

# compliance ALERT

## Agencies Issue Guidance Requiring Coverage of OTC COVID-19 Tests without Cost-Sharing

January 11, 2022

### Action Required:

- Connect with your insurance carrier (if fully insured) or third-party administrator (if self-insured) to understand how this new requirement will impact plans
- Communicate this new coverage requirement to plan participants

Effective January 15, 2022, group health plans and health insurers must cover over-the-counter (OTC) COVID-19 tests without any cost-sharing requirements, prior authorization or other medical management requirements.

### What Kinds of Limits Can Plans and Insurers Place on this Coverage Requirement?

Plans and insurers can still place limits on this new coverage requirement, including:

- Requiring individuals to purchase a test and then submit a claim for reimbursement rather than providing direct coverage to sellers. These upfront costs can be problematic for low-income participants.
- Setting limits on the number or frequency of OTC COVID-19 tests that are covered (as long as the insurer provides at least eight tests per month or 30-day period without cost-sharing).
- Providing direct coverage through pharmacy networks or direct-to-consumer shipping programs and limiting reimbursements to other sources (the actual cost of the test, or \$12, whichever is lower).
- Taking steps to prevent, detect and address fraud and abuse.

### What Should Employers and Plan Sponsors do Next?

Employers and plan sponsors should connect with their insurance carrier (if sponsoring a fully insured plan) and third-party administrator (if sponsoring a self-insured health plan) to understand how this new requirement will impact their plans, including which pharmacies or other providers/sellers will be making the tests available in-network.

Then, they should ensure that they communicate this new coverage requirement to employees and plan participants with specificity so that participants do not have to go out-of-network or face high upfront costs prior to reimbursement.

↓ Full Explanation Follows ↓

# Agencies Issue Guidance Requiring Coverage of OTC COVID-19 Tests without Cost-Sharing

On January 10, 2022, the U.S. Departments of Labor, Health and Human Services and Treasury (the “Agencies”) issued FAQ [guidance](#) under the FFCRA and CARES Act (the “Guidance”) requiring that, effective January 15, 2022, group health plans and health insurers cover over-the-counter (OTC) COVID-19 tests without any cost-sharing requirements, prior authorization or other medical management requirements. An additional set of [FAQs](#) was also issued the same day to help individual plan participants get the OTC tests.

## How Does this Guidance Change the Law?

The new Guidance significantly expands access to free and low-cost COVID-19 tests. As background, under [guidance](#) issued by the Agencies in June 2020, any COVID-19 diagnostic tests (whether for at-home use or otherwise) had to be covered without cost sharing only if they were ordered by a healthcare provider who determined that the test was medically appropriate for the individual. At that time, the FDA had not yet authorized any at-home COVID-19 diagnostic tests. Since then, several types of OTC at-home tests have been approved. More recently, on December 2, 2021, President Biden [announced](#) that guidance would be issued soon clarifying that coverage of OTC COVID-19 tests without cost-sharing would soon become a requirement for health insurers.

## How Many Tests Must be Provided and How Often?

Each covered participant (including the covered member and dependents) on a group health plan (whether self-insured or fully insured) is entitled to up to eight OTC COVID-19 tests per month without cost-sharing. Accordingly, a family of four will be able to receive a total of 32 COVID-19 tests each month without cost-sharing.

## Will All of these Tests be Available? What Kinds of Limits Can Plans and Insurers Place on this Coverage Requirement?

While this news is certainly much-welcomed by plan participants, there have been shortages of OTC COVID-19 tests in many areas throughout the country, and so, participants may not be able to obtain all of the tests that they’re looking for.

Additionally, plans and insurers can still place limits on this new coverage requirement, including:

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**If you have any additional questions,  
please call your [FRP]  
Account Manager or [FRP].**