

Agency RFI Focuses on No-Cost Coverage of OTC Preventive Products Without a Prescription

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Request for Information; Coverage of Over-the-Counter Preventive Services, 26 CFR Part 54; 29 CFR Part 2590; 45 CFR Part 147, 88 Fed. Reg. 68519 (Oct. 4, 2023)

RFI

Press Release

A DOL, HHS, and IRS request for information (RFI) is seeking input about how the preventive health services mandate applies to over-the-counter (OTC) preventive items and services, including the potential benefits and costs of requiring plans and insurers to cover these items at no cost without a provider's prescription. Agency guidance has previously advised that OTC items and services generally must be covered without cost-sharing only when prescribed by a provider.

The RFI seeks information on current access to and utilization of OTC preventive products, as well as operational challenges for plans, insurers, third-party administrators, and pharmacy benefit managers. For instance, the request asks about operational challenges that may be associated with using telepharmacies and mail orders within and across states or localities. The agencies are also interested in "lessons learned" from providing coverage for OTC COVID-19 diagnostic tests during the COVID-19 public health emergency. The RFI explains that the agencies are particularly focused on OTC preventive care items that can be purchased without a prescription now or in the future, such as contraceptives, tobacco-cessation products, folic acid during pregnancy, and breastfeeding supplies.

EBIA Comment: The RFI appears to be prompted (at least in part) by the FDA's recent approval of an OTC oral contraceptive and may signal the agencies' intent to eliminate the prescription requirement in future guidance. Comments are due by December 4, 2023. For more information, see EBIA's Health Care Reform manual at Section XII.C ("Coverage of Preventive Health Services") and EBIA's Group Health Plan Mandates manual at Section XIV.C ("Required Preventive Health Services Coverage"). See also EBIA's Self-Insured Health Plans manual at Section XIII.C.1 ("Preventive Health Services").

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