TRUCKER ✦ HUSS

Health Plans and Insurers Required to Cover At-Home COVID Tests

MARY E. POWELL

JANUARY 2022

On January 10, 2022, the Departments of Labor, Health and Human Services, and Treasury (the "Departments") issued FAQs Part 51 (FAQs) regarding the requirement for health plans to cover over-the-counter (OTC) COVID-19 diagnostic testing ("OTC COVID Tests"). This will be required effective with OTC COVID Tests purchased on and after January 15, 2022 and will last through the COVID-19 public emergency period. The OTC COVID Test coverage rules do not apply to excepted benefits (such as limited-scope dental plans or certain employee assistance plans) and group health plans that do not cover at least two employees who are current employees (such as retiree-only plans).

Some key provisions of the FAQs are as follows:

No Cost-Sharing or Clinical Assessment. OTC COVID Tests must be provided by the health plan without any cost-sharing, prior authorization or medical management requirements. Coverage of OTC COVID Tests is required, with or without an order or individualized clinical assessment by an attending health care provider.

- This requirement only applies to diagnostic OTC COVID Tests that are primarily for individualized diagnosis or treatment of COVID-19. Coverage of OTC COVID Tests for employment purposes is not required.
- This is a change from the prior guidance which only required coverage of COVID-19 diagnostic tests when ordered by an attending health care provider who had determined that the test was medically appropriate. While that standard still applies for other types of COVID-19 tests, it does not apply to OTC COVID Tests.

Coverage Requirement. A health plan can provide the coverage by directly reimbursing sellers of OTC COVID-19 Tests ("direct coverage") or by requiring participants who purchase an OTC COVID Test to submit a claim for reimbursement to the health plan.

- We assume that direct coverage can include OTC COVID Tests purchased from a health plan's preferred pharmacies as well as a direct-to-consumer shipping program offered

through the insurance carrier or third-party administrator (TPA) for the health plan or by a separate vendor that offers this service.

- The health plan will need to clearly inform participants how to obtain OTC COVID Tests from the plan's direct coverage program and how to request reimbursement for OTC COVID Tests that are purchased outside the direct coverage program. The guidance states that participants should be aware of key information needed to access the OTC COVID Tests, such as dates of availability for the direct coverage program and participating retailers.

Permitted Provider Limitations — Safe Harbor. If a health plan provides direct coverage for OTC COVID Tests both through its pharmacy network and a direct-to-consumer shipping program, then it can limit the reimbursement from non-preferred pharmacies or other retailers to no less than the actual price or $12 per test (whichever is lower). Direct coverage means that the participant is not required to seek reimbursement post-purchase. Further, the participant cannot incur any upfront out-of-pocket expenditures, or be subject to prior authorization or other medical management requirements. In addition, in providing OTC COVID Tests through a direct coverage program, the health plan must take reasonable steps to ensure that participants have "adequate access" to OTC COVID Tests through an adequate number of retail locations (including both in-person and online locations). The Agencies refer to this as a "safe harbor."

- Adequate access is determined based on the rele-vant facts and circumstances (e.g., locality of plan participants; coverage and current utilization of the plan's pharmacy network by its participants, etc.).

- If the safe harbor requirements are not met, then the health plan cannot impose any cost-sharing for OTC COVID Tests purchased from non-preferred sellers (including limiting the amount of the reimbursement).

Quantity Limit – Safe Harbor. If the safe harbor rule is met, a health plan may limit the number of tests reimbursed to 8 OTC COVID Tests per covered individual (employee, spouse and dependents) per 30-day period (or per calendar month). A health plan may not limit covered individuals to a smaller number of tests over a shorter period (e.g., 4 tests per 15-day period).

- A health plan satisfies the safe harbor rule if the plan provides coverage without cost-sharing for OTC COVID Tests purchased without the involvement of a health care provider or a prescription.

- There is no limit on the number of COVID-19 tests (including OTC COVID Tests) that must be covered by the health plan when the test is ordered by an attending health care pro-vider who has determined that the test is medically appropriate.

Fraud and Abuse. A health plan can require attestation that the OTC COVID Test was purchased for the covered individual for personal use, is not for employment purposes, has not been (and will not be) reimbursed by another source, and is not for resale. In addition, a health plan may require reasonable documentation of proof of purchase (e.g., receipt from the seller of the test documenting the date of purchase and the price of the OTC COVID Test).

Additional Provisions. The FAQs also address new provisions regarding preventive care, specifically about the coverage of colonoscopies and contraceptive services.

EMAIL MARY POWELL