Overview of the FDA Final Rule on Laboratory Developed Tests

The Food and Drug Administration (FDA) released a final rule regarding their plans to oversee laboratory developed tests (LDTs) on April 29, 2024. This 528-page document is similar in many ways to the proposed rule. The agency continues to assert that clinical laboratories that develop LDTs are medical device manufacturers and therefore subject to the same standards as medical device manufacturers.

Implementation Schedule

The agency implementation schedule remains largely the same. The FDA plans to phase out its "enforcement discretion" of LDTs through five stages:

• Stage 1: beginning 1 year after the publication date of this final rule (**May 6, 2024**), FDA will expect compliance with Medical Device Reporting (MDR) requirements, correction and removal reporting requirements, and quality system (QS) requirements under § 820.198 (complaint files).

• Stage 2: beginning 2 years after the publication date of this final rule, FDA will expect compliance with requirements not covered during other stages of the phaseout policy, including registration and listing requirements, labeling requirements, and investigational use requirements.

• Stage 3: beginning 3 years after the publication date of this final rule, FDA will expect compliance with QS requirements under part 820 (other than requirements under § 820.198 (complaint files), which are already addressed in stage 1).

• Stage 4: beginning 3½ years after the publication date of this final rule, FDA will expect compliance with premarket review requirements for high-risk in vitro diagnostics (IVDs) offered as LDTs, unless a premarket submission has been received by the beginning of this stage in which case FDA intends to continue to exercise enforcement discretion for the pendency of its review.

• Stage 5: beginning 4 years after the publication date of this final rule, FDA will expect compliance with premarket review requirements for moderate-risk and low-risk IVDs offered as LDTs (that require premarket submissions), unless a premarket submission has been received by the beginning of this stage in which case FDA intends to continue to exercise enforcement discretion for the period of its review.

Notable Changes

The final rule does include several notable changes from the original proposal. The document includes a grandfathering provision for LDTs marketed prior to the release of the final rule, which was expected, as well as a broad array of new exceptions. These exceptions also include

limitations that reduce the value of the provisions. It's important to note that any benefits included in the rule by the FDA can be eliminated tomorrow if the agency chooses to do so.

Categories Granted Enforcement Discretion:
The FDA has stated that certain categories of tests will receive special treatment under the final rule, such as:

- LDTs developed by the Department of Defense (DOD) and Veterans Health Administration (VHA) are exempt from FDA oversight (the Department of Health and Human Services granted similar exemptions to DOD and the VHA when CLIA was first promulgated).

- LDTs marketed prior to May 6, 2024 and are not subsequently modified. Once they are modified these tests are subject to all FDA requirements.

- LDTs approved by the New York State Clinical Laboratory Evaluation Program (NYS CLEP). These LDTs are exempt from FDA premarket review but are subject to all other requirements.

- LDTs manufactured and performed by a laboratory integrated within a healthcare system to meet an unmet need of patients receiving care within the same healthcare system are exempt from quality system regulation (QSR) and premarket review requirements, but subject to all other stipulations.

What is an Unmet Need?
The FDA states that an unmet need is when there is no available FDA-authorized IVD that meets the patient's needs, such as: there is no FDA-authorized IVD for the disease or condition (for example, because it is for a rare disease or condition); 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 there is an FDA-authorized IVD but it is not available to the patient.

Several examples of an unmet need provided by the agency include:

- An LDT for use on pediatric patients when FDA-authorized IVDs are indicated for use on adults only;

- An LDT that generates results in a significantly shorter period (e.g., hours versus days) than an FDA-authorized IVD with the same indication where, due to the circumstances of the patient, the shorter time period to get results is critical for the clinical decision making; and

- An LDT for the same indication as an FDA-authorized IVD that is offered only in another healthcare system that is not accessible to the patient and the developing laboratory will not make the IVD available outside of its system.

The FDA reiterates, however, that there is no longer an unmet need for once the FDA authorizes an IVD that meets the needs of the patient. **Also, during the period of an "unmet need" the LDT is still subject to registration, listing, labeling, and MDR reporting requirements.**

FDA Webinar

The FDA is also holding a webinar on the final rule on May 14th. Advance registration is not required. The agency is also accepting questions in advance of the program. Questions must be submitted to the agency at CDRHWebinars@fda.hhs.gov by May 7th.

ADLM's Policy & External Affairs Core Committee will continue to provide information on the final rule moving forward.