Client Alert: Covid-19 Free Swabs & Rising Fraud: Authorities Increase Testing Availability While Warning of Scams & Faulty Product

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Last week, the Supreme Court granted the administration's request requiring the vaccination of healthcare workers employed at facilities receiving federal (CMS) funding. At the same time, the Court rejected President Biden's 'vaccine-or-test' mandate for large businesses with 100 or more employees. Had the mandate been successful, the government estimated some 84 million workers would have been impacted. According to a Gallup poll conducted in December, approximately 25% of the American workforce remain unvaccinated. Although the Court nixed the possibility of more than 20,000,000 unvaccinated Americans undergoing mandatory weekly testing, their decision did little to relieve the current pressure on diagnostic laboratories. Since December, the Omicron variant has strained laboratory testing capacity across the country. In response, the Biden administration is aggressively pushing for more home tests. On January 10th, the U.S. Department of Health and Human Services (HHS), as well as the Departments of Labor and Treasury, jointly issued guidance stating that health plans and private insurers must cover the cost of over-the-counter (OTC) Covid-19 diagnostic testing. Beginning January 15, 2022, individuals with private health coverage can purchase a home test kit online or in-store and get reimbursed for the cost by submitting a claim to their insurance.

Key Points
For Health Insurance Providers, the substantive components are as follows:

- Health plans must cover eight free home tests, *per* individual, *per* month at the rate of up to $12 per individual test.
- However, Covid tests ordered by a clinician or healthcare provider are not counted as part of the eight-test monthly limit. There is also no obligation to provide testing for employer purposes.
- Reimbursements are solely for tests that have been cleared by the U.S. Food and Drug Administration. The FDA has a helpful table where consumers and providers can check which diagnostic tests have received Emergency Use Approvals (EUAs).
- Lastly, health plans and health insurers may require basic verification, such as a proof of purchase, product UPC code, or a signature declaration attesting that the product was purchased for the insuree's use, and not others. (Q4 – FAQs)

As the executive order was only officially announced on January 10th, implementing the directive within five days required healthcare plans to act with great haste. Interestingly, HMOs and private plans that maintain in-network pharmacy services have a cost-advantage over competitors, as they can purchase wholesale test kits and distribute them to their members as required. Those without a pharmacy supply chain will need to issue reimbursements at retail value (up to $12 dollars per test).

Direct-to-Your Door Test Kits
Meanwhile, as of January 19th, 2022, every home in the United States will be able to order four free at-home Covid-19 tests, compliments of the federal government. These tests are completely free—and there is no charge for shipping. As of the 19th, kits may be ordered via a government website: www.CovidTests.gov. To facilitate the program, the Biden administration announced plans to purchase one billion rapid home tests. The wait-time between order and delivery is intended to be around 12-14 days. But many observers anticipate that the ambitious plan will likely face logistical challenges.

For general marketing purposes, its normally beneficial when an entity can advertise multiple free products to consumers. Health plan organizations, like Kaiser-Permanente and Anthem, managed to neatly notify their members of both reimbursement plan and free government tests in single communications: KP, Anthem.

The Fraudulent and the Faulty
Even with an upsurge in Omicron infections, or perhaps because of it, both local and federal authorities are

investing more resources in policing fraudulent and defective Covid-19 services and products. For example, the CDC recently reported that 60% of the KN95 respirators did not meet their intended requirements. Of particular concern are units sourced from China. For hospitals and other healthcare providers, the CDC has a useful website for verifying the 'certification of personal protective technology.' Still, unhappy with quality control from international suppliers, President Biden announced plans to freely distribute 400 million N95 masks from the U.S.'s Strategic National Stockpile, all of which are sourced from 12 *domestic* manufacturers.

Often, even approved equipment is later found to be ineffective. On January 14th, the FDA issued a warning for people to stop using two COVID-19 tests produced by LuSys Laboratories, citing their frequent tendency of furnishing false results. Similarly, the U.S. Department of Health and Human Services (HHS) is also actively issuing warnings related to Covid-19 fraud schemes.

On the local scene, last week, the Los Angeles County Board of Supervisors unanimously passed a motion to address fraudulent Covid-19 test sites and at-home test kits. With county positivity rates of 20% and confirmed infections hitting the 40,000 a-day mark, demand for Covid-19 testing has skyrocketed, resulting in a supply shortage and forcing lengthy waits for laboratory results. Unfortunately, scammers are using the current crises as an opportunity to set-up fraudulent Covid-19 testing sites that can pop up on streetcorners one day and disappear the next. Even legitimate vendors are tempted to gouge prices for Covid-19 products and services. Unfortunately for Los Angeles residents, it will take time before authorities can actively rein in profiteering. The director of LA County's Department of Consumer and Business Affairs announced that the agency is only "in the beginning stages" of investigating reports of the price-gouging throughout Los Angeles.

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