



MICHELLE BAASS
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

March 4, 2022

John Baackes, CEO
L.A. Care
1055 West 7th Street 10th Floor
Los Angeles, CA 90017

Dear Mr. Baackes:

NOTICE OF INTENT TO IMPOSE MONETARY SANCTIONS FOR BREACH OF CONTRACT AND LEGAL VIOLATIONS

This letter serves as notice that due to L.A. Care Health Plan's (L.A. Care) failure to comply with its legal and contractual obligations, the Department of Health Care Services (DHCS) is imposing monetary sanctions in the amount of \$20 million pursuant to Welfare and Institutions Code section 14197.7.

L.A. Care's conduct subject to the sanctions amount identified above falls into the following categories:

- (1) Failure to timely resolve and/or send resolution letters in response to member grievances and appeals from January 1, 2019 to the present;
- (2) Failure to timely decide prior authorization (PA) requests and/or notify members and providers of PA decisions from January 1, 2019 to the present; and
- (3) Failure to ensure compliance on the part of subcontractor Los Angeles County Department of Health Services (LA DHS), as reflected in the September 14, 2021 Report on the Focused Compliance Audit of L.A. Care Health Plan for the audit period January 1, 2019 through December 31, 2020.

The effective date of the imposition of sanctions is April 4, 2022.

I. Grievances and Appeals

On May 28, 2021, L.A. Care sent DHCS's Contract Manager (CM) a letter stating that, "L.A. Care is writing to notify DHCS of a non-compliance matter involving management of appeals and grievance cases. In April 2021, the Plan determined based on a review period of 2017-2021 that certain resolution letters were not sent to members in appeals and grievance cases. The majority of the issues appear to have

occurred in 2020 and 2021.” DHCS followed up with L.A. Care over the next several days to ascertain the scale of the violations. Thereafter, on or about June 15, 2021, L.A. Care sent DHCS a letter stating the number of grievances and appeals without a resolution letter was 11,660 from 2018 through 2021. DHCS immediately requested weekly updates on the remediation efforts. On or about July 14, 2021, L.A. Care provided a Remediation Plan that included timelines to resolve the appeals and grievances issues.

On or about July 16, 2021, DHCS issued a Notice of Deficiency – Corrective Action Required (Notice of Deficiency), stating that DHCS found the timelines for remediation proposed by L.A. Care to be unacceptable. The Notice of Deficiency required L.A. Care to resolve pre-service expedited and standard appeals by August 1, 2021. It also required L.A. Care to resolve Priority 3 grievances (Expedited Pre-Service and Post-Service Grievances) and Priority 4 grievances (Standard Grievances) for specific categories (such as excessive long wait times, delay in referral, and denial of treatment or delayed referral to specialists) by September 1, 2021.

On August 16, 2021, L.A. Care submitted its Corrective Action Plan (CAP) to DHCS with a number of action items intended to resolve the backlog and continued delays related to grievances and appeals. Despite the CAP and direction from DHCS, on August 30, 2021, L.A. Care notified DHCS that it would not meet the September 1, 2021, deadline for processing the backlog of grievances.

On October 15, 2021, DHCS issued document requests to L.A. Care, to which L.A. Care responded on November 5, 2021. As part of its response, L.A. Care produced a spreadsheet dated October 29, 2021, that disclosed 41,446 instances in which L.A. Care failed to timely issue a resolution letter for a grievance or appeal since January 1, 2019. (L.A. Care's Response to DHCS Document Request No. 6). Out of this total, 1,609 were expedited appeals, 4,647 were standard appeals, 34,701 were standard grievances, and 489 were expedited grievances.

To date, L.A. Care continues to be noncompliant. In weekly updates, L.A. Care continues to report a backlog of unresolved grievances and appeals numbering in the thousands. On November 9, 2021, despite having been providing weekly updates for weeks, L.A. Care reported an additional backlog of 8,722 cases that had been transmitted to the Appeals and Grievance department (A&G), but had not been initiated, classified, or reported to DHCS due to intake processing errors. As of December 20, 2021, L.A. Care's weekly reporting regarding its outstanding backlog of grievances and appeals appeared to total 14,416, including the additional cases disclosed to DHCS by L.A. Care on November 9, 2021. As of February 28, 2022, L.A. Care's backlog of noncompliant grievances and appeals cases is 1,656.

L.A. Care's failure to timely resolve grievances and appeals and send resolution letters to members violates both federal and state law. (42 Code of Federal Regulations

(CFR) §§ 438.228, 438.400-410; Health & Safety Code §§ 1368, 1368.01;¹ Welf. & Inst. Code § 14197.3; 28 Code of California Regulations (CCR) §§ 1300.68, 1300.68.01.) L.A. Care is also in violation of the requirements set forth in the DHCS Contract, Exhibit A, Attachment 14, Member Grievance and Appeal System and All Plan Letter (APL) 17-006, Grievance and Appeal Requirements and Revised Notice Templates and “Your Rights” Attachments.

Moreover, L.A. Care’s late resolution of grievances and appeals has the potential to cause serious harm to members. Indeed, L.A. Care’s response to Document Request No. 31 revealed that at least three members out of the 22 cases reviewed suffered detrimental health impacts resulting from appeal delays or mishandling. Given the extent of L.A. Care’s failure to timely resolve grievances and appeals, the number of members harmed is surely much higher.

In determining appropriate monetary sanctions pursuant to Welfare and Inst. Code section 14197.7(e), DHCS has considered the following facts. Without limitation, DHCS finds that since January 1, 2019, L.A. Care has failed to timely resolve or timely issue a resolution letter as to grievances and appeals as set forth above, failed to adequately fund or staff its Utilization Management Department, failed to properly train staff and temporary staff, failed to comply with CAPs regarding the processing of backlogged grievances and appeals, failed to take appropriate steps to mitigate member harm, and failed to accurately and fully disclose the full extent of its processing backlog and past violations. Although L.A. Care has cooperated in DHCS’s investigation, the scope and breadth of L.A. Care’s violations, and L.A. Care’s prolonged inability to take effective corrective action to address the backlog and ensure that similar violations will not recur, are indicative of willfulness and bad faith.

II. Prior Authorization

On June 9, 2021, DHCS received notice from a hospital facility of inpatient authorizations that L.A. Care had not timely processed. DHCS staff contacted L.A. Care on June 10th regarding the processing delays and requested additional information regarding total volume of backlogged prior authorizations. In a letter dated June 22, 2021, L.A. Care reported 1) Number of Untimely Inpatient Authorizations, including Concurrent Requests to be 4,726 and 2) Number of Untimely Pre-Service and Retrospective Authorization Requests to be 3,791; totaling 8,517 untimely authorizations from April 6, 2021 through June 17, 2021. L.A. Care reported a total of 3,773 cases delinquent for 8 to 30 days and a total of 3,105 cases delinquent for more than 30 days for Medi-Cal and Cal MediConnect members.

L.A. Care began required daily reporting to DHCS (five days a week) beginning July 2, 2021. By July 12, 2021, L.A. Care reported it had made progress in addressing the prior authorization backlog. Thereafter, DHCS discontinued the daily reporting

¹ The Contract between L.A. Care and DHCS requires L.A. Care to comply with various Health and Safety Code sections and DMHC regulations, including Health & Safety Code §§ 1368 and 1368.01, as well as Title 28 of the Code of California Regulations (CCR), §§ 1300.68 and 1300.68.01.

requirement and began requiring weekly reporting beginning July 26, 2021, to ensure that L.A. Care continued to make progress on the prior authorization backlog. As of its report on September 27, 2021, L.A. Care appeared to have cleared its backlog, but there have been subsequent fluctuations in delayed prior authorizations reports. For example, as of October 4, 2021, L.A. Care reported seven new non-compliant cases. As of December 13, 2021, L.A. Care reported a backlog of nine non-compliant prior authorizations.

In addition to L.A. Care's disclosure of backlogged prior authorization requests described above, L.A. Care produced two Excel spreadsheets dated November 3, 2021 in response to Document Request Number 1 of the DHCS Document Requests. In a spreadsheet titled, Request 1 Impacted Members 2019-2020, L.A. Care identified 92,854 instances in which prior authorization requests were not processed timely due to delay in decision and/or notification from January 1, 2019 through October 13, 2021 (timeliness) (Column AJ).

L.A. Care's failure to timely process prior authorization requests and/or notify providers and members violates both federal and state law. (42 CFR §§ 438.210; 438.404; Health and Safety Code § 1367.01; and 28 CCR § 1300.67.2.2). L.A. Care is also in violation of the requirements set forth in the DHCS Contract, Exhibit A, Attachment 5, Utilization Management, at Section 2, Prior Authorization and Review Procedures and All Plan Letter (APL) 17-006 Grievance and Appeal Requirements and Revised Notice Templates and "Your Rights" Attachments.

Further, late resolution and/or notification of prior authorizations has the potential to cause serious harm to members, including substantial delay, or failure, with respect to the receipt of medically necessary services. Examples of member harm, including 105 cases and 98 members who incurred out of pocket costs for health care that L.A. Care should have covered from January 1, 2019 to the present, were disclosed in L.A. Care's response to the DHCS Document Requests. (Response to Document Request No. 16).

In determining appropriate monetary sanctions pursuant to Welfare and Inst. Code section 14197.7(e), DHCS has considered the following facts. Without limitation, DHCS finds that L.A. Care has failed to timely process prior authorization requests as set forth above, failed to adequately fund or staff its Utilization Management Department, failed to properly train staff and temporary staff, failed to develop adequate systems for timely responding to prior authorizations, failed to take appropriate steps to mitigate member harm, and failed to accurately and fully disclose the full extent of its prior authorization processing backlog and past violations. Although L.A. Care has cooperated in DHCS's investigation, the scope and breadth of L.A. Care's violations, as well as the prolonged timeframe over which these violations have occurred, and the fact that new violations continue to occur, are indicative of willfulness and bad faith.

III. Oversight of LA County Department of Health Services (LA DHS)

On September 30, 2020, the Los Angeles Times published an article highlighting LA DHS members who were harmed or died as a result of not getting a timely

appointment with a specialist. (Jack Dolan and Brittny Mejia, L.A.'s Poorest Patients Endure Long Delays to See Medical Specialists. Some Die Waiting, L.A. Times, Sept. 30, 2020). In response to the Times investigation, DHCS initiated a focused audit of L.A. Care's oversight over LA DHS. On September 14, 2021, DHCS Audits and Investigations Division (A&I) issued its Report on the Focused Compliance Audit of L.A. Care Health Plan for the audit period January 1, 2019 through December 31, 2020. The audit identified compliance violations with respect to L.A. Care's oversight of LA DHS in the following areas:

(1) Quality Of Care (QOC). The audit found that L.A. Care failed to take effective action to ensure Quality of Care (QOC) improvements when Potential Quality of Care Issues (PQI) case files demonstrated quality problems, and that L.A. Care failed to determine the PQI case file severity level, refer cases to the Medical Director and PRC, and develop appropriate CAPs as to LA DHS's delays in providing specialty care. Out of a sample of 10 case files, A&I found that L.A. Care failed to take effective corrective action with respect to LA DHS to ensure QOC improvements were implemented when 5 of these case files showed quality problems involving harm to members, in violation of L.A. Care's contract with the Department at Exhibit A, Attachment 4, Provisions 1 and 6. In addition to these findings, DHCS separately finds that each of the 5 case files summarized in the audit evidence violations of 28 CCR § 1300.67.2.2(c) regarding timely access standards, incorporated into the DHCS Contract at Exhibit A, Attachment 9, Provisions 1-4.

(2) Corrective Action Process. In its 2019 Final Annual Audit Report, L.A. Care found that LA DHS was out of compliance in the areas of cultural and linguistic services, information security, privacy, provider network, and utilization management (UM). L.A. Care imposed a CAP on LA DHS. LA DHS responded to the CAP on November 25, 2020. L.A. Care failed to monitor, evaluate, follow-up, and confirm LA DHS's progress or completion of the CAP. L.A. Care's failure to timely monitor and follow through on completion of its CAP has the potential to cause serious member harm in all areas of LA DHS's identified deficiencies. L.A. Care's failure to ensure the compliance of its subcontractor, LA DHS, with all contractual requirements, compounded by L.A. Care's failure to adequately follow through on its CAP after identifying LA DHS's non-compliance in multiple areas, violates the DHCS Contract, Exhibit A, Attachment 4, Provision 6 and Managed Care APL 17-004, Subcontractual Relationships and Delegation.

(3) Access and Availability of Care. The audit found that L.A. Care failed to ensure LA DHS provided timely access to care in compliance with 28 CCR section 1300.67.2.2, and failed to impose prompt corrective actions to bring LA DHS into compliance, in violation of the DHCS Contract, Exhibit A, Attachment 9, Provision 3 and APL 17-004, Subcontractual Relationships and Delegation. L.A. Care conducted a Provider Appointment Availability Survey (PAAS) and Provider After-Hour Access Study (PAHS) for Measured Year 2018 on LA DHS. Based on the PAAS results, LA DHS did not meet the performance goals for 10 out of the 15 measures for appointment availability. L.A. Care failed to request a root cause

analysis for LA DHS's failure to perform. Separately, LA DHS did not meet the performance goals for one of the two measures based on the PAHS results. L.A. Care requested a root cause analysis, but failed to follow up to bring LA DHS into compliance. These two separate violations of L.A. Care's obligation to ensure LA DHS's compliance entailed a serious risk of harm for LA DHS members.

(4) Grievance Notifications. The audit found that L.A. Care failed to monitor its grievance process to ensure that grievances brought by LA DHS members were timely resolved and the appropriate notifications timely sent. This failure to monitor constitutes a violation of 22 CCR section 53858. The DHCS Contract – as well as state and federal law – also requires that the Plan have procedures to ensure timely acknowledgment, resolution, and feedback to the complainant. (Contract, Exhibit A, Attachment 14, Provisions 1, 2). A&I conducted a sample verification study of 26 files to determine whether LA DHS member grievances were timely resolved. All 26 files sampled showed a failure to comply with the 30-day statutory deadline. A&I found that “[t]he average age of these grievance notifications was 242 days.” L.A. Care’s failure to timely resolve grievances and appeals and send resolution letters to members violates both federal and state law. (42 CFR §§ 438.228, 438.400-410; Health & Safety Code §§ 1368, 1368.01; Welf. & Inst. Code § 14197.3; 28 CCR §§ 1300.68, 1300.68.01.) L.A. Care is also in violation of the requirements set forth in the DHCS Contract, Exhibit A, Attachment 14, Member Grievance and Appeal System and APL 17-006, Grievance and Appeal Requirements and Revised Notice Templates and “Your Rights” Attachments.

In determining appropriate monetary sanctions pursuant to Welfare and Inst. Code section 14197.7(e), DHCS has considered the following facts. Without limitation, DHCS finds that L.A. Care's non-compliance in the above identified areas is deeply rooted and systemic, presenting a threat to the health and safety of LA DHS members. DHCS finds that L.A. Care knew or should have known of LA DHS's violations. L.A. Care's failure to monitor and ensure compliance on the part of LA DHS, including its failure to appropriately investigate quality of care issues, as well as its failure to issue and/or enforce CAPs, is indicative of willfulness and bad faith.

IV. DHCS Will Impose a Monetary Sanction of \$20 Million

A. L.A. Care’s Violations Support a High Monetary Penalty

DHCS finds that L.A. Care's violations, as described in every category of this letter, implicate several statutory factors that support a high monetary penalty against L.A. Care, including: the nature, scope and gravity of the violations and potential for member harm, L.A. Care's willfulness and bad faith, L.A. Care's history of violations, the fact that these violations are not isolated incidents, L.A. Care's failure to take steps to mitigate member harm and injury, L.A. Care's prolonged failure to take effective corrective action, and the amount of the penalty necessary to deter similar violations in the future. (Welf. & Inst. Code § 14197.7(g)(1),(2),(3),(4),(6),(7),(10), and (11)).

B. Discounting Factor

Based on the sheer number of L.A. Care's violations, as enumerated in all of the above-described categories, DHCS has applied a discounting factor in determining its sanctions amount on the basis of section 14197(g)(8), which permits DHCS to consider "[t]he financial status of the contractor, including whether the sanction will affect the ability of the contractor to come into compliance."

Accordingly, DHCS will impose the monetary sanction of \$20 million for the violations detailed above.

DHCS may impose additional monetary sanctions for L.A. Care's continued noncompliance in any of the above categories.

On February 3, 2022, DHCS issued its Annual Medical Audit Report for L.A. Care that generally supports the findings in the September 14, 2021, Focused Audit Report, and found systemic violations similar to those set forth in detail in this letter. Additionally, we note that L.A. Care has several other outstanding issues that DHCS is currently evaluating. This includes, but is not limited to:

- (1) Corrective action plans related to Cal MediConnect enrollment that both DHCS and the Centers for Medicare and Medicaid Services (CMS) are monitoring and enforcing;s
- (2) Transportation concerns related to access and quality of care issues including oversight of nonmedical transportation (NMT) vendors; and
- (3) L.A. Care's failure to timely report service and utilization information to DHCS in response to requests relating to third party liability (TPL) tort claims.²

This Notice does not impose sanctions for these items, and DHCS reserves all rights to impose additional sanctions against L.A. Care for these and other current violations not addressed in this Notice in the future. Additional sanctions could include, but are not limited to, monetary penalties or, for continued egregious behavior, the imposition of temporary management. (Welf. & Inst. Code § 14197(d); see also 42 CFR §§ 438.702 and 438.706.).

Consistent with Welfare and Inst. Code section 14197.7(h), you may request DHCS to meet and confer to discuss the information and evidence that may impact DHCS's final decision to impose sanctions. For example, in coordination with the Department of Managed Health Care (DMHC), these meet and confer discussions could include L.A. Care accepting the installation of an independent monitor to monitor the activities of the

² L.A. Care is required to submit service and utilization information to DHCS within 30 days of DHCS' request. (See APL 21-007.) As of February 2, 2022, L.A. Care had a backlog of **4,489** outstanding TPL requests where L.A. Care has not submitted requested service and utilization information. Of these outstanding TPL requests, 1,465 have been pending for over 60 days, 870 have pending for over 90 days, and 73 have been pending for over 120 days. L.A. Care's failures to respond to TPL requests are rapidly escalating, as 2,254 requests were added to the backlog between January 25 and February 2. DHCS reserves all rights to impose sanctions in the future for these deficiencies.

Executive and Management staff to ensure that appropriate corrective action plans are developed and executed in timeframes approved by DHCS.

If you have any questions, please contact me at susan.philip@dhcs.ca.gov.

Sincerely,

Original signed by:

Susan Philip
Deputy Director, Health Care Delivery Systems
Department of Health Care Services

Enclosure – Notice of Hearing Rights

cc: Michelle Baass, Director
Department of Health Care Services

Jacey Cooper, Chief Deputy Director and State Medicaid Director
Department of Health Care Services

Erika Sperbeck, Chief Deputy Director
Department of Health Care Services

John M. Puente, Deputy Director and Chief Counsel
Department of Health Care Services

Bruce Lim, Deputy Director
Audits and Investigations
Department of Health Care Services

Bambi Cisneros, Assistant Deputy Director
Health Care Delivery Systems
Department of Health Care Services

Michelle Retke, Chief, Managed Care Operations Division
Health Care Delivery Systems
Department of Health Care Services

Dana Durham, Chief, Managed Care Quality and Monitoring Division
Health Care Delivery Systems
Department of Health Care Services

NOTICE OF HEARING RIGHTS

L.A. Care Health Plan (L.A. Care) has the right to request a hearing in connection with any sanctions within 15 business days after receipt of the notice to impose sanctions. DHCS will stay the imposition of sanctions upon receipt of the request for a hearing until the effective date of a final decision from the Office of Administrative Hearings and Appeals. (Welf. & Inst. Code § 14197.7(l).) L.A. Care may request a hearing by sending a letter so stating to the Office of Administrative Hearings and Appeals at the address below:

The Honorable Patricia Freeman
Chief Administrative Law Judge
Office of Administrative Hearings and Appeals
Department of Health Care Services
3831 N. Freeway Blvd., Suite 200
Sacramento, CA 95834

A copy of the hearing request shall also be sent to:

Dana Durham, Chief
Managed Care Quality and Monitoring Division
Department of Health Care Services
P.O. Box 997413, MS 4411
Sacramento CA 95899-7413

John Puente
Deputy Director and Chief Counsel
Department of Health Care Services
Office of Legal Services
P.O. Box 997413, MS 0010
Sacramento CA 95899-7413