

## Summary of Recent Changes to FDA Regulation of Laboratory-Developed Tests

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On April 29, 2024, the Food and Drug Administration announced [a final rule](#) changing how laboratory-developed tests are regulated. The rule clarifies that LDTs are included within the definition of in vitro diagnostics, thus qualifying as devices subject to FDA's oversight and regulation. The new enforcement policy would extend over a four-year period, at which point IVDs offered as LDTs will be expected to meet applicable requirements as outlined. This is a significant change from current practice. These new administrative and financial burdens on laboratories that serve hospitals and health systems as well as public health laboratories may severely limit innovation and patient access to testing. IDSA is deeply concerned given the breadth of LDTs routinely used in ID patient care. IDSA expressed [significant concerns to FDA](#) during FDA's development of this new policy. A full summary of the rule can be found [here](#).

In response to concerns raised by IDSA and other stakeholders, FDA included the following provisions in the new LDT/IVD regulation. While these may be intended to reduce burdens on laboratories and lessen interruptions to patient access to testing, they are too narrow to have a significant impact:

- **Grandfathered tests:** FDA will not enforce premarket review and quality system requirements (except for requirements under part 820, subpart M [Records]) for currently marketed IVDs offered as LDTs that were first marketed prior to the date of issuance of this rule (May 6, 2024). **It remains unclear how the modification of tests will be assessed by FDA and what criteria will be used to determine if they are subject to review.**
  - FDA states that it will request that laboratories offering preexisting LDTs submit labeling to FDA, which will be an added burden on laboratories. **There is a lack of guidance and templates for LDT validation, submission and labeling requirements for laboratories who will be submitting labeling.**
- **Validation of LDTs:** FDA acknowledged that validation may vary depending on many factors, including the accessibility of specimens and the number of affected patients. FDA intends to consider whether issuing additional guidance regarding validation of tests, including those for rare diseases that takes into consideration the challenges in obtaining a robust number of samples for validation, would be helpful.
- **Exemptions from premarket review:** FDA outlined exemptions from market review for specific LDTs, including:
  - LDTs for patients who are receiving care within the health care system within which the laboratory offering the LDT is integrated. FDA does not consider this to include patients who are being treated at an affiliated hospital with different corporate ownership than the laboratory. **This is not sufficient to ensure that access to LDTs will continue to be met.**
  - LDTs for unmet needs: FDA considers an LDT to be for an unmet need where there is no available FDA-authorized IVD that meets the patient's needs. This may be because: (1) there is no FDA-authorized IVD for the disease or condition (for example, because it is for a rare disease or condition); (2) there is an FDA-authorized IVD for the disease or condition but it is not indicated for use on the patient, or a unique attribute needs to be added to the LDT to meet the patient's needs; or (3) there is an FDA-authorized IVD but it is not available to the patient. It is unclear if this rule applies when a clinical laboratory does not own the equipment/staffing/necessary resources to offer the FDA-cleared test.

**The decision-making process for determining if an LDT meets an unmet need was not clarified in the rule and remains a concern for IDSA.**

- FDA intends to exercise enforcement discretion and generally not enforce premarket review requirements for LDTs approved by New York State Clinical Laboratory Evaluation Program. **FDA does still intend to request submission of labeling for these tests, including performance information and a summary of validation support under its registration, which may still cause administrative burden on some labs.**
- FDA intends to exercise enforcement discretion and generally not enforce requirements for LDTs manufactured and performed within the Veterans Health Administration or the Department of Defense.

### **FDA Webinar and Updates**

On May 14, FDA hosted [a webinar](#) to answer questions about the released rule.

FDA further clarified that they would not be enforcing premarket review on specific LDT types. Additionally, they clarified that there is not currently a separate policy for public health laboratories offering LDTs. A draft guidance with proposed enforcement policy for [certain tests used in state and local public health labs in immediate public health response](#) has been released for comment. A [webinar to answer questions](#) on the topic was held in June. There is also intent to reclassify Class III tests into Class II tests, allowing manufacturers to seek clearance through the 510k pathway.

### **Impact of LDT Regulation on ID Clinical Care & IDSA Advocacy**

IDSA has repeatedly [expressed concern regarding the final rule](#) and the implications for infectious diseases diagnostics and clinical care. For many infectious diseases, LDTs are the only — or most reliable — tests available to provide timely results for ID clinical care.

Essential diagnostic tests for HIV and hepatitis drug resistance, tickborne diseases, fungal infections, sexually transmitted infections, organism identification and antimicrobial resistance may stop being offered in labs at many medical centers and health systems, which would increase turnaround time for diagnostic results and dramatically curtail the scope of ID clinical care. IDSA [has further concerns](#) that the final rule does not accurately address antimicrobial susceptibility testing and AST breakpoints. This will make it more difficult to offer susceptibility testing, further exacerbating rates of resistant infections and stifling stewardship efforts. There are further concerns regarding the operationalizing of the regulation in diagnostic practice and the user fees labs will need to pay for validation of their tests under the rule. These user fees will be inaccessible for many labs.

IDSA will continue working with FDA, Congress and other stakeholder organizations to advocate for policy improvements that will protect patient access to testing and diagnostic innovation. Prior to the final rule being released, the House Energy and Commerce Subcommittee held [a hearing](#) discussing the rule, prior attempts to regulate LDTs through Congress and the impact of FDA's rule on the diagnostics landscape. Many representatives were concerned with the rule's potential to stifle innovation in the diagnostic field, limit hospital-based labs and public health labs' ability to offer diagnostic tests and impose associated clerical burdens on these institutions. It remains unclear if Congress will act on the rule.

### **The final LDT rule will become effective on July 5, 2024.**

For further information regarding the rule, the impact on LDT usage or ways to get involved with IDSA advocacy, please contact Sara Hoopchuk, public policy manager, at [shoopchuk@idsociety.org](mailto:shoopchuk@idsociety.org).