are deemed interchangeable by the FDA.

To receive the interchangeable designation, a biosimilar must undergo switching studies, in which patients switch back and forth between the biosimilar and its reference product. The purpose of these studies is to determine whether patients react negatively to the biosimilar. These studies can be costly and time-consuming, especially if the reference manufacturer delays making its product available. Although the FDA has approved 41 biosimilars as of May 2023, it has granted interchangeability to only four.[5]

Today, it is abundantly clear that switching studies are unnecessary. The European Medicines Agency (EMA) has been approving biosimilars since 2006.[6] In 2022, after analyzing more than fifteen years of data, the EMA stated that there is no evidence that switching between a biosimilar and its reference product increases the risk of immunogenicity.[7] Since Congress created the interchangeability designation in 2009, multiple voices in the scientific community have criticized it and its requirement for extra data on switching.

- Dr. Sarfaraz Niazi has shown that, according to the statistical modeling required by the FDA, none of these switching studies—even those involving thousands of patients—can fail. In fact, such studies have never failed. Therefore, such studies have no utility.[8][9]

[1] Andrew W. Mulcahy, "Biosimilar Drugs Could Generate $38.4 Billion in Savings over Five Years," *RAND Corporation*, January 10, 2022.
[2] U.S. Food and Drug Administration, "Data Requirements for Biosimilars," *YouTube.com*, May 22, 2018.
[3] Erwin Blackstone, P. Fugr Joseph, "The Economics of Biosimilars," *National Library of Medicine*, September 2013.
[4] U.S. Food and Drug Administration, "The Concept of Interchangeability," *YouTube.com*, May 22, 2018.
[5] Alyssa Billingsley, Joshua Murdock, "What Is an Interchangeable Biosimilar Drug?," GoodRx Health, March 3, 2023.
[6] "The Impact of Biosimilar Competition in Europe," *IQVIA*, December 2022.
[7] European Medicines Agency and Heads of Medicines' Agencies (HMA) Biosimilar Working Group, "Statement on the scientific rationale supporting interchangeability of biosimilar medicines in the EU," *European Medicines Agency*, (September 19, 2022).
[8] Niazi S. Scientific Rationale for Waiving Clinical Efficacy Testing of Biosimilars. Drug Des Devel Ther. 2022 Aug 24;16:2803-2815. doi: 10.2147/DDDT.S378813. PMID: 36043044; PMCID: PMC9420434.
[9] Niazi, SK. No two classes of biosimilars: Urgent advice to the US Congress and the FDA. *J Clin Pharm Ther*. 2022; 47(9): 1352- 1361. doi:10.1111/jcpt.13743

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- Gillian Woollett, who has written extensively[10][11][12] on this subject, notes that any time a reference biologic manufacturer changes its manufacturing process, it is essentially thereafter creating a "biosimilar" of its own product. The FDA assumes that the product is fully interchangeable, usually without any clinical studies at all. Also, the product's label does not change, so physicians and their patients expect the same clinical outcome, too. Even without any manufactural changes, different batches of the same product can have some variation. The FDA's tools to analyze biologics are sufficient to establish interchangeability and can be applied to biosimilars as well. Those tools include state-of-the-art analytics, as well as functional assays in vitro.
- In April 2023, the American Society of Clinical Oncology (ASCO) published a policy statement in favor of abolishing the distinction between approved biosimilars and interchangeable biosimilars.[13]
  - *"The BPCIA distinction between interchangeability designation and biosimilars is unnecessary, burdensome, and creates barriers to high value care."*
- The FDA has already started requiring fewer switching studies.[14] However, the statutory distinction between approval and interchangeability still poses an obstacle to full market access and increased physician trust.

To streamline the current regulatory pathway for biosimilar approval and to align the law with reality, Senator Mike Lee is introducing the **Biosimilar Red Tape Elimination Act**.

Key Provisions:
This bill would:

- Amend the federal code to state that all biosimilars, upon approval, shall be deemed interchangeable. The bill still uses the term "interchangeable" because states have crafted their own laws around interchangeability. Retaining that word would provide for minimal disruption to current biosimilar distribution.
- Strike the current requirement in code that has been used to justify switching studies.
- Require the FDA to conduct a private briefing with relevant committee heads if the agency wants to require a switching study (the respective chairs and ranking members of Senate HELP and House E&C).
- This bill would NOT affect states' ability to craft their own laws regarding biosimilar substitution. It would merely send an accurate signal to the states regarding the nature of interchangeability.

[10] Park, J.P., Jung, B., Park, H.K. *et al.* Interchangeability for Biologics is a Legal Distinction in the USA, Not a Clinical One. *BioDrugs* **36**, 431–436 (2022). https://doi.org/10.1007/s40259-022-00538-6
[11] Webster, C.J., Wong, A.C. & Woollett, G.R. An Efficient Development Paradigm for Biosimilars. *BioDrugs* **33**, 603–611 (2019). https://doi.org/10.1007/s40259-019-00371-4
[12] Webster, C.J., George, K.L. & Woollett, G.R. Comparability of Biologics: Global Principles, Evidentiary Consistency and Unrealized Reliance. *BioDrugs* **35**, 379–387 (2021). https://doi.org/10.1007/s40259-021-00488-5
[13] Rodriguez G, et al, "ASCO Policy Statement on Biosimilar and Interchangeable Products in Oncology," JCO Oncology Practice. 2023 Apr 7. https://ascopubs.org/doi/pdf/10.1200/OP.22.00783
[14] "First Interchangeable FDA Approval without a Switching Study," *JD Supra*, September 9, 2022.

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