



FAQS ON RETURN-TO-WORK TESTING

As school districts and other employers across the state work to figure out how to safely bring employees back to the worksite, we have received a lot of questions regarding return-to-work testing for COVID-19. Below are Frequently Asked Questions (FAQs) regarding return-to-work testing. We will update these questions and answers as we continue to receive information from state regulators and insurance carriers.

Q1: Are California health plans required to cover return-to-work COVID-19 testing?

Answer: Insurers regulated by the Department of Managed Health Care (DMHC) are required to provide coverage for COVID-19 testing for essential workers.

In California, regulation and oversight of health insurance is split into two different regulatory agencies; the DMHC regulates managed-care plans (like health maintenance organizations or HMOs) and the Department of Insurance (CDI) has jurisdiction over traditional insurance plans.

On July 17, 2020, the California Department of Managed Health Care (DMHC) issued emergency regulations governing COVID-19 diagnostic testing for the plans it regulates, stating that during the COVID-19 state of emergency, “*Diagnostic testing for COVID-19 is a medically necessary basic health care service for enrollees who are essential workers... regardless of whether the enrollee has symptoms of COVID-19 infection or is asymptomatic, or whether the enrollee has a known or suspected exposure to a person with COVID-19.*”¹

The regulations define “diagnostic testing” as COVID-19 testing that is done “regardless of the purposes for or circumstances under which such testing is administered.” The regulations also defined “essential workers” to include the following categories of workers:²

- Persons working in the health care sector with frequent interactions with the public or with people who may have COVID-19 or who have been exposed to SARS-CoV-2.
- Persons working in the emergency services sector who have frequent interactions with the public or with people who may have COVID-19 or have been exposed to SARS-CoV-2.
- Persons working in the educational sector who have frequent interactions with students or the public.
- Persons working in the food services sector who have frequent interactions with the public.
- Persons working in the public transportation sector who have frequent interactions with the public.

Therefore, California law may require fully-insured health plans regulated by the DMHC to cover diagnostic testing for essential workers. However, the regulations allow health plans to deny coverage for a COVID-19

¹ 10 CCR 1300.67.01(c)(1), emphasis added. <https://wps0.dmhc.ca.gov/regulations/docs/regs/50/1594998444637.pdf>

² Along with several other categories of essential workers less relevant to Keenan clients.



test if the enrollee failed to attempt to access a COVID-19 diagnostic test from an in-network provider or failed to contact the health plan to locate an in-network testing provider before accessing a COVID-19 diagnostic test through a non-contracted provider, unless otherwise specified under state or federal law.

Q2: Can a plan impose cost-sharing on enrollees for COVID-19 testing?

Answer: The DMHC emergency regulations state that health plans may subject enrollees to any applicable cost-sharing amounts incurred as a result of COVID-19 diagnostic testing, *unless otherwise specified by state or federal law.*³ Both the FFCRA and the CARES Act require health plans to provide COVID-19 testing at zero cost-sharing for enrollees with symptoms of COVID-19 or known or suspected exposure to someone with COVID-19. However, for other enrollees (those without symptoms or known exposure to COVID-19), health plans may impose ordinary cost-sharing for COVID-19 testing.

Finally, the regulations allow health plans to deny coverage for a COVID-19 test if the enrollee failed to attempt to access a COVID-19 diagnostic test from an in-network provider or failed to contact the health plan to locate an in-network testing provider before accessing a COVID-19 diagnostic test through a non-contracted provider, unless otherwise specified under state or federal law.⁴

Q3: Is coverage for return-to-work testing required for plans regulated by the California Department of Insurance?

Answer: To date, the CDI has not provided an answer to this question. In its March 5, 2020 bulletin, the CDI required carriers under its jurisdiction to “immediately reduce cost-sharing (including, but not limited to, co-pays, deductibles, or coinsurance) to zero for all medically necessary screening and testing for COVID-19, including hospital, emergency department, urgent care and provider office visits where the purpose of the visit is to be screened and/or tested for COVID-19.”⁵ However, the bulletin does not define what constitutes “medically necessary screening and testing,” and it is unclear whether return-to-work testing is included in that definition. Right now, different carriers are giving different interpretations and an employer will need to check with its carrier.

Q4: Is coverage for return-to-work testing required under self-insured plans?

Answer: No. Self-insured health plans are generally not subject to state insurance regulations and are instead governed by federal law.

Under the federal Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), coverage of return-to-work testing is not mandated. The U.S. Department of Labor guidance on this issue is provided in the following question and answer.

³ 10 CCR 1300.67.01(c)(3), emphasis added.

⁴ 10 CCR 1300.67.01(c)(4).

⁵ <https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/COVID-19-Screening-and-Testing.pdf>, emphasis added.



Q5: Is COVID-19 testing for surveillance or employment purposes required to be covered under section 6001 of the FFCRA?

Answer: No. Section 6001 of the FFCRA requires coverage of items and services only for diagnostic purposes as outlined in this guidance. Clinical decisions about testing are made by the individual’s attending health care provider and may include testing of individuals with signs or symptoms compatible with COVID-19, as well as asymptomatic individuals with known or suspected recent exposure to SARS-CoV-2, that is determined to be medically appropriate by the individual’s health care provider, consulting CDC guidelines as appropriate. However, testing conducted to screen for general workplace health and safety (such as employee “return to work” programs), for public health surveillance for SARS-CoV-2, or for any other purpose not primarily intended for individualized diagnosis or treatment of COVID-19 or another health condition is beyond the scope of section 6001 of the FFCRA.⁶

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients’ business activities.

⁶ FAQs ABOUT FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT IMPLEMENTATION PART 43, June 23, 2020 <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf>.