Information and Perspectives on

Proposed FDA Regulation of Laboratory Developed Tests (LDTs)

to Office of Management and Budget/
Office of Information and Regulatory Affairs

Association of Pathology Chairs

April 4, 2024

In this brief presentation, we will:

- Introduce who we are and why we care about LDTs
- Define LDTs vs. manufacturers of devices/kits
- Frame our concerns within the context of OMB/OIRA's functions
- Share our suggestion for preferred approach

Who is the Association of Pathology Chairs (APC)?

- The APC is a non-profit organization which:
  - Represents 160 academic depts of pathology and laboratory medicine in the U.S. (plus others in Canada)
  - Empowers the entire leadership team (not just chairs) in the delivery of the tripartite academic mission: Research/innovation, Education, Patient care.
    - Team: Clinical leaders/directors, Dept. administrators, Education directors, Research leaders and more
  - Includes clinical activity within hundreds of clinical laboratories directed by faculty in academic depts. of pathology and laboratory medicine at their academic medical centers.
  - Supports our members and their depts to meet ever-changing challenges in academic medicine through education, leadership training, data gathering and sharing, networking and advocacy

As academic pathologists, our members:

- Are directly responsible for clinical **quality*** of laboratory tests performed within our labs that:
  - Are used for patients/community serviced by our labs
  - Provide unique windows into body function to assess health/disease
  - Underlie 70% of all medical decisions

- Serve the nation's sickest and most challenging patients:
  - Children, Cancer patients, Transplant patients, Rare diseases

- Are NOT manufacturers of tests, devices, kits and DO NOT work in a manufacturing environment – the usual jurisdiction for FDA

*Quality = Accuracy/safety, Effectiveness, Timeliness, Efficiency, Equity, Patient-centeredness

Manufacturing kits/devices vs. Developing and performing LDTs

A test kit – like a cake mix!

- The cake mix = a kit
  - Manufactured and packaged for general use elsewhere
  - Contains all the essential ingredients, pre-measured and ready to go
  - Promises a perfect results in any kitchen
  - Designed to meet general taste.
  - Only created when there is a substantial market with opportunity for profit

A LDT – like a homemade cake!

(used when there is no cake mix)

- The homemade cake = “made from scratch”, i.e., no kit!
  - Uses existing off-the-shelf ingredients/ reagents that must be measured locally
  - Utilizes processes optimized by the chef for that kitchen’s oven/tools
  - Designed to meet the local tastes and needs of family and friends where it will be served.

We know that OIRA/OMB cares about:

1. Reducing administrative burden
2. Budget development and execution
3. Coordination and review of all significant Federal regulations from executive agencies
4. Management, including oversight of agency performance, procurement, financial management, and information technology

We will frame our comments accordingly

1) Administrative Burden: Workload, Workforce, Resources, Knowledge

A recent survey of APC member laboratories revealed that:

- 43% of respondents use 200+ LDTs per lab site – only 39% had less than 50 LDTs.
- Staffing shortages in 100% of labs – national workforce challenges
- Insufficient space reported by 77% of respondents
- Lack of knowledge/familiarity with FDA processes – only 23% report experience with pre-market approval
- Financial resources uncertain

Consequences – poor quality for patients:

- Result delays due to outsourcing (if available elsewhere) –> delays in treatment
- Replace with other less accurate but approved tests
- No test at all; drop permanently from menu

Administrative burden to FDA: Insufficient staff

2) Budget: FDA Costs, User Fees, Impact on Hospitals

Poor estimates of the number of to-be-regulated tests and indeterminate time to review submissions.

Costly budget increase for FDA staff and infrastructure to support these new submissions.

User fees will likely be required for submission, but cannot fully defray the expense of FDA's review.

Must be reasonably priced to avoid dampening LDT innovation LDT to meet patient care needs – but may not adequately cover review costs.

Does this create a "tipping point" for hospital labs, pushing LDTs off the menu permanently?

Precarious financial situation at medical centers due to declining reimbursements and rising costs

3) Coordination and review of all significant federal regulations

The proposed rule is not evidence-based and appears to be based chiefly on anecdotes and small series.

- **APC recommends a collaborative national LDT "landscape" project:**
  - Gather data that will illuminate practice and resources
  - Inform regulation development, implementation, and oversight.
  - Align with the FDA's request for data and their stated desire for evidence-based policies
  - Create and evaluate regulatory scenarios, including:
    - Feasibility of a risk-based regulatory process
    - Regulation of companion diagnostics and home tests sold directly to consumers vs. LDTs performed in hospital labs
    - Regulatory models/scenarios including "new" models like the high-complexity lab and assay performance review required by New York
    - Sustainability and financial impact of different scenarios/models.
    - Similar model used to develop national consensus quality standards in cytopathology which was sponsored by the CDC almost ten years ago.

4) Management, including oversight of agency performance

We support ADLM's position that this proposed role creates duplication of regulation that is costly, inappropriate and unnecessary.

The Centers for Medicare and Medicaid Services (CMS) has had longstanding and successful oversight of laboratory processes (LDTs = lab process) via the Clinical Laboratory Improvement Act (CLIA)-accredited inspection organizations.

We support the Association for Molecular Pathology's proposal to update CLIA to address LDTs following a landscape study.

Does not pre-empt CMS' authority.

Does not create two layers of uncoordinated duplicative regulatory review which is burdensome and expensive for laboratories and for the agencies.

Minimizes confusion and conflict.

Societal impact (not OIRA-OMB purview, but…)

- All of these issues will impact:
  - Quality of care
  - Access to tests
  - Innovation
  - Ability to evolve as new treatments and diagnostic approaches become available


Questions??