

## 21st-Century Healthcare Policy and the Regulation of Laboratory-Developed Tests

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**D**IAGNOSTIC TESTS ARE ESSENTIAL for accelerating health solutions. The discovery of significant variants and the availability of reliable diagnostic tests afford patients and clinicians a range of benefits from an end to the diagnostic odyssey to better treatment options and improved health. Test developers believe that obtaining approval from the Food and Drug Administration (FDA) for diagnostic tests would make their development time-consuming and costly. As a result, the majority of tests are categorized as laboratory-developed tests (LDTs). LDTs are manufactured and administered within a single laboratory, and are therefore subject to regulation by the Clinical Laboratory Improvement Amendments (CLIA) of Centers for Medicare and Medicaid Services (CMS).

In 2014, the FDA posted a draft guidance for comment on the subject of regulating LDTs. This is pursuant to Section 1143 of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Energy and Commerce Committee, 2014). Specifically, the FDA described a premarket review process that would require confirmation of the analytical and clinical validity of new LDTs before the lab is permitted to administer those tests. Comments were accepted until early 2015. In the spring of 2015, the FDA announced the establishment of the FDA/CMS Task Force on LDT Quality Requirements to oversee changes to the LDT regulatory landscape (Shuren and Conway, 2015). This movement toward increased oversight of LDTs has sparked debate among stakeholders, a debate that resurfaced in the context of the House Energy and Commerce Committee's 21st Century Cures Act (Energy and Commerce Committee, n.d.).

When the objectives of the 21st Century Cures Act were first under discussion, the House Energy and Commerce Committee released a white paper seeking feedback with regard to how the act should approach and establish FDA oversight of LDTs. Stakeholders from public health nonprofit organizations, disease advocacy organizations, professional societies, research groups, and private companies responded.

The stakeholders provided wide-ranging reasons for their opposition of introducing FDA regulation of LDTs in the 21st Century Cures Act. Some stated that increased regulation of LDTs would impede innovation. They described these challenges as including detrimental delays in the process of bringing the test to the consumer, challenging pathways to iteratively improving the test over time, and higher costs to the

healthcare system. Some stakeholders described concern that tests might be required to undergo a regulatory pathway akin to medical devices approved by the FDA. Others argued that the risk associated with a diagnostic test is not similar to the risk that a medical device imposes (Energy and Commerce Committee, n.d.). In various comments, stakeholders described the fact that LDTs have been considered standard-of-care procedures for years, used frequently by healthcare providers under practice of medicine laws without any documented harm to patients. They expressed concern that if FDA oversight of LDTs were to shift, providers might no longer be permitted to administer many of these tests, despite their long-proven safety and effectiveness in bringing diagnosis to affected individuals (Energy and Commerce Committee, n.d.).

Supporters of FDA oversight of LDTs assert that the FDA has permission to regulate LDTs through the Medical Device Amendments of 1976 (Ray, 2015). Supporters also hold that FDA oversight of LDTs will benefit the diagnostic industry. Before the results of an LDT can be released, the administering laboratory must meet the CLIA's specified performance metrics. Although this CLIA assessment does evaluate the LDT's reliability, the process is not as comprehensive as the validity assessment associated with FDA approval process. For example, the CLIA review process does not necessitate clinical trials to be performed prior to marketing an LDT (Centers for Medicare and Medicaid Services, 2015). Supporters of FDA oversight believe that this allows diagnostic tests to be administered to patients before aggregating adequate information to understand the test's safety and accuracy. Supporters also suggest that tighter regulation procedures will attract investors who might otherwise be dissuaded by the risk of investing in an LDT that, due to minimal regulation, ultimately fails to predict as expected. The resultant increased opportunities for funding would promote innovation in the diagnostic testing sphere.

As of this writing, the most recent version of the 21st Century Cures Act was approved in the House of Representatives on July 10, 2015. Despite the committee's request for feedback and the resulting white paper debate, there appears to be no information included in the act that directly addresses LDTs. The draft version of the bill, released on January 26, 2015, did include a subtitle devoted to "Modernizing Regulation of Diagnostics," though the content under

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the subtitle was yet “to be supplied” (Energy and Commerce Committee, 2015). The elimination of LDT regulation-related content may be attributed to the pushback received in response to the 21st Century Cures Act white paper seeking input on FDA regulation of LDTs. Another reason for the omission could be tension between the American Clinical Laboratory Association (ACLA) and the FDA; the ACLA has stated that they are open to collaborating with the FDA on the 21st Century Cures Act, but not if the FDA imposes standards that increase regulatory burden and costs and inhibit patient access to diagnoses (Ray, 2015).

Omission of any discussion regarding LDTs from the 21st Century Cures Act does not suggest that the FDA is backing down on its intention to regulate LDTs. Committee members are likely considering ways to relieve tension between stakeholders and the FDA, and to help these groups reach a consensus on a modified LDT regulatory landscape (Ray, 2015). The diagnostic industry will likely see provisions related to LDTs introduced in the future (Gaffney, 2015). With the dawn of the 21st Century Cures Act, stakeholders speculate how this new era of healthcare policy will influence the trajectory of LDT regulation.

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