State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF THE COMMISSIONER
PO BOX 325
TRENTON, NJ 08625-0325

TEL (609) 633-7667

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

MARLENE CARIDE
Commissioner

BULLETIN NO. 22-03

TO: **ALL HEALTH INSURANCE COMPANIES, HEALTH MAINTENANCE ORGANIZATIONS, HEALTH SERVICE CORPORATIONS, AND ANY OTHER ENTITY ISSUING HEALTH BENEFIT PLANS IN THE STATE**

FROM: **MARLENE CARIDE, COMMISSIONER**

RE: **COVERAGE FOR COVID-19 TESTS**

This bulletin provides guidance to all health insurance companies, health maintenance organizations, health service corporations and other entities issuing health benefits plans in this State (collectively "carriers") regarding expanded coverage requirements for testing for COVID-19. Carriers are reminded that the January 10, 2022 federal guidance implementing the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act[1], (the "federal guidance") requires coverage of FDA approved over-the-counter ("OTC") COVID-19 tests[2], with or without an order or individualized clinical assessment by an attending health care provider. Consistent with the federal guidance, this expanded coverage requirement took effect on January 15, 2022 and continues during the federal public health emergency.

Carriers are advised that information concerning the availability of coverage of OTC COVID-19 tests must be made available to covered persons and prominently displayed on the carriers' website. Such information must be consistent with the federal guidance and include a

[1] See "FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 51, FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT IMPLEMENTATION" https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf

[2] The FDA provides information on which at-home tests are authorized for use at https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/in-vitro-diagnostics-euas

description of any applicable limits on the number or frequency of OTC COVID-19 tests covered without cost sharing[3] and a description of any safe harbors related to "direct coverage"[4] of OTC COVID-19 tests that the carrier is utilizing so that covered persons understand where tests can be obtained without payment of any costs. Carriers must also warn covered persons of circumstances where costs could be incurred for OTC COVID-19 tests, including if the test is not obtained through any applicable direct coverage option. Any safe harbor approach taken by a carrier must be consistent with the federal guidance and clearly explained to covered persons.

Carriers are also advised that Bulletin 20-24, issued May 13, 2020, was recently extended under Executive Order 281 and that P.L. 2021, c. 310 repealed P.L. 2020, c. 3 and P.L. 2020, c. 7 and re-codified the requirement to provide coverage, without the imposition of any cost sharing, prior authorization requirements, or other medical management, for testing for COVID-19, provided that a health care practitioner has issued a medical order for the testing. In addition, the law requires coverage for items and services furnished or provided to an individual during health care provider office visits, including in-person visits and telemedicine and telehealth encounters, urgent care center visits, and emergency department visits, that result in an order for administration of a test for COVID-19. The coverage requirement applies during any portion of the federal state of emergency declared in response to the COVID-19.

1/20/2022
Date

Marlene Caride
Commissioner

Jd OTC Covid test bltn/COVID-19

[3] Note that coverage for tests administered pursuant to previous guidance under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act or consistent with P.L. 2021, c. 310, which are issued by a medical order by a health care practitioner, may not be subject to or count towards this limit. Neither this bulletin nor the federal guidance limit or affect the previous coverage requirements for carriers to provide coverage, without cost-sharing, without prior authorization or other medical management requirements, of any SARS-COV-2 test authorized where a health care practitioner has issued a medical order for the testing, including pursuant to the New Jersey Department of Health standing order under Bulletin 20-24, which was extended under Executive Order 281.

[4] For purposes of the safe harbor under the federal guidance, "direct coverage" of OTC COVID-19 tests means that a participant, beneficiary, or enrollee is not required to seek reimbursement post-purchase; instead, the plan or issuer must make the systems and technology changes necessary to process the plan's or issuer's payment to the preferred pharmacy or retailer directly (including the direct-to-consumer shipping program) with no upfront out-of-pocket expenditure by the participant, beneficiary, or enrollee.