

## Health Plans Required to Cover Costs of Over-the-Counter COVID-19 Tests Beginning January 15, 2022

By Samuel C. Nolan

The Departments of Labor, Health and Human Services, and the Treasury (the “Departments”) recently issued guidance to implement President Biden’s order requiring health plans and insurance issuers to cover the costs of over-the-counter (OTC), at-home COVID-19 tests (sometimes called “rapid tests”).

Beginning on January 15, 2022, health plans and insurance issuers must directly cover or reimburse plan participants for the costs of up to eight at-home tests per covered individual, per month. Unlike the Biden Administration’s previous rule, which only required plans and issuers to cover the costs of OTC tests when ordered by a health care provider, the new rule requires plans and issuers to cover the cost of any FDA-approved at-home test purchased for personal use. Under this new rule, plans may not impose any cost-sharing requirements on the purchase of OTC tests for personal use, and may not impose prior authorization or other medical management requirements in connection with coverage or reimbursement of the tests.

The following questions and answers may be helpful as plans begin to implement the requirements of this new rule.

### What Tests Are Covered by the Rule?

The rule applies to any OTC, at-home COVID-19 test that has been approved by the FDA. The FDA provides information on which at-home tests are authorized for use at: <https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/in-vitro-diagnostics-euas>.

### Are There Limits on the Cost of Reimbursement?

The limits on the cost of coverage or reimbursement for OTC tests depend on whether the plan has a network of preferred pharmacies or direct-to-consumer shipping programs that allows participants to obtain tests directly from the seller with no upfront, out-of-pocket cost to the participant. This is considered “direct coverage” of the tests.

If the plan establishes a “direct coverage” arrangement with a network of preferred pharmacies for the purchase of OTC tests, and a participant instead chooses to purchase an OTC test from an out-of-network or non-preferred pharmacy where direct coverage is not an option, the plan is only required to reimburse the lower of (a) the actual cost of the test, or (b) \$12. Note that the reimbursement amount is calculated per test. Thus, if a covered individual purchases a 4-pack of tests for \$50, the plan would need to reimburse \$48 of the purchase.

Additionally, the plan is responsible for ensuring that its network of preferred pharmacies offering direct coverage of tests is large enough to provide the plan’s participant population with adequate testing. As part of this “adequacy” consideration, plans are encouraged to ensure that their participants are aware of key information

regarding the availability of tests, including dates of availability of the direct coverage program, and the contact information of participating retailers.

If a plan does not have a network of preferred pharmacies allowing for direct coverage of OTC tests, the plan is required to reimburse the full cost of the test, even if the test costs more than \$12.

In all cases, coverage or reimbursement of OTC tests is to be made without imposing any cost-sharing requirements, such as deductibles.

### **Are There Limits on the Number of Tests a Plan Must Pay For?**

Plans must cover or reimburse the cost of up to eight OTC tests per covered individual, per month, or per 30-day period. This includes any participants, beneficiaries, or enrollees covered under the plan. Thus, if a family has four covered individuals, the plan may be required to cover or reimburse the cost of up to 32 tests per month. Tests may be purchased individually or as part of a pack.

Additionally, plans are prohibited from limiting the number of covered tests within a shorter time-frame than the 30-day period set by the Departments. For example, a plan cannot limit an individual to purchasing four tests in a 15-day period. Plans are, of course, permitted to provide more generous limits for covering the costs of OTC tests.

These limitations do not affect the previously-issued rule requiring plans to cover the costs of COVID-19 tests ordered by a health care provider after a clinical assessment of the covered individual. Tests ordered by such a provider are still required to be covered, and do not count toward the eight-test limit.

### **Are Plans Required to Pay for Tests Used for Employment Purposes?**

No. The new rule does not change the Biden Administration's policy that employers are not required to cover the cost of routine testing under the Administration's "vaccine or test" employer mandate.

### **What Steps Can Plans Take to Prevent Fraud and Abuse?**

The Departments' guidance allows plans to take "reasonable steps" to ensure that OTC tests are being purchased for the purchaser's own use, or for the use of another participant, beneficiary, or enrollee covered under the purchaser's plan. The Departments provided examples of such reasonable steps, including:

- A plan requiring covered individuals to sign an attestation that the OTC test was purchased by the individual for personal use or for use by another person covered under the purchaser's plan, and not for employment purposes. The attestation may also contain a statement that the individual has not been, and will not be, reimbursed by another source for the test, and that the purchase of the test was not for resale purposes.
- A plan requiring reasonable documentation of proof of purchase with a claim for reimbursement for the cost of an OTC test.

The Departments cautioned, however, that fraud and abuse programs that require multiple documents or involve numerous steps that unduly delay a participant's access to, or reimbursement for, an OTC test are not considered "reasonable."

### **Must a Plan Reimburse the Purchase of an OTC COVID-19 Test Made Before January 15, 2022?**

No. Plans are only required to cover or reimburse the costs of OTC tests purchased by plan participants on or after January 15. Plans are, however, permitted to reimburse the costs of OTC tests purchased before January 15 if they choose to do so.

**Does the Biden Administration Still Plan to Provide Tests Directly to Individuals?**

Yes. The Biden Administration still plans to create a program by which individuals may order free COVID-19 tests, which will be shipped directly to the ordering individual at no cost. This program is expected to launch sometime in January 2022.

As always, please do not hesitate to reach out to the [Employee Benefits](#) attorneys at Eckert Seamans with any questions about this new rule.