



Topic: CAP's Legislative Proposal for Laboratory-Developed Tests (LDT)

Date: September 14, 2015

1. What are the CAP's views on the regulatory oversight of laboratory-developed tests (LDTs)?
2. How are LDTs currently regulated?
3. Why has the CAP released a legislative proposal for oversight of LDTs and why do we advocate that Congress utilize it in its efforts to regulate LDTs?
4. What enhancements are included in the CAP's legislative proposal?
5. Is the CAP's legislative draft based on the 2009 framework for LDT oversight?
6. How does the CAP define a traditional LDT?
7. What are the principles and elements of the CAP's LDT framework that was first presented to the FDA in 2009 and are they still reflected in the revised framework and legislative draft?
8. What is the CAP's position on the FDA's draft guidance for regulatory oversight?
9. What is the CAP doing to address FDA's intent to regulate LDTs?
10. When will the FDA finalize its guidance document?
11. Who will determine the LDT classifications?
12. How would the CAP's proposal work and evaluate risk?
13. Which LDTs will be impacted?
14. How are well characterized companion diagnostics classified in the CAP's plan?
15. Why are clinical validation requirements included in the CAP's proposal?
16. How will the CAP's proposal minimize delays caused by increased regulations?
17. Have the CMS or the FDA provided input into the CAP's proposal?
18. Where can I obtain a copy of the CAP's revised LDT framework, our legislative draft and obtain more information?

Q. 1. What are the CAP's views on the regulatory oversight of LDTs?

A. 1. The CAP believes any regulatory framework for LDTs needs to enhance patient safety, maintain quality laboratory testing, and promote innovation without creating a significant new regulatory burden on laboratories. To effectively meet these goals, the CAP believes that any legislative proposal should rely on the existing Clinical Laboratory Improvement Amendments of 1988 (CLIA) framework as much as possible while also taking into account the unique roles of the CMS and the FDA. Since 2009, when the CAP first presented its LDT model to the FDA, the CAP has maintained that enacting modifications to CLIA, with a targeted role for the FDA for high-risk tests, is the most effective and least burdensome approach to ensuring patient safety and sustaining continued innovation in diagnostic testing.

Q. 2. How are LDTs currently regulated?

A. 2. While the FDA assumes authority for regulating LDTs, and is currently exercising enforcement discretion, it is planning to increase oversight of LDTs. Current oversight requirements governing LDTs are the laboratory requirements prescribed in CLIA. In 2014, the FDA published a guidance document for the proposed oversight of LDTs. As of today, the agency has not finalized its plan while Congress is pursuing drafting legislation that addresses the oversight of LDTs.

Q. 3. Why has the CAP released a legislative proposal for oversight of LDTs and why do we advocate that Congress utilize it in its effort to regulate LDTs?

A. 3. At a time when the Congress is considering several approaches to the oversight of LDTs, the CAP is releasing its legislative plan for LDTs that will meet the needs of patients and strikes the right balance to LDT oversight by utilizing a public-private approach. We are confident this legislative proposal is the most effective and least burdensome approach to ensuring patient safety and sustaining continued innovation in diagnostic testing.

Q. 4. What enhancements are included in the CAP's legislative proposal?

A. 4. The CAP has modified the proposal following conversations with various stakeholders and continued input from the LDT workgroup. We have made three enhancements to the CAP legislative proposal that are consistent with our policy and reflect stakeholder support. These modifications include:

Classification and Reclassification of LDTs: Since June, the CAP has received feedback from the AMA Clinical Laboratory Reform Workgroup about having a clear process to perform initial classification of all LDTs that includes the FDA, CMS, and clinical experts. The workgroup believed a process was necessary to ensure LDTs were subjected to the appropriated level of regulatory oversight. We include a public and transparent process for classification of LDTs into risk categories, and for reclassification of LDTs from one risk category to another when necessary.

Exceptions: Since June, the CAP has received feedback from the AMA Clinical Laboratory Reform Workgroup about having an exception for the NY State Department of Health Program in order to allow the program to participate in the new regulatory paradigm and reduce the potential backlog for moderate-risk LDT review. The workgroup believed these exceptions were vital in protecting the public health system surveillance system. We include exceptions for the NY State program and LDTs used to respond to public health and infectious disease emergencies.

Low Volume, Public Health Testing and Traditional LDTs: Since June, the CAP has received feedback from the stakeholders that low volume and public health testing should also be classified as low-risk tests. The 2009 CAP proposal assumed that a low volume test is not classified as high risk and is promoted only to detect a condition, and in which a total of less than 500 tests per year are performed by a laboratory entity (to include all laboratories that share a common ownership or control structure and perform that same test). We modify our proposal to more clearly identify these categories of LDTs, low volume and public health testing, as low-risk tests under our regulatory approach.

Q. 5. Is the CAP's legislative draft based on the 2009 framework for LDT oversight?

A. 5. Yes.

Q. 6. How does the CAP define a traditional LDT?

A. 6. The CAP defines traditional LDTs as an LDT using techniques and components marketed for clinical use that are interpreted directly by qualified healthcare providers. Qualified healthcare providers, a term used by federal regulators, include the following practitioners:

- Anesthesiologist Assistant (AA)
- Certified Nurse Mid-Wife (CNM)
- Certified Registered Nurse Anesthetist (CRNA)
- Clinical Nurse Specialist (CNS)
- Clinical Social Worker (CSW)
- Nurse Practitioner (NP)
- Physician Assistant (PA)
- Physical Therapist (PT)
- Others to include: Athletic Trainer & Dietitian

Q. 7. What are the principles and elements of the CAP's LDT framework that was first presented to the FDA in 2009 and are they still reflected in the revised framework and legislative draft?

A. 7. The CAP's longstanding principles for LDT oversight:

- Ensure quality laboratory testing for patients
- Allow for innovation in laboratory testing

- Prevent undue administrative or regulatory burdens on laboratories

The major elements of the CAP's 2009 proposal are:

- A tiered risk-based regulation that would focus FDA oversight to the tests that currently have the least transparency and highest potential patient risk.
- Allowance for evaluation of patient risk based on a laboratory's claims for the test and the potential for harm to patients of an incorrect or misinterpreted test.
- Provision for achievable and targeted FDA oversight of high-risk LDTs as we define these categories in our proposal.
- Provision for assurance of both analytic and clinical validity of laboratory tests.
- Requirement for notification by laboratories to the Secretary of each LDT in use since April 23, 2003, which is when CMS revised the CLIA regulations to be aligned with the quality management systems.
- Allowance for continued CMS oversight of laboratory quality under CLIA for moderate- and low-risk LDTs as we define these categories in our proposal.
- Definition of a regulatory process for modified LDTs with significant modifications to report high-risk tests to the FDA and for moderate- or low-risk to the CMS.
- Classification of LDTs for rare diseases, unmet diseases, and traditional LDTs as low-risk tests.
- Requirement for adverse event reporting by laboratories to the Secretary or deemed accrediting agencies.
- Promotion of transparency by making test information publicly available.
- Encouragement of coordination between the FDA and the CMS to avoid duplicative or unduly burdensome requirements on laboratories

Q. 8. What is the CAP's position on the FDA's draft guidance for regulatory oversight?

A. 8. The CAP has advocated that the FDA should make significant changes to the agency's draft LDT guidance for regulatory oversight to assure quality laboratory testing for patients, allow for continued innovation in diagnostic medicine, and remove duplicative and unnecessary requirements for laboratories.

[Read the CAP's full letter to the FDA](#)

Q. 9. What is the CAP doing to address the FDA's intent to regulate LDTs and its components?

A. 9. Over the past decade, the number, complexity, and importance of LDTs in diagnosing and treating disease have increased dramatically, creating the need for strengthened oversight that will ensure patient safety. Responding to this need, the CAP proposed a risk-based model employing a public-private partnership to address oversight of LDTs in an inclusive, systematic way in 2009. The CAP's proposal relies on a role for third-party accreditors and inspectors to oversee and monitor standards for low- and moderate-risk LDTs; high-risk LDTs would be reviewed directly by the FDA.

The CAP maintains its balanced risk-based approach to LDT oversight would enhance patient safety, maintain quality laboratory testing and innovation, and not create significant regulatory burden on laboratories.

Q. 10. When will the FDA finalize its guidance document?

A. 10. The FDA has not indicated when the final LDT guidance will be released. The agency continues to speak with stakeholders, including the CAP who actively engages with the FDA on its proposal.

Q. 11. Who will determine the LDT classifications?

A. 11. Under the CAP proposal, each laboratory would determine the LDT classification based on the criteria for low-, moderate-, and high-risk tests. The determination would be verified by the third-party certifier and/or accreditor.

Q.12. How would the CAP's proposal work and evaluate risk?

A. 12. The CAP proposes a public-private partnership to strengthen oversight of laboratory-developed testing through a three-tier risk based system. This system will regulate claims about both analytic and clinical validity and provide for specific scientific and regulatory standards to be applied to all LDTs. Risk would be determined based on claims a laboratory makes about an LDT and its potential risk to patients.

The CAP believes optimum oversight will be achieved by applying a risk-based classification (low-, moderate-, or high-) to each LDT; strengthening CLIA accreditation standards on laboratories using low- and moderate-risk LDTs, and requiring FDA review of all high-risk LDTs.

High-risk LDTs are those LDTs intended to guide high-risk treatments and employ novel technology and/or statistical calculations that cannot easily be linked to existing test systems. In these cases, the CAP believes the FDA is best equipped to ensure necessary controls are applied to protect public health and safety.

Under the CAP proposal, each laboratory would determine the LDT classification based on the criteria for low-, moderate-, and high-risk tests. The determination would be verified by the third-party certifier and/or accreditor.

Q. 13. Which LDTs will be impacted?

A. 13. The FDA has indicated its intent to subject all LDTs to higher regulatory scrutiny. The CAP's proposal would impact all LDTs developed within CLIA-certified laboratories that are used in patient management and have both of the following characteristics:

- The test is performed by the clinical laboratory in which it was developed; and
- The test is neither FDA-cleared nor FDA-approved.

The CAP proposal covers all types of LDTs—generic, molecular, conventional, and other. It would require the notification by laboratories of each LDT in use since April 23, 2003, which is when CMS revised the CLIA regulations to be aligned with the quality management systems.

Q. 14. How are well-characterized companion diagnostics classified in the CAP's plan?

A. 14. Well-characterized companion diagnostics are classified as moderate-risk LDTs.

Q. 15. Why are clinical validation requirements included in the CAP's proposal?

A. 15. The risk posed by many LDTs depends on how the LDT is intended to be used. Clinical validation requirements have been included in the CAP proposal to ensure that tests are accurately classified and that claims made about the accuracy or usefulness of a test are validated. As personalized healthcare and direct-to-consumer testing continues to grow and become more complex, it is important that LDTs are only labeled or promoted for uses that have been adequately verified for specific clinical purposes.

Q. 16. How will the CAP's proposal minimize delays caused by increased regulations?

A. 16. The proposal has been structured to ensure that the majority of LDTs will still progress through the CLIA process and should have no or moderate effect on the timeline for implementation of these innovations. Other than performing clinical validation and an internal review process, laboratory reporting requirements for low-risk LDTs will be similar to those existing under CLIA, which already requires laboratories to notify the certifier and/or accreditor when they add a new test.

Q. 17. Have the CMS or the FDA provided input into the CAP's proposal?

A. 17. Since the CAP formulated its proposed oversight model in 2009, it has had several meetings with the FDA and CMS, and the dialog has been productive. In addition, the CAP participated in several public meetings and town halls to discuss the topic with other stakeholders.

The CAP believes it is important to work with federal agencies and all stakeholders to continue to develop and refine this proposal. We are committed to ensuring that the quality standards and safeguards applied to LDTs evolve in step with technological advances.

Q. 18. Where can I obtain a copy of the CAP's revised LDT framework, our legislative draft and obtain more information?

A. 18 More information can be found under CAP Advocacy or by [contacting Helena Duncan](#), CAP Assistant Director of Economic and Regulatory Affairs.