AMA
AMERICAN MEDICAL ASSOCIATION

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The Honorable Robert M. Califf, MD
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Re: Medical Devices; Laboratory Developed Tests – Docket No. FDA–2023–N–2177

Dear Commissioner Califf:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to express our deep concern over the U.S. Food and Drug Administration's (FDA) proposed approach to regulation of laboratory developed tests (LDTs). **While we appreciate FDA's commitment to ensuring that only high-quality, high-performing diagnostics are available to patients, the proposal in question will undoubtedly cause significant upheaval to the laboratory community with detrimental results for patients.** The current laboratory regulatory structure has resulted in a robust, safe, and high-performing medical testing community, which under the proposed rule would be disrupted for unknown benefit. The risk of significant disruption of the laboratory industry must be carefully balanced with the need for stronger oversight to achieve the most appropriate approach to regulation of LDTs.

The AMA agrees that there is a role for FDA in the regulation and oversight of LDTs. However, we are concerned that the role proposed is too expansive and will detrimentally impact patient access to diagnostic testing services. The proposed rule, while appearing simple, presents a significantly complex new oversight structure for LDTs after fifty-plus years of enforcement discretion by the FDA—a wholesale shift from how the industry has operated for decades. Requiring thousands of LDTs to seek FDA review will rock the very foundation of diagnostic development and represents what will undoubtedly be a massive disruption to the laboratory industry.

As you are well aware, over the many years of discussion on this issue, laboratories of all types have indicated that they will likely have to significantly reduce their test offerings should these types of regulatory requirements go into effect. Should laboratories decide that they cannot afford the expense or significant administrative burden associated with seeking FDA review of each test and modification, we anticipate substantial decrease in access to diagnostic testing services for our patients. This is particularly concerning where there are no commercial alternatives to LDTs available. Additionally, the costs of seeking FDA review for a medical device are not insignificant. Clinical laboratories that are already operating in an environment of continued cuts to reimbursement due to provisions within the Protecting Access to Medicare Act will have no choice but to pass those costs on to patients, increasing patient financial burden and costs to the health care system broadly—that is if they continue offering the tests at all.

The FDA's proposal will also likely serve to delay access to diagnoses and subsequent treatments. Should practice settings such as hospitals and academic medical centers find it no longer feasible to engage in LDT development due to onerous new regulatory requirements, they will be forced to send specimens to outside laboratories for review. The obvious result of no longer having ready access to in-house diagnostics will be delays in receiving critical diagnoses and health status information, which will ultimately result in delays for receiving care. We share the significant concerns of the entirety of the laboratory community that this proposal, as written, will have a significant and detrimental impact on patient care. The AMA also suspects that proceeding with new oversight as proposed will have a chilling effect on innovation in the diagnostic space, with resource strapped laboratories either unable or unwilling to engage in innovative test development.

The AMA is concerned that the proposed rule lacks a substantial amount of clarity on how laboratories will effectively comply with complex new oversight requirements. The lack of clarity makes it exceptionally difficult for clinical laboratories, pathologists, medical geneticists, and others to provide fully informed comments on the proposal, and to evaluate the entirety of the impact on the diagnostics industry. For example, as written, laboratories will likely have a very difficult time understanding and selecting the appropriate classification for each test offering. It is also unclear how potential conflicts between new FDA and the Clinical Laboratory Improvement Amendments of 1980 (CLIA) programs will be resolved or how laboratories may best manage dual and potentially competing regulatory requirements.

Additionally, there is little clarity on how FDA plans to address exemptions for diagnostics during an urgent or emergent public health crisis. While FDA has signaled it will consider exemptions in the case of a public health emergency, the laboratory industry and public health officials need clear guidance on how they can expect this issue will be managed. As we saw during the COVID-19 pandemic, early diagnostic development is of critical importance to protect our patients during times of an emerging public health crisis. While there were known performance issues with some COVID-19 diagnostics, overly burdensome FDA requirements also hindered the ability to get testing to patients early in the pandemic—a time when the threat of COVID-19 was rapidly escalating and a critical misstep that undoubtedly harmed patients. FDA must ensure maximum flexibility and maintain an ability to be nimble to avoid the same mistakes during future public health emergencies. There is also significant flexibility needed to address other, non-emergent public health issues to ensure we maintain test availability.

The proposed regulatory structure will also require a very significant amount of FDA resources to manage review of what will amount to several thousand tests. Given the significant resource constraints already existing at the agency, the AMA has concerns that the volume of new reviews will result in an extreme backlog and will ultimately result in creating barriers to access to patients, particularly under the overly ambitious timeline for implementation. While we understand that FDA proposes to engage third party reviewers to help manage the volume, we still do not believe that this will create meaningful capacity to handle the significant and potentially overwhelming volume that FDA may be facing. Many FDA reviews already operate on timelines of months or years. These timelines are simply too long to ensure continuity of access for our patients.

LDTs are not currently without oversight. CLIA regulations and additional accreditation requirements have ensured that the overwhelming majority of LDTs are safe and high quality. Many LDTs represent the gold standard diagnostic for their purpose and many fill niche gaps where there are no commercially available alternatives. They also present different regulatory challenges than many medical devices. As such, the oversight framework must be tailored to meet the specific and unique needs of clinical diagnostics. While we defer to pathology and laboratory colleagues on the specific changes necessary to ensure continued timely access to the full range of diagnostic testing services, we do know that a risk-

based approach that integrates with existing (or potentially updated) CLIA requirements and acknowledges additional requirements imposed by entities such as the College of American Pathologists accreditation process or the New York State Department of Health Clinical Laboratory Evaluation Program would represent a more responsible approach towards LDT oversight. While FDA undoubtedly has a role to play in oversight of diagnostic testing, we must ensure collaboration with other federal agencies, accreditors, Congress, and other interested parties to develop the most beneficial yet least disruptive path forward.

While we certainly understand that there have been, and continue to be, instances in which poorly performing tests make their way to market, we are concerned that FDA has prefaced this potentially industry-destabilizing approach on a collection of anecdotal examples of bad tests that are not representative of the industry as a whole. We agree with FDA that we must take steps to eliminate as many poorly performing, low-quality tests as possible from the market. However, in doing so we must appropriately weigh the risks and benefits to the actions taken and ensure that any changes maintain broad access to critical diagnostic tests without significantly increasing financial or access burdens on our health care system. We strongly encourage FDA to pause further action on this proposed rule, carefully review comments, and take time to work directly with interested parties to develop a more carefully tailored and deliberate approach to LDT regulation. Public meetings with opportunities for public input would be an appropriate next step to both receive additional feedback on the current proposal and discuss potential changes that can meet FDA, laboratory, physician, and patient objectives.

The AMA appreciates your careful attention to the issue of LDT regulation and shares your overarching goal of ensuring the quality and performance of our clinical diagnostics. **However, we, along with many of our federation members and colleagues in the laboratory community, share very significant concern with the approach proposed by FDA.** Should FDA continue to pursue this massively disruptive path forward, our patients will undoubtedly contend with serious access issues, increased costs, delays in diagnosis and treatment, and we will all have to face impacts to innovation in the clinical diagnostic space going forward. While we agree FDA has a strong role to play in oversight of clinical diagnostics, including LDTs, we must work together and ensure we pursue an appropriately tailored approach that meets our shared goals. **We strongly urge FDA not to rush towards finalization and instead pause for a more deliberate, collaborative approach with interested parties.**

For any questions or to further discuss this proposed rule, please contact Shannon Curtis, Assistant Director of Federal Affairs at Shannon.Curtis@ama-assn.org. The AMA looks forward to continuing collaboration with FDA on this challenging yet critically important issue.

Sincerely,

James L. Madara, MD