August 31, 2022

Dear Hospital CEO:

I write today regarding our shared interest in ensuring that California healthcare consumers are able to access medical services that meet their needs, and are not disproportionately limited by race or other protected characteristics. To that end, the Office of the Attorney General seeks to ascertain how healthcare facilities and other providers are addressing racial and ethnic disparities in commercial decision-making tools and algorithms.

While there are many factors that contribute to disparities in healthcare access, quality, and outcomes, research suggests that bias in decision-making tools or algorithms is likely a contributor. Bias may be introduced to such tools in a number of ways. For example, the data used to construct the tool may not accurately represent the patient population to which the tool is applied. Or tools may be trained to predict outcomes (e.g., healthcare costs) that are not the same as their objectives (e.g., healthcare needs). Whatever the cause, decision-making tools perpetuate unfair bias if they systematically afford increased access for white patients relative to patients with comparable needs who are Black, Latino, or members of other historically disadvantaged groups.

The California Attorney General's Office is committed to addressing disparities in healthcare and assuring compliance with state non-discrimination laws in hospitals and other healthcare settings, including but not limited to Government Code section 11135, Health & Safety Code section 1317, Civil Code section 51 et seq., and Business & Professions Code section 17200 et seq., as well as related federal laws. To that end, we request information about the decision-making tools used in your hospital that could be contributing to racially biased treatment or outcomes. Specifically, please provide:

- A list of all commercially available or purchased decision-making tools, products, software systems, or algorithmic methodologies currently in use in your hospital that assist or contribute to the performance of any of the following functions:

- o clinical decision support, including clinical risk prediction, screening, diagnosis, prioritization, and triage;

- o population health management, care management, and utilization management;

- o operational optimization, e.g., office or operating room scheduling; or

- o payment management, including risk assessment and classification, billing and coding practices, prior authorization, and approvals.

- The purposes for which these tools are currently used, how these tools inform decisions, and any policies, procedures, training, or protocols that apply to use of these tools in your facilities.

- The name or contact information of the person(s) responsible for evaluating the purpose and use of these tools and ensuring that they do not have a disparate impact based on race or other protected characteristics.

My office is conducting investigations related to this information request, which may require access to documents and data in the possession or control of [hospital]. Those documents may be requested through an investigative subpoena under Government Code sections 11180-11189. We therefore further request that you take immediate action to preserve documents and electronic files relating to this information request.

All information provided to our office will be treated as confidential in accordance with California Government Code section 11180 et seq. Please provide the requested information and documents to Deputy Attorney General Anna Rich at Anna.Rich@doj.ca.gov, or 1515 Clay St., 20th Floor, Oakland, CA, 94612, by October 15, 2022. We thank you in advance for your cooperation.

Sincerely,

ROB BONTA
Attorney General