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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

USC Center for Health Journalism, USC Center for Health Financing, Policy, and Management, Plaintiff/ Petitioners, vs. Local Initiative Health Authority for Los Angeles County, Defendant/Respondent.	Case No.: 22STCP01429 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND VERIFIED PETITION FOR WRIT OF MANDATE

INTRODUCTION

1. Plaintiffs/petitioners ("Plaintiffs") bring this suit to enforce the right to inspect public records pursuant to the California Public Records Act, Cal. Gov. Code § 6250 *et seq*.[1] Plaintiffs

[1] All further statutory references in this Complaint are to California statutes, unless otherwise noted.

requested public records in July 2021 from Defendant Local Initiative Health Authority for Los Angeles County ("L.A. Care"), which serves more than 2.4 million low-income Los Angeles County residents and is the nation's largest publicly-operated health care plan.

2. The information Plaintiffs requested concerns L.A. Care's evaluation of the performance of its health care providers including quality and access to care.

3. This performance information is standard in the health care industry and is regularly made public for Medicare, private insurance and other health care plans that receive public funding. This information is crucial for patients to make informed choices about their health care providers, and to ensure provider accountability..

4. The need for accountability in the L.A. Care system was underscored just last month, as L.A. Care was assessed a record g $55 million in penalties by the California Department of Health Care Services and the California Department of Managed Health Care (DMHC) for violations of state health care law and regulations. This fine was by far the largest such penalty in the state's history.

5. In its enforcement filing against L.A. Care, DMHC stated that "[t]he widespread, systemic, and unrelenting nature of these violations is unprecedented and has caused harm to [L.A. Care]'s enrollees."[2] DMHC's enforcement filing listed twenty separate "causes for discipline," including incorrect denials of care, inaccurate payments, failure to meet standards for timely access of care, and many others.

[2]Dep't of Managed Health Care, "Accusation," Document Number 367334_11 (3/4/22) at page 2, lines 6-7, *available at* https://wpso.dmhc.ca.gov/enfactions/docs/4116/1646418458591.pdf.

6. Despite the importance and public nature of the data plaintiffs seek, L.A. Care continues to wrongly and without adequate justification withhold it. Plaintiffs therefore seek an order compelling the production of these public records.

JURISDICTION AND VENUE

7. This Court has jurisdiction under Gov. Code § 6258 and Code Civ. Pro §§ 1060, 1085.

8. Venue is proper in this Court pursuant to Gov. Code § 6259 and Code Civ. Pro §§ 393, 394(a).

THE PARTIES

9. Plaintiff University of Southern California ("USC") Center for Health Journalism is a Los Angeles-based center within USC's Annenberg School for Communication and Journalism. The Center for Health Journalism is dedicated to accountability journalism and partners with journalists and newsrooms in California and across the nation to investigate and explore health equity challenges and solutions in their communities.

10. Plaintiff USC Center for Health Financing, Policy, and Management is a Los Angeles-based center within USC's Sol Price School of Public Policy. It aims to advance community, organizational and health system innovation and effectiveness through applied healthcare research, analysis and knowledge dissemination. The Center's mission is to expand society's knowledge to improve healthcare, health system performance, and effective management of health service delivery.

11. Defendant Local Initiative Health Authority for Los Angeles County, known as L.A. Care, is a public agency created by the State of California and Los Angeles County to provide health coverage to low-income Los Angeles County residents. L.A. Care contracts with providers in Los Angeles to provide care at a reduced cost, and currently serves nearly 2.4 million patients through the Medicaid program.

12. Defendant is a "local agency" under California Government Code § 6253(b).

FACTUAL ALLEGATIONS

13. Medicaid is a federal health care program that partners with states to fund health care services for low-income adults, children, and people with disabilities. 42 U.S.C. §§ 1396-1396(w)(5). It is the largest source of health care funding for low-income people in the U.S., providing health insurance to over 70 million people. *See* Medicaid.gov. The federal government sets baseline standards individuals must meet to be eligible for coverage and gives states a percentage of the funding necessary to run the program. 42 U.S.C. § 1396(b). States are in charge of administering Medicaid and have broad leeway in determining who is eligible. Id. at § 1396a(a)(10).

14. Medi-Cal is California's Medicaid program and serves California's most vulnerable residents. Eligible persons include low-income people with disabilities, seniors, children, pregnant people, and adults. Approximately one-third of Californians—more than 13 million people—are enrolled in Medi-Cal.

15. The administration of health care services in the United States is complex and confusing, and people have historically struggled to find a good-quality plan that fits their health care needs. To aid consumers and promote transparency about health care quality and informed choice, the health care industry has developed quality measurements, many of which are standardized, to assess health care providers.

16. Providers' performance with respect to these measures is compiled and regularly made available to the public.[3] This information allows patients to better choose their health care providers and encourage providers to effectively manage and improve their performance.

[3] *See, e.g.*, Report Cards, NCQA.org (https://www.reportcards.ncqa.org/).

17. Because of the importance of transparency in health care, this information is standard in the industry. In California, both Medicare and commercial health care providers publicly release report cards on provider quality, including provider organization names.[4]

18. Transparency for consumers is an increasingly vital feature of the health care market.

19. According to the National Academy of Medicine, which provides authoritative advice to health care providers, policymakers and the public, the "health care system should make information available to patients and their families that allows them to make informed decisions when selecting a health plan, hospital, or clinical practice, or choosing among alternative treatments. This should include information describing the system's performance on safety, evidence-based practice, and patient satisfaction."[5]

20. The American College of Physicians has found that transparency improves "quality, safety and efficiency throughout the health care system due to competition and/or the availability of clinical benchmarks."[6] It also allows "for increased trust in the patient-physician relationship and health care systems." Id.

21. The National Committee for Quality Assurance (NCQA)'s Healthcare Effectiveness Data and Information Set ("HEDIS") is one of the health care industry's most widely-used performance metrics. *NCQA: Measuring quality, Improving health care*, NCQA.org. Over 191 million people are enrolled in health care plans that report HEDIS results. Id.

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[4] See, e.g., State of California: Office of the Patient Advocate, *Health Care Quality Report Cards, 2020-21 Edition*, https://www.opa.ca.gov/ReportCards/

[5] *Crossing the Quality Chasm: A New Health System for the 21st Century*, Institute of Medicine Committee on Quality of Health Care in America, Washington (DC): National Academies Press (US) (2001) https://pubmed.ncbi.nlm.nih.gov/25057539/.

[6] American College of Physicians: Internal Medicine, *Healthcare Transparency – Focus on Price and Clinical Performance Information*, (2010) https://www.acponline.org/acp_policy/policies/healthcare_transparency_2010.pdf

22. HEDIS metrics include over 90 measures across six domains of care: (1) effectiveness of care; (2) access and availability of care; (3) experience of care; (4) utilization and risk adjusted utilization; (5) health plan descriptive information; and (6) measures collected using electronic clinical data systems. *HEDIS and Performance Measurement*, NCQA.org/hedis/.[7] HEDIS metrics, among other things, also evaluate how often patients get preventative care and whether people with chronic conditions get care that can keep them healthy. *Consumers*, NCQA.org, https://www.ncqa.org/consumers/.

23. NCQA also evaluates whether doctors or other health insurers make the best use of health care resources, or whether they provide unnecessary care that may harm patients. Id. This information is published in the form of accreditation results, NCQA Report Card results, and member survey results. Id.

24. To provide services to the public, L.A. Care contracts with provider organizations, including medical groups and Independent Physician / Practice Associations ("IPAs"). Provider organizations are associations of health care providers who come together to offer their health care services through contracts with managed health care insurance plans.

25. L.A. Care contracts with provider organizations to deliver Medi-Cal covered services promised under its contract with the California Department of Healthcare Services. According to L.A. Care's redacted PRA response, in 2020, L.A. Care contracted with over fifty such provider organizations.

26. L.A. Care developed a Pay-for-Performance ("P4P") program that provides financial rewards for providers who provide high-quality care for L.A. Care Medi-Cal members.[8]

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[7] http://www.ncqa.org/hedis/.

[8] L.A. Care Health Plan, *It's Year Eight for the Pay for Performance (P4P) Program*, https://www.lacare.org/providers/thepulse/its-year-eight-pay-performance-p4p-program/.

27. Included in this P4P program is L.A. Care's Value Initiative for Independent Physician Association Performance ("VIIP"), which measures provider organization performance across multiple domains, including HEDIS clinical quality, utilization, encounters, and member experience. *2020 Quality Improvement Program Description*, L.A. Care Health Plan.[9]

28. This data is then compiled in provider organization Performance Report Cards ("Scorecards").

29. By letter dated July 28, 2021, Plaintiffs submitted a request to L.A. Care under the Public Records Act (PRA), Gov. Code § 6250 *et seq.* The letter requested copies of "the complete L.A. Care IPA Performance Report Cards developed for the "LA Care Value Initiative for IPA Performance' for each of the IPAs, medical groups, or other provider organizations . . . for every year since the launch of the LA Care IPA Performance Report Cards. . . ." A copy of the request is attached as Exhibit A.

30. The request asked L.A. Care to produce the Scorecards for each individual provider organization with whom L.A. Care or one of its plan partners contracts. The request included, in bold lettering, that the names of the provider organizations be included in the records produced.

31. This lawsuit does not seek the names or performance data of any individual health care providers, nor payment information for any provider or patient. Instead, it seeks performance data aggregated by provider organization.

32. By letter dated July 30, 2021, Plaintiffs made a second PRA request, this time for documents between LA Care and provider organizations related to the Report Cards, documents

[9] https://www.lacare.org/sites/default/files/la2812_qi_program_202004.pdf/at 86.

referring to distribution of the scorecards, and documents referring to the sharing of the scorecards with any public official. A copy of this second request is attached as Exhibit B.

33. Plaintiffs requested this information to improve transparency in health care for low-income residents in Los Angeles.

34. The Scorecards compiled by L.A. Care would provide invaluable information for Medi-Cal patients to enable them knowledgably to choose their providers. They will also assist public officials who oversee L.A. Care to ensure that taxpayer dollars are being wisely spent in keeping with benchmark health care quality standards.

35. In addition, Plaintiffs planned to use the Scorecard information to build an interactive, web-based application to help patients decide where to seek care.

36. Given how poorly L.A. Care has performed recently, as detailed by the state regulators who imposed the unprecedented penalties, the Scorecards could also help watchdogs, advocates, patients, policymakers, and others understand which provider organizations to avoid and conversely, which performed adequately or well.

37. L.A. Care responded to Plaintiffs' July 28 request on September 8, 2021 and provided a link to the 2015 and 2016 Scorecards, but with each provider organization name redacted.

38. L.A. Care provided an additional response on September 22, 2021, and provided a link to the 2017 Scorecards, but again, with each provider organization name redacted.

39. L.A. Care provided an additional response to Plaintiffs' July 28 request on October 6, 2021, and provided a link to the 2018 Scorecards, but again, with each provider organization name redacted.

40. L.A. Care provided an additional response to Plaintiffs' July 28 request on October 20, 2021, and provided a link to the 2019 Scorecards, but again, with each provider organization name redacted.

41. Because the September 22, October 6, and October 20, 2021 responses are identical to the September 8, 2021 response in all respects except for providing links to different years' redacted Scorecards, plaintiffs attach only the September 8 response here. A copy of that September 8, 2021 response is attached as Exhibit C.

42. Without provider organization names, the Scorecards are useless to Plaintiffs.

43. Without provider organization names, Plaintiffs and Medi-Cal consumers have no way of knowing which of L.A. Care's provider organizations performed well or poorly on measures that indicate provider quality.

44. Without provider organization names, Plaintiffs and Medi-Cal consumers have no way of knowing which L.A. Care provider organizations proved to be persistent low performers or high performers over time because it is impossible to compare performance of the same provider organization over multiple years.

45. Without provider organization names, Plaintiff CHJ cannot create its planned interactive application for consumers.

46. By withholding the names, L.A. Care violates Plaintiffs' right to information under the PRA, and Plaintiff is therefore entitled to compelled disclosure of the unredacted Scorecards.

47. In each of its letters providing links to the redacted Scorecards, L.A. Care cited five exemptions under the PRA to justify nondisclosure: **(1)** the peer review privileged records exemption under Welfare & Institutions Code (WIC) §§ 14087.38(o) and (q), Evidence Code § 1157, and/or Health & Safety Code § 1370; **(2)** the trade secrets exemption under WIC § 14087.38(n)(2); **(3)** the rates of payment exemption under WIC 14087.38(p); **(4)** the official information exemption under Evidence Code § 1040; and **(5)** the public interest exemption pursuant to Government Code § 6255. All exemptions except (5), the public interest exemption,

are incorporated into the PRA through Government Code § 6254(k). None of the exemptions, however, apply to the Scorecards.

48. The peer review exceptions does not apply because the Scorecards are not peer review records.

49. The health authority trade secrets exemption does not apply because neither the provider organization names nor the Scorecards are trade secrets, nor do they meet the additional requirements of a "health authority" trade secret.

50. The rates of payment exemption does not apply because the Scorecards reveal nothing about the provider rates of payment.

51. The official information exemption does not apply because neither the group names nor the Scorecards were acquired in confidence, and are therefore not official information. The exemption also requires a showing that the public interest weighs in favor of nondisclosure, which it clearly does not here.

52. The public interest exemption does not apply, because it is in the public interest for the public to know how government money is being spent and in Medi-Cal patients' interest for them to have information about the quality of their health care.

53. L.A. Care has provided no formal response to Plaintiffs' July 30 request for documents discussing the distribution or sharing of the Scorecards.

FIRST CLAIM FOR RELIEF

Violation of the California Public Records Act (Gov. Code § 6250 *et seq.*)

54. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 53.

55. Government Code § 6253(b) provides that, "[e]xcept with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request

for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication."

56. Defendant has violated Plaintiffs' fundamental and necessary right to access information concerning the conduct of the people's business, as guaranteed by the PRA, Gov. Code § 6250 *et seq*., by refusing to disclose requested public records about the quality of its health care providers.

57. The exemptions on which Defendant relies in refusing to produce public records are inapplicable to this request and do not justify withholding the requested records.

SECOND CLAIM FOR RELIEF

Writ of Mandamus (Code of Civ. Proc. § 1085)

58. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 53.

59. Defendant has a ministerial duty to comply with the PRA, Gov. Code § 6250 *et seq.*, and produce nonexempt records in its possession pursuant to a valid PRA request.

60. Defendant has not fulfilled this duty.

61. Plaintiffs are beneficially interested in the faithful execution of Defendant's duty and have no other adequate, plain, or speedy remedy to obtain Defendant's compliance other than the relief sought by this Complaint. Plaintiffs are therefore entitled, under Code of Civ. Proc. § 1085, to a writ of mandamus that directs Defendant to produce the records.

THIRD CLAIM FOR RELIEF

Declaratory Relief (Code of Civ. Proc. § 1060)

62. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 53.

63. An actual and continuing controversy exists between Plaintiffs and Defendant, in that Plaintiffs contend that they have a right under the PRA, Gov. Code § 6250 *et seq.*, to full disclosure of the requested public records, while Defendants, on information and belief, deny any such right.

64. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain their right to public records. Plaintiffs are therefore entitled to a declaration of their rights under Code of Civil Procedure § 1060.

65. Plaintiffs seek a judgment declaring that Plaintiffs are entitled to the requested records under PRA, Gov. Code § 6250 *et seq.*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs USC Center for Health Journalism and USC Center for Health Financing, Policy and Management pray for the following relief:

A. An order declaring that Defendant L.A. Care has violated the law by withholding records responsive to Plaintiffs' request, and that Plaintiffs are entitled to the requested records;

B. An order granting a writ of mandate and compelling Defendant to promptly disclose all public records responsive to Plaintiffs' July 28, 2021 and July 30, 2021 Public Records Act requests;

C. A permanent injunction prohibiting Defendant from withholding the unredacted Scorecards;

D. An award of reasonable attorney's fees incurred in this matter pursuant to Gov. Code § 6259;

E. An award of the costs of suit;

F. Such other and further relief as the Court deems just and proper.

Dated: April 19, 2022

By: _____

Clare Pastore
Counsel for Plaintiffs

By: _____
Abigail Coursolle
Counsel for Plaintiffs

VERIFICATION

I, Michelle Levander, on behalf of the USC Center for Health Journalism, have read the foregoing Complaint and Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of April, 2022, at Los Angeles, California.

_____

Michelle Levander

I, Glenn Melnick, on behalf of the USC Center for Health Financing, Policy, and Management, have read the foregoing Complaint and Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of April, 2022, at Los Angeles, California.

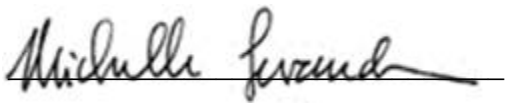
Glenn Melnick

VERIFICATION

I, Michelle Levander, on behalf of the USC Center for Health Journalism, have read the foregoing Complaint and Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of April, 2022, at Los Angeles, California.



Michelle Levander

I, Glenn Melnick, on behalf of the USC Center for Health Financing, Policy, and Management, have read the foregoing Complaint and Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of April, 2022, at Los Angeles, California.

_____

Glenn Melnick