



December 22, 2021

Secretary Martin J. Walsh
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Secretary Janet Yellen
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: *Expanding Free At-home COVID-19 Testing*

To Whom It May Concern:

The U.S. Chamber of Commerce (the “Chamber”) is submitting these comments and recommendations in response to the White House announcement on December 2, 2021¹ and in advance of the issuance of guidance from the Department of the Treasury, the Department of Labor and the Department of Health and Human Services (the “Departments”). We urge the Departments to consider these concerns and suggestions to best advance the Administration’s stated goals to help Americans access the at-home tests necessary to help stop the spread of COVID-19. These comments have been developed with the input of members of the business community with an interest in improving the health care system.

Following yesterday’s announcement, the Administration will be purchasing 500 million over-the-counter (OTC) tests. Beginning in January 2022, through a to-be-launched website, individuals may be able to request OTC at-home tests to be mailed to them. However, details on the terms or quantity of tests that can be ordered have not yet been shared. The 12/21/21 announcement also outlined additional steps that the federal government will take to:

- Expand our healthcare treatment capacity, provide medical supplies, and support vaccinations.
- Launch additional federal testing locations with the first in New York City.
- Use the Defense Production Act to accelerate production of at-home tests and the availability of testing components.

We appreciate the additional efforts that the Administration is pursuing but continue to have concerns about the forth coming at-home testing guidance that the Departments are expected to issue by January 15, 2022.

¹ [President Biden Announces New Actions to Protect Americans Against the Delta and Omicron Variants as We Battle COVID-19 this Winter | The White House](#)

OVERVIEW

Over the past two years, businesses have demonstrated agility, tenacity, dedication and resilience in supporting our country and communities. In addition to providing resources for employees and their families, businesses have been on the front lines in developing and manufacturing treatments and vaccines, providing health care services to patients, facilitating remote work opportunities, and reflecting concern for the grave impacts of the pandemic. The business community remains committed to the health and safety of our communities and people domestically and abroad.

While we support efforts generally to improve access to FDA-approved and/or FDA authorized COVID-19 at-home (or over-the counter/OTC) tests, we urge you to carefully craft guidance to mitigate likely – and potentially dangerous – ramifications. Unless certain parameters are included in the forthcoming guidance, implementing a free at-home testing policy will likely exacerbate testing shortages, result in significant hoarding, compound price-gouging and fraud, as well as significantly and unnecessarily increase premiums and destabilize insurance markets. Finally, we urge the Departments to permit flexibility and time in complying with a prospective change.

Protect the Fragile Supply Chain & Mitigate Shortages

As we have seen with a variety of products over the course of the pandemic, supply chains are fragile. Shortages of medical items are far more dangerous than that of toilet-paper in March of 2020 and cream cheese in December of 2021. Just as we experienced in the days following vaccine approval, when pent up demand is coupled with sudden access to a new medical item, shortages, price gouging and hoarding result. As our country did in the early days after vaccines were approved, we urge you to consider mitigating these supply chain disruptions by prioritizing recipients until supply is robust.

We are already seeing shortages across the country for at-home test kits. While the majority of pharmacies carry them, “many are showing the kits as sold-out both online and in stores.”² As Christmas approaches and the new omicron variant surges across the US, at-home COVID-19 test kits are in high demand, though high cost and dwindling supplies have left many wanting even before the guidance. After the holiday and with Americans returning to work and school in January, shortages for at-home testing will become even more significant.

While the supply chain struggles to regain its footing in ensuring ample supply of at-home testing, we urge the Departments to prioritize access to individuals experiencing symptoms, who have been in close contact with someone who has tested positive for COVID-19 as recommended by a health care provider. As early vaccine doses to the elderly and those with underlying health conditions were prioritized until there was ample vaccine supply, we would encourage such a prioritization of at-home tests.³

² [There's a National Shortage of Covid-19 Tests—Here's Where to Find Them Around DC \(washingtonian.com\)](#)

³ [Why older adults must go to the front of the vaccine line: Study shows speeding up roll-out, prioritizing 60-plus could save 65,000 US lives in three months -- ScienceDaily](#)

Curtail Dangerous Reactions to Shortages: Prevent Hoarding

Shortages can lead to secondary supply chain assaults such as hoarding, unless limits are put into place. As businesses did in the early weeks and months of the pandemic, limits on the amount of ground beef, chicken and even toilet paper protected the hemorrhaging supply chain during shortages.⁴ “In order to prevent the panic buying and stockpiling of goods that occurred at the onset of the pandemic in March, many stores took preventive steps...[t]o ensure all customers have access to what they need.”⁵ We recommend a similar approach with regard to at-home tests while shortages persist.

To protect the fragile supply chain for at-home tests, the Chamber recommends the Departments set some quantity parameters around to whom, how often and under what circumstances, fully reimbursable at-home tests are available. Consumers should purchase the test up-front and then seek reimbursement following the payer’s existing processes on the back-end. The Chamber would recommend allowing plans and employers to set reasonable quantity limits for a prescribed period-of-time: for example, a per member per time period quantity limit such as once every seven-day period. In addition, consumers should prove or attest that they have used the at-home test before seeking reimbursement to thwart hoarding. Individuals would be able to get tests elsewhere beyond this limit should there be a medical reason. However, setting parameters around the at-home tests that can be reimbursed will help stymie hoarding while shortages persist.

Curtail Bad Actors During Shortages: Curb Price-Gouging & Fraud

Shortages and supply chain disruption can also stoke bad actors seeking to gouge consumers for scarce items. To curtail these bad actors from abusing the fear exacerbated by shortages, we recommend several ways to hinder fraudulent action such as placing reimbursement caps and identifying reimbursable purchase sites. Establishing an upper limit on the reimbursement for at-home tests will prevent bad actors from price-gouging consumers and driving up the cost of a limited good. We recommend that the Departments:

- Allow health plans and employers to direct consumers to a network for preferred sources for to purchase authorized tests at fair prices.
- Establish an upper limit on the reimbursement for at-home tests to discourage bad actors from price-gouging consumers and driving up the cost of a limited good. We recommend the Departments cap the reimbursement mandate to no more than \$10 per test and ask the Departments to clarify that this does not violate the cash price provisions of The *Families First Coronavirus Response Act (FFCRA)* or The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) because in-home tests are not diagnostic.

If reimbursement is not capped, the price of at-home COVID-19 tests will spike, putting these tests further out of reach for the most vulnerable populations that do not have the benefit of this mandate (which only applies to commercial insurance).

Further, we are very concerned about the financial incentives for marketing and selling unauthorized COVID-19 tests in an environment where it is difficult to differentiate authorized from unauthorized

⁴ [Costco, ShopRite, Wegmans, Whole Foods, others limit meat purchases to avoid food supply chain problems - nj.com](#)

⁵ [Grocery store purchase limits are back | Fox Business](#)

tests and payment is mandated. It will be critically important for the FDA to actively use its authority to prevent non-authorized and/or poor-quality tests from being marketed and sold to consumers. Allowing payers to limit the at-home tests for which they will reimburse to those purchased from a specific universe of retailers/suppliers will also provide greater certainty that the tests are legitimate and not fraudulent, as well as promote equitable access.

Downstream Premium Implications

The above recommendations are offered first and foremost to protect consumers, ensure access to tests, deter problematic behaviors, and mitigate unscrupulous actors. However, the recommendations will also have beneficial implications in the future.

While the United States is already seeing tremendous demand for testing in general which will no doubt climb for at-home tests after the holiday season, there is no way to predict the total number of claims this new policy will generate. Payers have already concluded open enrollment for 2022 calendar plan years and the costs associated with providing reimbursable at-home testing were not incorporated into the premiums for the coming year. As a result, the financial impact on payers in 2022 to provide the benefit of these at-home tests will not be off-set by additional premiums contributions. The guardrails recommended to curtail unnecessary testing will ultimately benefit the beneficiaries and consumers financially by mitigating premium increases in the future.

Anecdotally, we offer the Departments the following information from a multi-state health insurer regarding the average monthly costs of COVID-19 provider administered tests for fully insured as well as fully and self-insured plans relative to the plan's total spending on healthcare, including medical and drug claims, since July 2020. This data only includes the costs associated with the testing alone. There may be additional costs for office visits associated with COVID-19 tests, facility fees, etc. that were incurred and are not reflected in the totals below. This data does not include costs associated with at-home COVID-19 tests.

We also offer data on spending for primary care and emergency room care as a point of comparison. As is delineated below, COVID-19 testing costs are now approaching between a third and a half of spending on primary care provider visits. Similarly, COVID-19 testing costs are now approximately one half of spending for emergency room care and observation.

COVID-19 Testing

- Fully insured/Risk: 2.4% of total healthcare spend
- Fully & Self-insured/Risk + Administrative Services Only (ASO): 2.1% of total healthcare spend

Points of Comparison

- Primary care (spending associated with PCP office visits, preventive physical exams, and preventive well baby exams)
 - Fully insured/Risk: ~ 5% of total healthcare spend
 - Fully & Self-insured/Risk+ASO: ~ 6% of total healthcare spend
- Emergency room (spending associated with outpatient ER care and observation)
 - Fully insured/Risk: ~ 3.5 - 4% of total healthcare spend
 - Fully & Self-insured/Risk+ASO: ~ 4.5% of total healthcare spend

Facilitate Smooth Implementation: Provide Flexibility & Time for Compliance

In addition to the recommendations to mitigate shortages and ameliorate supply chain abuses such as hoarding and price gouging, the Chamber suggests several compliance and operational recommendations to facilitate a smooth implementation. We urge the Departments to apply this reimbursement policy for at-home tests prospectively and allow payers at least 30 days following the release of the guidance to comply. Additionally, CMS should create a separate CPT code for at-home tests and provider ordered tests will be essential for tracking claim volume.

Currently, these claims for at-home tests must be processed following with paper claims and is a highly manual, time-intensive process. This entails opening mail, scanning the paper claim, and verifying the information is complete and legible prior to sending the claim to the processing system. Manual checks add additional costs and delays to the process. We urge the Departments to consider the significant administrative burden and provide flexibility to allow payers to build on their existing processes rather than mandate prescriptive steps that would require new systems to be built or capabilities to be developed.

Conclusion

The Chamber stands ready to work with the Departments and our other public and private partners along with our members to advance policies that will improve the health of our country, our economy and the world. We urge you to consider the recommendations detailed here – many of which have been adopted by other sectors when facing shortages and supply chain challenges as a result of the pandemic. We believe adopting these recommendations will help ensure access, deter hoarding, mitigate price gouging and fraud, lessen future premium increases, and facilitate a smooth implementation.

Sincerely,



Katie Mahoney
Vice President, Health Policy
U.S. Chamber of Commerce

cc: Members of the United States Congress