



## PAYORS RECOUPING MONIES PAID FOR COVID TESTING

Garfunkel Wild (GW) has recently seen a dramatic increase in government and commercial payors seeking to recoup payments made during the Covid pandemic for Covid testing and related services. The GW clients who have received recoupment notices demanding substantial repayments include urgent care centers, primary care providers, hospitals, and labs. We also anticipate this impacting long-term care providers. Many of the notices make broad but non-specific allegations that payments were made for services that the payor or plan does not cover. Repayment demands can involve large sums of money.

GW has been active in asserting providers’ rights to reimbursement for Covid testing and has fought to require payors to abide by the coverage requirements imposed on them under federal law, including both the Families First Coronavirus Relief Act (“FFCRA”), and the CARES Act. In one of only two reported cases nationwide addressing how Covid testing providers can challenge a plan’s failure to follow the Federal statutes, GW persuaded the Federal District Court of Connecticut that the FFCRA and CARES Act are incorporated into ERISA and therefore the coverage requirements for Covid testing are also incorporated into every ERISA or self-insured plan.<sup>1</sup> We have also developed state law strategies for pursuing payments and challenging recoupments by non-ERISA plans.

GW believes this is only the beginning of payor recoupment efforts. In order to maximize the effectiveness of our efforts to protect providers GW has created a Covid Testing Billing and Payment Task Force, consisting of the Chairs of our Litigation, Compliance, and Health Care Groups, along with senior litigators and compliance attorneys. With the increase in Covid testing, payors need to review their responsibility under Federal law to cover and pay for Covid testing and related services.

If you have questions about your Covid testing claims being denied or you are facing recoupment actions for testing services previously provided – you can contact your regular GW attorney, or contact GW and ask to be put in touch with one of the members of the Covid Testing Billing and Payment Task Force.

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<sup>1</sup> *Murphy Med. Assocs., LLC v. Cigna Health & Life Ins. Co.*, No. 3:20CV1675(JBA), 2022 WL 743088 (D. Conn. Mar. 11, 2022); *Diagnostic Affiliates of Ne. Hous., LLC v. United Healthcare Servs. Inc.*, No. 2:21-cv-131, 2022 WL 214101 (S.D. Tex. Jan. 18, 2022).

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Should you have any questions regarding the above, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at [info@garfunkelwild.com](mailto:info@garfunkelwild.com).

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