



Tri-Agencies Clarify Recent Guidance on OTC COVID-19 Tests and HRA/FSAs

The following general summary is intended to educate employers and plan sponsors on the potential effects of recent government guidance on employee benefit plans. This summary is not and should not be construed as legal or tax advice. The government's guidance is complex and very fact specific. As always, we strongly encourage employers and plan sponsors to consult competent legal or benefits counsel for all guidance on how the actions apply in their circumstances.

On February 4, 2022, the Department of Labor (DOL) Employee Benefits Security Administration (EBSA) – in conjunction with the Departments of Health and Human Services and the Treasury (collectively, the “Agencies”) released new guidance in the form of Frequently Asked Questions (FAQs)¹ addressing the White House’s ongoing expansion of “Free At-Home Testing for Americans” in the ongoing battle against the COVID-19 pandemic.

As previously² reported, the Agencies issued FAQ guidance on January 10, 2022, clarifying that group health plans and issuers must provide coverage of over-the-counter (OTC) home COVID-19 tests without participant cost-sharing, preauthorization, or medical management.

In the newest set of FAQs (specifically, Q&A-5), the Agencies reiterate the general prohibition against individuals participating in a Flexible Spending Account (health FSA), Health Savings Account (HSA), or Health Reimbursement Arrangement (HRA) seeking reimbursement under one of these plans *and* having the health plan – which is now required to cover these OTC COVID-19 tests – pay for the same medical expense.

Therefore, the Agencies recommend that plans and issuers advise individuals not to seek reimbursement from a health FSA or HRA for the cost of OTC COVID-19 tests paid or reimbursed by the plan or issuer. As an additional safeguard, the Agencies recommend not using a health FSA or HRA debit card to purchase OTC COVID-19 tests for which the individual intends to seek reimbursement from the plan or issuer.

HealthEquity will continue to monitor agency guidance on this matter and provide updates accordingly.

Nothing in this communication is intended as legal, tax, financial or medical advice and is for informational purposes only. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations. Always consult a professional when making life-changing decisions.

¹ https://mcusercontent.com/48756b806c01c1ad2bebc1da/files/5133bc5a-f19e-b448-147d-f1317a0f0c5c/DOL_FAQ_re_Covid_Testing_2_4_22.pdf

² https://healthequity.com/doclib/Compliance/otc_covid19_tests-2022_medical_mileage_rates-pcori_fees.pdf