

**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 COVID RT-PCR LABORATORY §
Plaintiff, §

C.A. No. _____

v. §

ENTRUST, LLC, D/B/A 90 DEGREE §
BENEFITS AND TEXAS SCHOOL §
HEALTH BENEFITS PROGRAM §

Defendants.

ORIGINAL COMPLAINT AND JURY DEMAND

Diagnostic Affiliates of Northeast Hou, LLC d/b/a 24 Hour Covid RT-PCR Laboratory (“24 Hour Covid” or “Plaintiff”) by and through its attorneys, brings its Original Complaint against Entrust, LLC d/b/a 90 Degree Benefits (“90 Degree Benefits”) and the Texas School Health Benefits Program, (“TSHBP”) and allege as follows:

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.¹ 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.²

¹ See 21 U.S.C. § 360bbb-3.

² 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

2. 90 Degree Benefits is licensed in the State of Texas to act as a Third-Party Administrator and serves in the trusted role of third-party claims administrator for self-funded health plans including the TSHBP.

3. Importantly, 24 Hour Covid does not have an in-network contract with 90 Degree Benefits or TSHBP, and despite 90 Degree Benefits giving the impression of its intent to negotiate an amount to be paid to 24 Hour Covid for Covid Testing services, its actions appear to be no more than “smoke and mirrors” given their lack of response after 24 Hour Covid attempted – repeatedly – to resolve this matter.

4. Under ordinary circumstances, not all self-funded health plans administered by 90 Degree Benefits, like TSHBP, 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 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 out-of-network (“OON”) provider.³

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

<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/>.

³ See CMS FAQ Parts 42, 43, and 44, The FFCRA and the CARES Act.

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, 90 Degree Benefits and TSHBP have intentionally disregarded its obligations to comply with its requirements to cover Covid Testing services without the imposition of cost-sharing and other medical management requirements pursuant to Section 6001 of the FFCRA, and, in instances where Plaintiff was reimbursed for its Covid Testing services, 90 Degree Benefits and TSHBP have failed to reimburse Plaintiff in accordance with Section 3202(a) of the CARES Act.

PARTIES

7. 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 has lawful standing to bring in all claims asserted herein.

8. Defendant Entrust, LLC, d/b/a 90 Degree Benefits (“90 Degree Benefits”) is a domestic limited liability company organized under the laws of the State of Texas with its principal place of business located at 22322 Grand Corner Drive, Suite 200, Katy, Texas 77494-5941. 90 Degree Benefits may be served with process by serving its registered agent for service at CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

9. Defendant Texas School Health Benefits Program (“TSHBP”) is a self-funded health plan subject to Section 6001 of the FFCRA, as amended. TSHBP may be served with process at its principal place of business located at 2175 N. Glenville Drive, Richardson, Texas 75082.

JURISDICTION AND VENUE

10. 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 Defendants in Count I under the FFCRA and the CARES Act.

11. The Court has personal jurisdiction over the parties because 24 Hour Covid submits to the jurisdiction of this Court, and 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.

12. Venue is appropriate under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claim occurred in this district. 24 Hour Covid alleges that Defendants violated the FFCRA and the CARES Act within the District Court of Texas.

STATEMENT OF FACTS

I. BACKGROUND AS TO THE FFCRA AND THE CARES ACT

13. 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.⁴

14. 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.

⁴ See <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (Determination that a Public Health Emergency Exists).

15. To facilitate the nation’s response to the COVID-19 pandemic, Congress passed the FFCRA and the CARES Act to, amongst other things, require group health plans and health insurance issuers offering group or individual health insurance coverage to: (i) provide benefits for certain items and services related to diagnostic testing for the detection or diagnosis of COVID-19 without the imposition of any cost-sharing requirements (*i.e.* deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements;⁵ and (ii) to reimburse any provider for COVID-19 diagnostic testing an amount that equals the negotiated rate or, if the plan or issuer does not have a negotiated rate with the provider (*e.g.* 24 Hour Covid), the cash price for such service that is listed by the provider on its public website in accordance with 45 CFR § 182.40.⁶

16. To further clarify to issuers and health plans their legal expectations when processing a claim for Covid Testing in accordance with the FFCRA and the CARES Act, the Department of Labor (“DOL”), the Department of Health and Human Services (“HHS”), and the Department of the Treasury (the “Treasury”) (collectively, the “Departments”) jointly prepared and issued a series of Frequently Asked Questions (“FAQs”) to address any stakeholder questions or concerns pertaining to the proper adjudication of Covid Testing claims. The following FAQs summarize the health plan and issuers’ obligations as it pertains to covering and paying for Covid Testing services during the public health emergency:

The Departments FAQ, Part 42, Q1: *Which types of group health plans and health insurance coverage are subject to section 6001 of the FFCRA, as amended by section 3201 of the CARES Act?*

Section 6001 of the FFCRA, as amended by section 3201 of the CARES Act, applies to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans as defined in section 1251(e) of the Patient Protection and Affordable Care). The term “group health plan” includes both insured and self-insured group health

⁵ Pub. L. No. 116-127 (2020).

⁶ Pub. L. No. 116-136 (2020).

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