DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

Center for Clinical Standards and Quality/ Quality, Safety & Oversight Group

Ref: QSO 18-19-CLIA

DATE: **July 20, 2018**

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group (*formerly Survey & Certification Group*)

SUBJECT: Performance Specification Verification of Assays Authorized Under Emergency Use (EUA)

Memorandum Summary

The Centers for Medicare & Medicaid Services (CMS) is providing guidance to surveyors, specifically if surveyors find a laboratory using an assay without an EUA that is testing for the same agent for which an emergency has been declared, or a modified EUA assay, they should notify their Regional Office (RO).

- Assays that have been issued an Emergency Use Authorization (EUA) by the United States Food and Drug Administration (FDA) remain subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA) CLIA Regulations
- At the onset of a public health emergency, there may be a very limited number of positive samples available for the verification of performance specifications. This does not necessarily prevent laboratories from utilizing assays authorized by an EUA.
- **Centers for Disease Control (CDC) Developed Assays:** Laboratories using a CDC assay authorized for emergency use should follow any and all instructions provided for verifying performance specifications.
- **Non-CDC Developed Assays:** For other non-CDC EUA assays, the Laboratory Director (LD) should determine the acceptable number of positive and negative samples needed for their laboratory to verify performance specifications of the EUA assay. In accordance with 42 CFR §493.1252(a), any manufacturer's instructions for verification, if provided, must also be followed. The surveyor should confirm that the laboratory has followed its procedures for verification.

Background

The FDA EUA of Medical Products and Related Authorities guidance document contains key legal authorities to sustain and strengthen national preparedness for public health, military, and domestic emergencies involving chemical, biological, radiological, and nuclear (CBRN) agents,

including emerging infectious disease threats. The rapid development and deployment of emergency assays is afforded through the EUA guidance.

Assays that have been issued an EUA by the FDA remain subject to the CLIA regulations. Early on in a declared emergency, laboratories may have limited access to positive patient samples to verify the performance specifications of EUA assays. This guidance is intended to clarify requirements for performance specification verification performed by laboratories utilizing EUA assays to meet CLIA regulation §493.1253(b)(1).

Discussion

Authorization of Emergency Use of Diagnostic Assays

Section 564 of the Federal Food, Drug, and Cosmetic Act 21 U.S.C. 360bbb-3 authorizes the FDA to issue an EUA to allow the emergency use of an unapproved product or an unapproved use of an approved product only after the Secretary of Health and Human Services (HHS) issues a declaration that circumstances exist justifying the authorization of emergency use of the medical product. The EUA remains in effect until the emergency declaration is terminated or until the FDA revokes the authorization. The emergency use of an authorized assay under an EUA must be consistent with the terms of the HHS Letter of Authorization, to include the Scope and Conditions of Authorization.

When an EUA declaration is terminated or revoked, any EUA(s) issued, based on that declaration, will no longer remain in effect. For example, an EUA issued to allow the use of an unapproved diagnostic assay, may no longer be needed if that diagnostic assay is later approved by the FDA.

Verification of Performance Specifications

As required by CLIA regulation §493.1253(b)(1), the laboratory must verify performance specifications of unmodified, FDA-cleared or approved test systems before reporting patient test results. At the onset of a public health emergency, there may be a very limited number of positive samples available for the verification of performance specifications. This does not necessarily prevent laboratories from utilizing assays authorized by an EUA. When the number of positive samples that a laboratory would normally run for verification of performance specifications is not available, it is the responsibility of the laboratory director (LD) (see §493.1445(e)(3)(ii)) to ensure that verification procedures used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method. While initially there may not be many positive samples to verify performance specifications, as time goes on, and as more samples become available, the LD may choose to enhance their EUA assay verification to the level of other test verifications in their laboratory.

CDC Developed Assays

Laboratories are required to verify performance specifications for CDC developed EUA assays per 42 CFR 493.1253(b)(1). In general, CDC developed test kits provide an initial set of samples for verifying performance specifications and instructions for their use. Laboratories using a

CDC developed assay authorized for emergency use should follow any and all instructions provided for verifying performance specifications.

Non-CDC Developed Assays

As with CDC developed EUA assays, laboratories are required to verify performance specifications for other, non-CDC developed EUA assays per 42 CFR 493.1253(b)(1). Laboratories are required to verify performance specifications according to the performance specifications established by the manufacturer and the manufacturer's reference intervals. In accordance with 42 CFR §493.1252(a), any manufacturer's instructions for verification must be followed, if provided. The surveyor must confirm that the laboratory has followed its procedures for verification.

Laboratory Use of Assays Without FDA Emergency Use Authorization

Once the HHS Secretary has declared a public health emergency, CMS Central office will issue guidance to inform surveyors about the emergency and the laboratory test(s) available for use. Surveyors should determine if the laboratory is using an assay that has been issued an EUA. If surveyors find a laboratory using an assay without an EUA that is testing for the same agent for which an emergency has been declared, or a modified EUA assay they should notify their RO and the RO will notify central office (CO).

Emergency Use Authorization Test Reports

It is not required that a statement be included on the test report noting that the EUA assay is not FDA approved. However, information about the test must be provided to clients upon request as per 42 CFR 493.1291(e). Any authorized Fact Sheets for the assay must also be provided to clients as required by the package insert.

Contact: Questions related to this policy memorandum may be submitted to: LabExcellence@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
David R. Wright

cc: Survey and Certification Regional Office Management