

# LEGAL UPDATE

## Agencies Issue Guidance on Coverage of OTC COVID-19 Tests

On Jan. 10, 2022, the Depts. of Labor, Health and Human Services (HHS), and the Treasury issued [FAQ guidance](#) regarding the requirements for group health plans and health insurance issuers to cover over-the-counter (OTC) COVID-19 diagnostic tests.

### Legal Requirements

Plans and issuers must cover the costs of COVID-19 tests during the COVID-19 public health emergency without imposing any cost-sharing requirements, prior authorization, or other medical management requirements.

Under guidance issued in June 2020, at-home COVID-19 tests had to be covered only if they were ordered by a health care 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.

As of Jan. 15, 2022, the cost of these tests must be covered, even if they are obtained without the involvement of a health care provider. However, the FAQs do not require tests to be covered if they are not for individualized diagnosis (such as tests for employment purposes).

### Plan Options

Plans and insurance issuers may place some limits on coverage, such as:

- Requiring individuals to purchase a test and submit a claim for reimbursement, rather than providing direct coverage to sellers.
- 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).
- Setting limits on the number or frequency of OTC COVID-19 tests that are covered (no less than 8 tests per month or 30-day period).
- Taking steps to prevent, detect and address fraud and abuse.

### Important Dates

#### Dec. 2, 2021

President Biden announced that guidance would be issued clarifying coverage of OTC COVID-19 tests.

#### Jan. 10, 2022

Federal agencies issued the guidance implementing the requirements for coverage of OTC COVID-19 tests.

#### Jan. 15, 2022

Deadline for plans and issuers to provide coverage for OTC COVID-19 tests available without a health care provider order or assessment.

***At-home COVID-19 tests must be covered even if they are obtained without the involvement of a health care provider.***

Provided to you by **Apex Benefits**

**ApexBenefits**

This Legal Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. ©2022 Zywave, Inc. All rights reserved.