COLLEGE of AMERICAN PATHOLOGISTS

January 26, 2026

Martin A. Makary MD, MPH
FDA Commissioner
U.S. Food and Drug Administration
5630 Fishers Lane, Rm 1061
Rockville, MD 20852

Re: Immunology and Microbiology Devices; Reclassification of Nucleic Acid-Based Test Systems for Use with a Corresponding Approved Oncology Therapeutic Product; Proposed Amendment; Proposed Order; Request for Comments (Docket No. FDA-2025-N-4622)

Dear Dr. Makary,

The College of American Pathologists (CAP) appreciates the opportunity to comment on the FDA's proposal to reclassify oncology therapeutic nucleic acid-based test systems from class III to class II (special controls) devices with 510(k) requirements. As the world's largest organization of board-certified pathologists and leading provider of laboratory accreditation and proficiency testing programs, the CAP serves patients, pathologists, and the public by fostering and advocating excellence in the practice of pathology and laboratory medicine worldwide.

The CAP supports the FDA's proposal to reclassify these oncology therapeutic nucleic acid-based test systems (intended for the detection of specific genetic variant(s) and/or other nucleic acid biomarkers in human clinical specimens using nucleic acid amplification technology (NAAT) and/or sequencing technology) as class II devices (special controls) with 510(k) requirements. We have advocated for the down classification of these tests because they use longstanding and well-understood technologies. We also support the FDA's determination that valid scientific evidence demonstrates this assertion. Pathologists are confident in the science and technology underlying these tests and support their use in high-quality cancer care. We also appreciate that the FDA released additional analysis that it conducted on data from the FDA Manufacturer and User Facility Device Experience database. The transparency of the FDA's rationale and use of the notice-and-comment rulemaking process are essential to building the trust of pathologists, cancer care professionals, cancer patients, and their loved ones in the FDA and safety and effectiveness of these products.

Downgrading the classification of these devices and stipulating special controls will help broaden access to these companion diagnostic tests at more clinical laboratories across the US. We encourage the FDA to work with drug and test developers to include in the device labeling sufficient details of the biological basis for the test and its minimum performance characteristics. This information will enable pathologists and clinical laboratories to establish benchmarks for comparison of these tests with other tests.

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Pathologists also use immunohistochemistry (IHC) and in situ hybridization (ISH) test systems to identify the same genetic variant(s) and/or nucleic acid biomarkers addressed by this FDA reclassification. IHC and ISH testing techniques have been in regular use longer than the companion diagnostic assays included in the FDA announcement. As a result, pathologists, laboratory professionals, and in vitro diagnostic device manufacturers have developed significant peer-reviewed scientific evidence demonstrating the analytical and clinical validity of these testing techniques for oncology therapeutics and treatment outcomes. The CAP has a robust cadre of world-renown pathologists who interpret this evidence and create clinical practice guidelines. We would be happy to work with FDA to conduct an analysis, if needed, to support reclassification of IHC and ISH tests for oncology therapeutics.

We appreciate this opportunity to provide our support for the FDA's proposal. Please contact Suanna S. Bruinooge, Director of Scientific Regulatory and HIT Policy, in our Washington office at sbruino@cap.org.

Sincerely,

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