

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
CORPUS CHRISTI DIVISION

DIAGNOSTIC AFFILIATES OF §
NORTHEAST HOU, LLC D/B/A 24 §
HOUR COVIDRT-PCR LABORATORY §
ON BEHALF OF AND AS ATTORNEY §
IN FACT FOR PATIENT CS §

Plaintiff,

C.A. No. _____

v.

CIGNA HEALTH AND LIFE §
INSURANCE COMPANY, CIGNA §
HEALTH AND WALARE PLAN §
COMMITTEE, AND CIGNA MEDICAL §
PLAN

Defendants.

COMPLAINT AND JURY DEMAND

24 Hour Covid Diagnostic Affiliates of Northeast Hou, LLC d/b/a 24 Hour Covid RT-PCR Laboratory (“24 Hour Covid” or “Plaintiff”) on behalf of Patient CS¹ or, in the alternative, as the attorney-in-fact for Patient CS, by and through its attorneys, brings its Complaint against Cigna Health and Life Insurance Co. (the “Cigna TPA”), Cigna Health and Walare Plan Committee (the “Cigna Medical Plan Committee”), and the Cigna Medical Plan (the Cigna TPA, the Cigna Medical Plan Committee, and the Cigna Medical Plan shall be collectively referred to as the “Cigna Defendants”), and allege as follows:

[INTENTIONALLY LEFT BLANK]

¹ Patient CS’ identity shall be withheld from all public filings. Patient CS’ protected health information will be provided to the Court and to the Cigna Defendants under seal and/or upon request.

NATURE OF THE CLAIMS

1. 24 Hour Covid is a CLIA certified high complexity laboratory that has requested emergency use authorization under Section 564 of the Federal Food, Drug, and Cosmetic Act; therefore, has all authorizations and/or approvals necessary to render and be reimbursed for Covid Testing services.² At the height of the pandemic 24 Hour Covid operated seven specimen collection sites located across the States of Texas and Louisiana, and partnered with employers and independent school districts across Texas to render Covid Testing services to employees, teachers, students, and other staff members.³

2. Cigna TPA serves in the trusted role of third-party claims administrator for self-funded health plans, including its own employer sponsored health plan, the Cigna Medical Plan. The Cigna Medical Plan Committee serves as the plan administrator for the Cigna Medical Plan. All three are named Defendants in this Complaint.

3. Importantly, 24 Hour Covid does not have an in-network contract with the Cigna TPA or any of its affiliated entities, nor has the Cigna TPA or any of its affiliated entities even attempted to negotiate an amount to be paid to 24 Hour Covid for Covid Testing services despite 24 Hour Covid's multiple attempts and offers to do so. Therefore, 24 Hour Covid is considered an out-of-network ("OON") laboratory with the Cigna TPA and any of its affiliated entities.

4. Under ordinary circumstances, not all health plans administered by the Cigna TPA offer its members with access to OON providers and facilities. However, pursuant to Section 6001 of the FFCRA, as amended by Section 3201 of the CARES Act, all group health plans and health

² See 21 U.S.C. § 360bbb-3.

³ Humble ISD Expands Options for Student Covid Testing (<https://www.humbleisd.net/covid19studenttesting>); Humble ISD expands free COVID-19 testing options to provide easier access for students (<https://communityimpact.com/houston/lake-houston-humble-kingwood/education/2021/01/07/humble-isd-expands-free-covid-19-testing-options-to-provide-easier-access-for-students/>).

insurance issuers offering group or individual health insurance coverage are required to provide benefits for certain items and services related to diagnostic testing for the detection or diagnosis of COVID-19 without the imposition of cost-sharing, prior authorization, or other medical management requirements when such items or services are furnished on or after March 18, 2020, for the duration of the COVID-19 public health emergency regardless of whether the Covid Testing provider is an in-network or OON provider.⁴

5. Furthermore, Section 3202(a) of the CARES Act provides that all group health plans and health insurance issuers covering Covid Testing items and services, as described in Section 6001 of the FFCRA, must reimburse OON providers in an amount that equals the cash price for such Covid Testing services as listed by the OON provider on its public internet website or to negotiate a rate/amount to be paid that is less than the publicized cash price.

6. Here, the Cigna TPA initially failed to adjudicate Patient CS' Covid Testing claim in accordance with the requirements of Section 3202(a) of the CARES Act. Despite 24 Hour Covid's attempts to appeal this adverse benefit determination through the Cigna TPA's internal administrative appeals process, the Cigna TPA not only upheld its initial determination to unlawfully process Patient CS' claim but also failed to provide a sufficient response to 24 Hour Covid's appeal in violation of 29 CFR § 2560.503-1 and to provide requested documentation in violation of 29 U.S. Code § 1132(c). 24 Hour Covid, on behalf of Patient CS, has fully exhausted the Cigna TPA's internal administrative appeals process.

7. Furthermore, because the Cigna Medical Plan Committee has contracted with the Cigna TPA to act as its third-party claims administrator for the Cigna Medical Plan, the Cigna

⁴ See CMS FAQ Parts 42, 43, and 44, The FFCRA and the CARES Act.

Medical Plan Committee, through its silence and inaction, is dually liable for the Cigna TPA's violations of the FFCRA, the CARES Act, and ERISA pursuant to 29 U.S.C. § 1105(a).

PARTIES

8. 24 Hour Covid is a limited liability company organized under the laws of the State of Texas, with its company headquarters located at 22751 Professional Drive, Suite 210, Kingwood, Texas 77339. 24 Hour Covid, on behalf of Patient CS or, in the alternative, as the attorney-in-fact of Patient CS, has lawful standing to bring in all claims asserted herein.

9. Defendant Cigna Health and Life Insurance Co. (the "Cigna TPA") is a corporation organized under the laws of the State of Connecticut with its principal place of business in Bloomfield, Connecticut. It is a foreign for-profit corporation operating in the State of Texas and administers plans that are funded by plan sponsors in Texas. The Cigna Claims Administrator may be served with process by serving its registered agent for service at CT Corporation System 350 North St Paul Street Dallas, TX 75201.

10. Defendant Cigna Health & Walare Plan Committee (the "Cigna Health Plan Committee") is the committee identified by the Cigna Medical Plan to act as the Cigna Medical Plan's plan administrator.⁵ The Cigna Plan Administrator may be served with process by serving Alicia Vaslow at 1601 Chestnut Street, TL05T, Philadelphia, PA 19192.

11. Defendant Cigna Medical Plan is a self-funded health plan subject to ERISA. The Cigna Health Plan may be served with process by serving Alicia Vaslow at 1601 Chestnut Street, TL05T, Philadelphia, PA 19192.⁶

⁵ See Exhibit A (Cigna Health Plan Form 5500).

⁶ *Supra* Footnote 5.

JURISDICTION AND VENUE

12. This Court has federal question subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1131, as 24 Hour Covid asserts federal claims against the Cigna Defendants in Counts I, II, III, IV and V under the FFCRA, the CARES Act, and ERISA.

13. The Court has personal jurisdiction over the parties because 24 Hour Covid submits to the jurisdiction of this Court, and the Cigna Defendants systemically and continuously conduct business in the State of Texas, and otherwise have minimum contacts with the State of Texas sufficient to establish personal jurisdiction over them.

14. Venue is appropriate under 29 U.S.C. § 1132 (e)(2), which requires that an ERISA plan participant has the right to bring suit where he/she resides or where he/she alleges that the violation of ERISA occurred. 24 Hour Covid alleges that the Cigna Defendants violated ERISA within the District Court of Texas.

STATEMENT OF FACTS

I. BACKGROUND AS TO THE FFCRA AND THE CARES ACT

15. Pursuant to Section 319 of the Public Health Service Act, on January 31, 2020, the Secretary of Health and Human Services (“HHS”) issued a determination that a Public Health Emergency exists and has existed as of January 27, 2020, due to confirmed cases of COVID-19 being identified in this country.⁷

16. On March 13, 2020, the President issued Proclamation 9994 declaring a National Emergency concerning the COVID-19 outbreak with a determination that a national emergency exists nationwide, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

⁷ See <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (Determination that a Public Health Emergency Exists).

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