



Illinois Department of Insurance

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Governor

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Acting Director

TO: All Health Insurance Issuers

FROM: Dana Popish Severinghaus, Acting Director *dps*

DATE: January 24, 2022

RE: Company Bulletin 2022-02
IMPORTANT NOTICE REGARDING IMPLEMENTATION OF THE
AFFORDABLE CARE ACT – PART 51

On January 10, 2022, the U.S. Departments of Health and Human Services, Labor, and the Treasury jointly released [Part 51](#) of their FAQs on the implementation of the Affordable Care Act (ACA), which pertains to the following: coverage of over-the-counter (OTC) COVID-19 home tests; coverage of colorectal cancer screening without cost-sharing due to the United States Preventive Services Task Force updating its recommendation for colorectal cancer screening on May 18, 2021; and coverage of FDA-approved contraception products and services without cost sharing. The Department urges all health insurance issuers to reference the latest guidance.

COVID-19 OTC At-Home-Test Coverage

The Department encourages issuers to promptly take steps to streamline the coverage process for consumers purchasing OTC at home tests, including but not limited to the following actions:

- Provide clear, concise guidance to consumers on the appropriate steps to follow to receive reimbursement for the COVID-19 OTC tests or which locations they may obtain free tests with no upfront out-of-pocket costs. The Department has included information about FAQ Part 51 requirements in the DOI website COVID-19 FAQ page and encourages issuers to take similar steps to distribute information to consumers.
- Contract with a network of pharmacies or retailers to provide an option to purchase tests with no upfront costs either at the in-network pharmacy or retailer or via an online portal with a direct-to-consumer shipping program.
- Limit the amount of documentation required for reimbursement. Allow members on the same plan to submit the same reimbursement form for tests bought at the same time. While FAQ Part 51 allows issuers to require an attestation from consumers, the Department emphasizes that this extra step is not a requirement and reminds issuers that any attestation may act as a barrier to consumers obtaining OTC COVID-19 tests.

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- Ensure consumers are not denied coverage of their eight OTC COVID-19 tests per member per month for any reason other than employment purposes.
- Provide an option for enrollees to submit claims electronically, including via email, existing claims systems, or mobile applications, to hasten and simplify the process.

Colorectal Cancer Screening

Issuers must cover and may not impose cost sharing with respect to a colonoscopy conducted after a positive non-invasive stool-based screening test or direct visualization screening test for colorectal cancer for individuals described in the [USPSTF recommendation](#).

The recommendation was issued as of May 31, 2021, so nationwide, Section 2713 of the Public Health Service Act will require plans and issuers to provide coverage without cost sharing for plan or policy years beginning on or after May 31, 2022.

Pursuant to Pub. Act 102-0443, effective January 1, 2022, Illinois law requires issuers to cover without cost-sharing a colonoscopy exam that is a follow-up exam based on an initial screen where the colonoscopy was determined to be medically necessary by an appropriately licensed physician, advanced practice registered nurse, or physician assistant. This requirement remains in effect and is not delayed or suspended until May 31, 2022 in Illinois.

Although the FAQs do not address the implications for high deductible health plans, in light of Pub. Act 102-0443, Illinois' requirement for major medical and HMO policies to cover follow-up colonoscopies without cost-sharing will apply to high-deductible health plans regardless of whether the covered individual has met the deductible. In IRS Notice 2004-23, the U.S. Department of the Treasury identified colorectal cancer screening as "preventive care" for purposes of determining whether a plan qualifies as a high deductible health plan under section 223 of the Internal Revenue Code. The FAQs in Part 51 include an interpretation of the Treasury guidance that "the follow-up colonoscopy is an integral part of the preventive screening without which the screening would not be complete." Because the Treasury has determined a medically necessary follow-up colonoscopy to be part of the "screening," that service falls within the scope of the preventive care safe harbor identified in IRS Notice 2004-23. Therefore, effectively immediately, the Department will not exempt high deductible health plans from the prohibition on cost-sharing for follow-up colonoscopies described under Pub. Act 102-0443.

Coverage of FDA-Approved Contraception

Per the FAQ, "[I]f an individual and their attending provider determine that a particular service or FDA-approved, cleared, or granted contraceptive product is medically appropriate for the individual (whether or not the item or service is identified in the current FDA Birth Control Guide), the plan or issuer must cover that service or product without cost sharing." A plan or issuer may not:

- Deny coverage for any brand of contraceptive after the individual's attending health care provider has communicated to the plan or issuer that a particular FDA-approved contraceptive is medically necessary or appropriate for the individual;

- Require an individual to fail first using other contraceptives, whether within the same or different method of contraception, before approving coverage for the particular FDA-approved contraceptive that the individual's attending health care provider has determined medically appropriate for the individual;
- Provide an unduly burdensome exception process for the individual to obtain the contraceptive determined to be medically necessary by the individual's attending health care provider. For example, a plan or issuer may not require an individual to use the internal claims and appeals process to obtain an exception; or
- Deny coverage for an FDA-approved contraceptive merely because it does not specifically appear on the FDA Birth Control Guide referenced in guidance issued by the U.S. Departments of Health and Human Services, Labor, or the Treasury.

Please direct questions regarding this Bulletin to DOI.InfoDesk@illinois.gov.