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Employer-Sponsored Group Health Plans Must Cover At-Home COVID-19 Tests

On January 10, the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) released a fifth set of frequently asked questions (FAQs) on the implementation of the Families First Coronavirus Response Act (the FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Under the FAQs, employer-sponsored group health plans must cover the full cost of at-home tests for COVID-19 purchased on or after January 15 and during the public health emergency. Tests purchased before January 15 need not be reimbursed.

The FFCRA and the CARES Act require employer-sponsored group health plans (both fully insured and self-funded) to provide cost-free coverage of COVID-19 testing. Under prior guidance issued in June 2020, at-home testing was only required to be covered if ordered by an attending healthcare provider who had determined that the test was medically appropriate based on current accepted standards of medical practice (and otherwise met the FFCRA's criteria). It is worth noting that at-home diagnostic tests for COVID-19 were not available for purchase in June 2020, and none had been authorized for use by the Food and Drug Administration (FDA). Since June 2020, however, multiple tests have received FDA authorization and can be purchased over the counter from any number of retailers.

The new FAQs update the Departments' prior guidance to require coverage of at-home COVID-19 tests without an individualized clinical assessment by an attending healthcare provider. Plans are strongly encouraged (and, in fact, incentivized) to reimburse retailers directly (referred to in the FAQs as "direct coverage") so that participants and beneficiaries have no upfront, out-of-pocket expenditure. Plans that provide for direct coverage through both its pharmacy network and a direct-to-consumer shipping program are able to limit the reimbursement for tests obtained from non-preferred pharmacies or other retailers to $12 per test (or the actual price of the test, if lower). In order to take advantage of this $12 per-test limit, the plan must take reasonable steps to ensure that participants and beneficiaries have adequate access to at-home tests. If access to tests through the plan's pharmacy network or direct-to-consumer shipping program is inadequate (e.g., there are significant delays in obtaining tests), the plan must cover the full cost of tests obtained elsewhere (i.e., without regard to the $12 per-test limit).

To ensure that tests are available to everyone who needs them, a plan may limit participants and beneficiaries to no fewer than eight at-home tests per 30-day period (or per calendar month). Additionally, in order to prevent fraud and abuse, a plan may require participants and beneficiaries certify that at-home tests are being purchased for personal use, not for employment purposes, will not be reimbursed by another source and are not for resale.

If you have questions about the FAQs or any other employee benefits topic, please reach out to any of the attorneys in Day Pitney's Employee Benefits and Executive Compensation group.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first

publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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