



# **Feds Will Require Group Health Plans to Cover At-Home COVID-19 Tests**

Insights

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Three federal agencies just teamed up to issue guidance that will require group health plans to pay for at-home over-the-counter COVID-19 tests approved by the U.S. Food and Drug Administration and purchased on or after January 15, 2022. Plans may, but do not have to, pay for OTC COVID-19 Tests bought before January 15. Here's what group health plan sponsors need to know about the latest COVID-19 testing coverage mandate released on January 10.

## **Summary of New Rule**

The new rule – announced by the Department of Labor, the Department of Health and Human Services (HHS), and the Treasury Department – requires plans either to arrange to provide OTC COVID-19 tests free of charge at the point of sale using a plan's normal pharmacy or retail network or direct delivery system, or to reimburse the test costs after purchase. Where a plan requires reimbursement for an OTC COVID-19 test, reasonable proof of purchase can include the UPC code to verify that the item is FDA-approved, or a receipt that shows the purchase date and price.

Plans must take reasonable steps to ensure that covered individuals can access OTC COVID-19 tests through an adequate number of in-person and online outlets. Plans also must provide covered individuals with the dates when the direct coverage program is available and a list of participating retailers or other locations.

Though the price of OTC COVID-19 tests varies and could add up quickly, the guidance creates a safe harbor that will let a plan that has arranged for a network to provide free OTC COVID-19 tests to limit reimbursement for any out-of-network purchase to the lesser of the cost of the test or \$12 per test. However, a plan cannot apply this limit if, for example, it cannot provide free OTC COVID-19 tests due to significantly longer delays for the tests than for other covered items under the plan. In this case, a plan cannot deny coverage or set limits on the reimbursement amount for any OTC COVID-19 test obtained by covered individuals, including tests purchased from non-network sellers. Finally, if a plan has not set up a network to provide free point-of-sale OTC COVID-19 tests, it must reimburse the full cost of a qualifying OTC COVID-19 test bought by a covered individual.

Each covered individual may get up to eight OTC COVID-19 tests per month, so a family of four would be limited to 32 tests each month. The limits apply assuming a plan does not impose any cost-

sharing requirement, prior authorization or other medical management condition on receiving an OTC COVID-19 test.

### **Does Not Cover Workplace-Required Tests**

The OTC COVID-19 testing mandate does not apply to tests required for employment purposes. Thus, where an employer requires employees to submit COVID-19 test results as a condition of employment, plans are not required to cover the costs under the new rules. Group health plans may take reasonable steps to ensure that an OTC COVID-19 test for which a covered individual purchased a test for their own use (or use by another covered member of the individual's family). For example, a plan or issuer could require an individual to attest in writing that they bought the OTC COVID-19 test for personal use, not for employment purposes, not for resale, and that the cost has not been (and will not be) reimbursed by another source.

### **What Should You Do?**

Group health plan sponsors should coordinate with their insurance carriers and third-party administrators to determine how they will comply with the new mandate. This is particularly true if they plan to provide the required tests free through their pharmacy network or direct-to-consumer shipping program. They also should be prepared to communicate the details regarding how and where participants may access OTC COVID-19 tests under the plan.

Individuals likely will welcome the recent announcement regarding OTC COVID-19 testing costs, but employers face numerous challenges and questions as to how the new mandate will work in practice.

We will continue to monitor developments and provide updates as we learn more details. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Employee Benefits and Tax Practice Group](#).

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