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ADDITIONAL GUIDANCE ISSUED ON OTC COVID-19 TEST MANDATE

On February 4, 2022, additional guidance was issued on the federal mandate requiring health plans to provide over-the-counter (OTC) COVID-19 tests at no cost to participants.

As we have previously shared, plans are allowed to limit the total amount reimbursable to participants for out-of-network tests to $12/test—but, only if the plans meet the requirements of the "direct coverage program" safe harbor. This new guidance clarifies/adds the following with respect to that safe harbor:

- The determination of whether a plan provides "adequate access" to tests through its direct coverage program is determined based on facts and circumstances. In any case, meeting this standard requires that a plan must have a way to procure tests in-person and at least one method to receive tests by mail.

  Examples of permissible distribution outlets include: (1) a plan's pharmacy network, (2) non-pharmacy retailers (including through the distribution of coupons that can be used to pay for tests at the point of sale), and/or (3) alternative distribution sites (such as a drive-through or walk-up site).

  The mail order direct coverage option can allow for orders to be placed online and/or via telephone. For this option, plans may not charge participants for shipping and handling—however, if the safe harbor is met, plans do not have to reimburse costs for shipping and handling when a participant purchases a test on their own and seeks reimbursement.

- The plan must notify participants that the direct coverage is available. This notice should include key information and instructions on how to get the tests without making any upfront payments.

- Plans are not required to make all brands of OTC COVID-19 tests available through the direct coverage program. However, plans are still required to reimburse participants for any approved OTC COVID-19 test if a participant elects to use the reimbursement option instead of the direct coverage program.

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- A plan will not be out of compliance with the safe harbor if tests are temporarily unavailable through their direct coverage program due to a supply shortage.

The new guidance also clarifies that:

- To help combat fraud and abuse, plans may disallow reimbursement of tests that were purchased: (1) from a private individual via an in-person or online sale, or (2) from a seller that uses an online auction or resale marketplace. If a plan elects to put such restrictions in place, it must notify participants of the types of purchases that are not reimbursable and what type of documentation will be required for reimbursement. Reasonable documentation could include proof of purchase that identifies the seller, such as a UPC code or other serial number, an original receipt, etc. However, plans may not require multiple documents or implement numerous steps in a manner that unduly delays access to reimbursement.

- The OTC COVID-19 test rules do not apply to tests that use a self-collected sample but require processing by a laboratory or other health care provider to return results. However, under preexisting rules, these tests must be covered without cost-sharing and medical management requirements if ordered by an attending health care provider.

- OTC COVID-19 tests are considered medical expenses and therefore, if not otherwise paid for by a health plan, would generally be reimbursable through a health flexible spending account, health reimbursement account, or health savings account. The guidance suggests that plan sponsors may wish to remind participants not to seek reimbursement from one of these account-based plans for tests paid for or reimbursed through their medical plan, and not to use a debit card for one of these accounts to purchase tests they wish to have paid for by their medical plan. If a test is mistakenly paid for "twice" in this way, the participant should contact the health FSA or HRA administrator regarding correction procedures. If HSA funds are involved, the individual must include the distribution in gross income or repay the distribution to the HSA.

Overall, this new guidance provides helpful clarification to plan sponsors and their service providers as they work quickly to fully implement the new rules. Our team will continue to monitor for any additional developments.