



C A L I F O R N I A

DEPARTMENT OF JUSTICE

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June 26, 2024

Christine S. Wheatley
Group Vice President, Secretary, and General Counsel
The Kroger Co.



VIA PRIORITY MAIL AND EMAIL

RE: PRIVACY PRACTICES INVOLVING PATIENT DATA

Dear Ms. Wheatley:

I am writing to remind The Kroger Co. (“Kroger”) of its obligation under California law to protect medical information, especially reproductive health and other sensitive medical information. It was recently publicly reported that several pharmacies, including those operated by Kroger, have been providing patient medical information to law enforcement without a warrant.¹ Such disclosures, if they occurred in California or involved California patient data, may violate California health privacy laws.

The California Confidentiality of Medical Information Act (CMIA) and the California Constitution protect the privacy of Californians with respect to their medical information, especially their reproductive and other sensitive healthcare information. (Civ. Code, § 56.10 et seq.; Cal. Const., Art. I, Sec. 1.) CMIA prohibits pharmacies from disclosing patient medical information without patient authorization, unless a specified exception applies. (Civ. Code, §§ 56.10, 56.102, subd. (b).) CMIA allows disclosure of patient medical information to law enforcement without patient authorization pursuant to “[a] search warrant lawfully issued to a governmental law enforcement agency.” (Civ. Code, § 56.10, subd. (b)(6).) No exception allows for disclosure pursuant to a subpoena. In addition, the California Constitution protects the right to privacy with respect to health information. (Art. I, Sec. 1; Art. I, Sec. 1.1; *White v. Davis*

¹ Letter from the Senate Fin. Comm. to Sec’y of Health & Hum. Services Xavier Becerra (Dec. 12, 2023) (https://www.finance.senate.gov/imo/media/doc/hhs_pharmacy_surveillance_letter_signed.pdf).

(1975) 13 Cal.3d 757, 773-74 [“fundamental to our privacy is the ability to control circulation of personal information”].) Unlike the United States Constitution, the California Constitution’s guarantee of individual rights “creates a right of action against private actors.” (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1, 20).

I am also writing to remind Kroger of its legal obligations under Assembly Bill 352 (2023) (Bauer-Kahan). Specifically, AB 352 prohibits pharmacies from knowingly disclosing, transmitting, transferring, sharing, or granting access to “medical information in an electronic health records system or through a health information exchange that would identify an individual and that is related to an individual seeking, obtaining, providing, supporting, or aiding in the performance of an abortion that is lawful under” California law to anyone from another state, unless authorized pursuant to specified circumstances. (Civ. Code, § 56.110.) In addition, as of July 1, 2024, businesses, including pharmacies and those they contract with to store or maintain medical information related to sensitive services, are required to enable certain security features, including limiting user access privileges and segregating medical information related to gender-affirming care, abortion and abortion-related services, and contraception. (Civ. Code, § 56.101.) Pharmacies must ensure that they and the businesses they contract with for such services comply with these laws.

Please provide, by July 31, 2024, Kroger’s policies demonstrating that Kroger requires a warrant before providing medical information to law enforcement without patient authorization if the request occurs in California or involves California patient data. Please also provide, by July 31, 2024, Kroger’s policies, or those of its electronic health record (EHR) subcontractor(s), demonstrating compliance with the new requirements of AB 352.

Protecting the privacy of medical information, particularly reproductive and other sensitive healthcare information, is critically important. I appreciate your help in ensuring that Kroger has sufficiently protective policies and procedures in place to safeguard the medical information of California patients.

Sincerely,



SEAN C. McGUIRE
Deputy Attorney General

For ROB BONTA
Attorney General