

The FAQs Ensure Plans have Flexibility in Providing OTC COVID-19 Tests

On Feb. 4, 2022, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) jointly issued FAQs ([FAQs Part 52](#)) regarding coverage of over-the-counter (OTC) COVID-19 tests. Beginning Jan. 15, 2022, plans and issuers must cover these tests without cost-sharing requirements, prior authorization or other medical management requirements during the public health emergency.

These FAQs modify and clarify the guidance in [FAQs Part 51](#), which specified that plans and issuers must cover OTC COVID-19 tests available without an order or individualized clinical assessment by a health care provider.

The new FAQs include the following guidance:

- Plans and issuers have flexibility in how they establish a direct-to-consumer shipping program and direct coverage through an in-person network in order to qualify for the safe harbor.
- The Departments will not take enforcement action against a plan or issuer that is temporarily unable to provide adequate access to OTC COVID-19 tests through its direct coverage program due to a supply shortage.
- Plans and issuers are permitted to take reasonable steps to prevent, detect and address fraud and abuse.
- The OTC test coverage requirements 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.

The FAQs also address how a plan's or issuer's coverage of OTC COVID-19 tests impacts health flexible spending arrangements (FSAs) and similar account-based plans.