

## BLOG

# New Federal Guidance on OTC COVID-19 Test Coverage

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Feb 8, 2022

On February 4, 2022, the Department of Health and Human Services (HHS), together with the Department of Labor (DOL) and the Department of the Treasury, released updated [FAQ guidance](#) clarifying several items in connection with the recent requirement for health plans to cover OTC COVID-19 tests at no cost to covered individuals.

Please [click here](#) for our prior post detailing the specifics of the original joint federal agency guidance, issued on January 10, 2022. That guidance required health plans and insurers to pay for or reimburse up to eight OTC COVID-19 tests per month for each covered individual.

This updated FAQ guidance was issued in response to questions and feedback received by these federal agencies from stakeholders. It provides clarity for plans, insurers, and covered individuals on several items outlined below.

Highlights include:

- **Direct Coverage Flexibility:** “Direct coverage” essentially means that covered individuals have adequate access to OTC COVID-19 tests from plans/insurers with no upfront out-of-pocket costs. This section of the FAQs clarifies that adequate access to tests under direct coverage programs generally requires that plans/insurers establish a direct-to-consumer shipping program and a direct in-person program. However, this section also clarifies that there might be certain limited circumstances in which a direct coverage program could provide adequate access without establishing both a direct-to-consumer shipping and an in-person program. For example, if a small employer’s plan covers only employees who live and work in a localized area, in-person distribution at a nearby location suffices for adequate access to OTC COVID-19 tests without establishing a direct-to-consumer shipping program.

Direct coverage programs may include the following:

- A direct-to-consumer shipping program with online or telephone ordering



- The pharmacy network of the plan/insurer
- Non-pharmacy retailers, including coupons distributed for tests received from certain retailers without cost-sharing
- Alternative OTC COVID-19 test distribution sites established by, or on behalf of, the plan/insurer, such as a standalone drive-through or walk-up distribution site

A direct coverage program may limit which OTC COVID-19 tests it covers based on contractual relationships that plans/insurers have in place with certain testing manufacturers.

Reasonable shipping costs for OTC COVID-19 tests must be covered under direct-to-consumer shipping programs in the same manner as other mail order items covered under the plan. When reimbursing OTC tests outside of the direct coverage program, plans/insurers must cover the total cost of the test (including shipping costs and sales tax) up to \$12 per test.

Plans and insurers must effectively communicate to covered individuals about these different ways to obtain tests through direct coverage programs.

- **Supply Shortage Relief:** This section acknowledges the current supply shortage of OTC tests available and clarifies that direct coverage programs temporarily unable to provide these tests to members are not considered out of compliance under these rules. Tests purchased by covered individuals outside of a plan or insurer's direct coverage program due to supply shortages may continue to be reimbursed at \$12 per test or the full cost of the test, whichever is lower.
- **Resale Prohibitions:** In an effort to combat fraud or abuse patterns that result in limiting consumer access to OTC COVID-19 tests, plans/insurers may limit coverage of OTC COVID-19 tests purchased from established retailers that would typically be expected to sell these tests. Specifically, plans/insurers may prohibit reimbursements for tests that are sold by third-party resellers, including via an online auction or resale marketplace. Plans/insurers may require covered individuals to sign an attestation document attesting that the OTC test has not been (and will not be) reimbursed by another source, including through resale. Plans/insurers may also require reasonable documentation of proof of purchase with a claim for reimbursement for the cost of an OTC COVID-19 test such as a UPC code for the OTC COVID-19 test and/or a receipt from the seller of the test with the date of purchase and the price listed.

Plans/insurers must effectively communicate these resale prohibitions and provide general information regarding acceptable retailers for covered individuals to purchase tests.

- **At-Home Tests Requiring Lab Processing:** This section clarifies that home collection COVID-19 tests, which require a specimen to be processed in a laboratory, are not covered under these OTC test plan coverage requirements. However, these home collection COVID-19 tests are still required to be covered when ordered by a health care provider, with no cost-sharing.
- **Intersection with FSAs/HRAs/HSAs:** Although OTC COVID-19 tests are eligible for reimbursement by health care flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), and

health savings accounts (HSAs), this section confirms that any OTC tests paid or reimbursed by plan/insurers cannot also be reimbursed by an FSA, HRA or HSA. If covered individuals inadvertently receive reimbursement from FSAs, HRAs or HSAs for OTC COVID-19 test costs covered by plans/insurers, they should contact the administrators of those plans regarding correction procedures and HSA rules regarding non-qualified medical expenses.

Plans/insurers must effectively communicate this “no double dipping” rule for FSA/HRA/HSA reimbursement purposes to covered individuals.

Employers are advised to continue working with their Risk Strategies account team and carriers/TPAs for further compliance and communication efforts in the wake of this new federal FAQ guidance.

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