21st Century Cures – Request for Feedback: A Modernized Framework for Innovative Diagnostic Tests

One of the motivating goals for the 21st Century Cures initiative when launched earlier this year was to close the gap between the science of cures and how we actually regulate these therapies. Over the past several months, the committee has hosted a number of hearings and roundtables to further understand what role Congress can play in this effort.

One roundtable held on July 23, 2014, focused on personalized medicine and how advances in diagnostic testing can accelerate the pace of better treatments and cures. One week later, the Food and Drug Administration (FDA) notified Congress, pursuant to Section 1143 of the Food and Drug Administration Safety and Innovation Act of 2012 (FDASIA), of the agency's intent to issue guidance documents that would fundamentally alter the regulatory landscape for the review and oversight of laboratory developed tests (LDTs) including innovative companion diagnostics.

On September 9, 2014, the Subcommittee on Health held a hearing to better understand FDA's proposal and solicit stakeholder feedback. As was the case at the roundtable, while some may have disagreed about certain specifics, all participants made clear that any regulatory framework for innovative diagnostic tests—regardless of whether they are developed in a lab or distributed by a manufacturer—must prioritize patient benefit as well as encourage robust investment and allow for continued innovation.

The committee understands that FDA's approach has led to a number of important questions about administrative process and policy. In addition to questions about the framework proposed, we are aware that the agency's release of the guidance documents has served as a catalyst for broader conversations about the overarching need to modernize governmental oversight of these unique and increasingly important medical products. As the 21st Century Cures initiative proceeds, with preparations for a discussion draft early in the New Year, the committee appreciates all interested stakeholders' specific feedback on the following questions by January 5, 2015, in addition to advice on what role Congress should play in addressing any other related issues.

1. Multiple stakeholders have expressed the urgent need to have clear and logical lines separating the practice of medicine, the actual conduct of a diagnostic test and the

development and manufacturing of diagnostic tests. How should these lines be defined and what are the key criteria separating each of these activities?

2. In FDA's draft regulatory framework, the agency describes the extent to which it proposes to regulate LDTs as medical devices under the Federal Food, Drug, and Cosmetic Act (FFDCA). It is relatively clear with respect to distributed test kits what constitutes a "device," but less clear when considering a test developed and performed in a laboratory. What should comprise the "device" subject to regulation by the FDA?

3. FDA intends its regulation of diagnostics to be risk-based. How should risk be defined? Are the types of risks posed by diagnostic tests different from therapeutic medical devices? Are these risks different with LDTs compared to distributed test kits? Is the traditional medical device classification system appropriate for these products?

4. The current pre-market review standards that apply to *in vitro* diagnostics use the same terminology of safety and effectiveness that apply to all medical devices. Should the medical device concepts of safety and effectiveness apply to test kits and LDTs?

5. Are there areas where the balance between pre-market review versus post-market controls should be reconsidered? How can post market processes be used to reduce barriers to patient access to new diagnostic tests?

6. A number of stakeholders have expressed concerns about uncertainty as to when a supplemental premarket submission is required for a modification. When should they be required prior to implementing modifications? Should the requirements for submission of a supplemental clearance or approval differ between LDTs and distributed test kits?

7. We have heard a lot about the practice of medicine and its relationship with medical product "labeling." What should comprise "labeling" for diagnostic tests? Should different standards for dissemination of scientific information apply to diagnostic tests versus traditional medical devices? What about for laboratories that develop, perform, and improve these tests? Should there be regulatory oversight of the information that is provided to the individual patient or health care provider or is that the practice of medicine?

8. The Section 1143 guidance documents raise important questions about the relationship between the FFDCA and the Clinical Laboratory Improvement Amendments (CLIA), administered by the Centers for Medicare & Medicaid Services (CMS). Is there overlap between the requirements of the guidance documents and CLIA? For instance, how do FDA's quality systems regulations compare with CLIA quality systems requirements? Are there areas of duplication where there would be efficiencies to having either CLIA or FDA regulate, rather than both?

9. How should any regulatory system address diagnostic tests used for rare diseases or conditions, customized diagnostic tests and diagnostic tests needed for emergency or unmet needs (e.g. Ebola)?

10. Any new regulatory system will create transition challenges. How should existing products be handled? Should all current diagnostic tests be "grandfathered" into the marketplace? What transition process should be used for new product introductions?

11. What incentives can be put in place to encourage the development of new, more accurate or more efficient diagnostic tests?

The committee has been overwhelmed by the outpouring of support and the quality of advice provided throughout the 21st Century Cures initiative. These are difficult issues that we must get right for the sake of patients and public health, and we are asking for your help in getting there. Please submit your comment to cures@mail.house.gov by January 5, 2015.