ACMG
American College of Medical Genetics and Genomics
Translating Genes Into Health®

February 28, 2019

The Honorable Frank Pallone
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Washington, DC 20515

The Honorable Larry Bucshon
2313 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

The Honorable Diana DeGette
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Re: Verifying Accurate Leading-edge IVCT Development Act Discussion Draft

Dear Chairman Pallone, Ranking Member Walden, Representative Bucshon, and Representative DeGette:

The American College of Medical Genetics and Genomics (ACMG) appreciates the opportunity to provide comments on the Verifying Accurate Leading-edge IVCT Development Act (VALID Act) discussion draft. ACMG is the only nationally recognized medical society dedicated to improving health through the clinical practice of medical genetics and genomics. Our membership includes over 2,200 biochemical, clinical, cytogenetic, molecular, and medical geneticists, genetic counselors, and other healthcare professionals, nearly 80% of whom are board certified in medical genetics specialties. ACMG engages in coordinated efforts to improve patient care, ensure optimal reimbursement for genetic services, establish standards of care and laboratory policy, educate members about advances important to their practices, and advocate for the responsible application of genetics and genomics in medicine.

ACMG appreciates your efforts to ensure that *in vitro* clinical tests (IVCTs) are accurate and of high quality. ACMG has long been committed to supporting the development of high-quality genetic and genomic tests that are both analytically and clinically valid, as demonstrated by our development and ongoing maintenance of expert-reviewed technical standards and guidelines, disease-specific standards and guidelines, clinical practice resources, and supporting policy statements. When considering regulation and oversight of IVCTs, it is important to consider the differences between tests that may provide individualized results and those that require complex expert interpretation as is the case with most genetic and genomic

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tests. Many genetic and genomic tests are highly complex tests based on recently acquired and rapidly evolving knowledge. Diagnosis is often not determined by the test result alone but requires consideration of the result within the context of medical and family histories. This necessitates interpretation by highly trained laboratory and medical professionals which stretches clearly into the practice of medicine. We are concerned that the regulatory approach described in the VALID Act does not fully take into consideration these differences. For example, it is unclear how unbiased genome-wide sequencing procedures which are not disease or target-specific, and for which there is an evolving separation of analytical components from clinical interpretive components, would fit into the regulatory review scheme described in the VALID Act.

We are also concerned that Congress's current efforts to strengthen regulation and oversight of clinical tests appear to be focused solely on the Food and Drug Administration (FDA). The Centers for Medicare and Medicaid Services (CMS) also plays a very important role through enforcement of the Clinical Laboratory Improvement Amendments (CLIA) of 1988. There are important aspects of ensuring safe and accurate genetic testing that include both FDA and CLIA programs, and enhancing regulation and oversight of clinical tests requires coordination and modernization of both of these programs. In genetic and genomic testing, examples of these include legislative authority for the oversight of clinical laboratory practices, laboratory personnel qualifications, the evolving separation of analytical components of genomic testing from the clinical interpretive components, and allowances required for complex and rare diseases and conditions.

Further, CLIA has familiarity and expertise with clinical testing laboratories, whereas FDA's familiarity and expertise are centered around manufacturers. We are concerned about the impact that an FDA regulatory approach would have on small and specialized clinical testing laboratories, especially academic laboratories. The regulatory approach described in the VALID Act would result in a burdensome, iterative regulatory process for these laboratories which have traditionally engaged primarily with CMS through CLIA. In addition to registration fees, user fees, and other costs associated with compliance with the VALID Act, these laboratories would need to hire full-time staff to handle regulatory compliance and communications with FDA. This would likely result in an unmanageable financial burden that these laboratories cannot support, resulting in forced reductions in test offerings, potential closure of laboratories, and overall reduced patient access to specialized testing services. The test kit manufacturers that FDA is familiar with benefit from the sale of manufactured products and can accommodate these burdens. Academic laboratories, on the other hand, that are focused on providing clinical services rather than manufacturing of products rely on already tenuous coverage and reimbursement policies and will be negatively impacted. We encourage Congress to consider additional avenues to modernize clinical testing oversight that will not negatively impact these academic laboratories. In addition to potentially reducing patient access to specialized genetic and genomic testing services, these laboratories operate at the interface of new test development, research, clinical investigations, and clinical patient management which is the center of diagnostic innovation. When applying least burdensome principles, the stark differences between manufacturers, reference laboratories, and academic laboratories must be considered.

The impact of the VALID Act could be better understood if a pilot was performed prior to creating new legislation, as is currently being done for FDA regulation of digital health software. A novel approach involving precertification was proposed for digital health software, therefore the Agency decided to perform a pilot program to test the precertification model prior to developing new regulations or working with Congress for legislative needs. The VALID Act also hinges on the use of a precertification model.

Given the novelty of this approach and the fact that this approach would result in FDA regulating certain laboratory tests and procedures for the first time ever, the same caution should be considered.

We believe that these broad underlying issues must be addressed before details of legislative text can be fully developed and properly reviewed. While we are unable to provide line-by-line edits at this time, the attached VALID draft includes some additional section-specific comments for your consideration. We appreciate your thoughtful consideration of our comments.

Sincerely,

Michael Watson, Ph.D., FACMG
Executive Director