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GROUP HEALTH PLANS MUST COVER OVER-THE-COUNTER COVID-19 TESTS AS OF JAN. 15, 2022

On Jan. 10, 2022, the Departments of Labor, Health and Human Services and Treasury (Departments) issued FAQs which require group health plans and insurers to cover at-home COVID-19 diagnostic tests, including over-the-counter (OTC) kits purchased without a prescription. Individuals who purchase OTC COVID-19 tests during the pandemic may seek reimbursement from their employer-sponsored group health plan or individual insurance.

Effective Jan. 15, 2022, plans and issuers must cover OTC COVID-19 tests purchased by covered individuals, even if the test is purchased without the involvement of a health care provider. No cost-sharing, prior authorization or other medical management requirements may apply to this coverage. Plans and issuers do not have to provide direct payment to the sellers of the OTC COVID-19 tests. Instead, plans and issuers may require that participants purchase the tests and then submit reimbursement requests.

The Departments created a safe harbor coverage structure that will be deemed compliant with the new rules. A plan or issuer may arrange for direct coverage of OTC COVID-19 tests through its pharmacy network and a direct-to-consumer shipping program, and then limit reimbursements for tests from non-preferred pharmacies or other retailers to the lesser of $12 or the actual price. Plans and issuers must take reasonable steps to ensure that covered individuals have adequate access to OTC COVID-19 tests through in-person and online locations. Direct coverage means that the covered individual does not have to pay for the test out-of-pocket and then seek reimbursement.

In addition, plans and issuers that provide direct coverage in compliance with the safe harbor may limit the number of tests covered to eight tests per 30-day period or calendar month. This limit applies to each covered individual – employee, spouse, and dependent. Also, if more than one test is sold in a package, the limit applies to the individual tests, not the package. The limit may not be applied to a period shorter than 30 days or a calendar month. For example, a limit of four tests per 15-day period is not permissible.

Plans and issuers must continue to provide coverage for tests administered

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with a provider's involvement or prescription, in addition to providing coverage for OTC COVID-19 tests administered without a provider's involvement or prescription.

The Departments indicated that plans and issuers may implement activities to prevent fraud and abuse. Permissible activities include requiring a simple attestation that the tests are for personal use, not for employment purposes, have not been and will not be reimbursed by another source, and are not for resale. Also, the plan or issuer may request reasonable documentation of proof of purchase. The FAQs also include additional information regarding how plans and issuers can facilitate access to and prompt payment for OTC COVID-19 tests.

Prompt action is necessary to ensure that insurers and administrators of employer-provided group health plan coverage are taking immediate steps to provide the required coverage for OTC COVID-19 tests without provider involvement. The required coverage must apply to tests purchased on or after Jan. 15, 2022.