

# United States Senate

WASHINGTON, DC 20510

March 2, 2020

Joseph R. Impicciche  
President and Chief Executive Officer  
Ascension  
101 South Hanley Rd., Suite 450  
St. Louis, MO 63105

Dear Mr. Impicciche:

We write regarding Ascension's partnership with Google, a collaboration—also known as Project Nightingale—that provides Google with the health records of tens of millions of Americans.<sup>1</sup> In November 2019, we sent a letter to Google requesting information about the partnership,<sup>2</sup> and in December 2019, we received a response.<sup>3</sup> As detailed below, this response offered details about the partnership. However, because Google's response did not answer a number of our questions pertaining to Ascension's involvement, we are requesting additional details from Ascension to help us better understand how Project Nightingale protects the sensitive health information of American patients.

In November 2019, the *Wall Street Journal* disclosed Project Nightingale, a business partnership that began in August 2018.<sup>4</sup> Under the partnership, Ascension—the second largest health systems provider in the United States—will reportedly rely on Google to manage the personal health information of roughly 50 million patients served in 2,600 medical outlets in 21 states, providing Google with access to health records in the process.<sup>5</sup> According to a report from *The Guardian*, employees of Ascension had raised concerns about the secrecy and security of the project,<sup>6</sup> and at least one individual involved in the project expressed concerns that patients were

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<sup>1</sup> Wall Street Journal, "Google's Secret 'Project Nightingale' Gathers Personal Health Data on Millions of Americans," Rob Copeland, November 11, 2019, <https://www.wsj.com/articles/google-s-secret-project-nightingale-gathers-personal-health-data-on-millions-of-americans-11573496790>.

<sup>2</sup> Letter from Senators Blumenthal, Warren, and Cassidy to Mr. Sundar Pichai, CEO, Google LLC, and Mr. Tariq Shaikat, President, Industry Products and Solutions, Google Cloud, Google LLC, November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.11.20%20-%20Google%20Ascension%20-%20Health%20Care%20-%20FINAL.pdf>.

<sup>3</sup> Letter from Dr. David Feinberg, Head of Google Health, Google LLC, to Senators Blumenthal, Warren, and Cassidy, December 6, 2019.

<sup>4</sup> Wall Street Journal, "Google's Secret 'Project Nightingale' Gathers Personal Health Data on Millions of Americans," Rob Copeland, November 11, 2019, <https://www.wsj.com/articles/google-s-secret-project-nightingale-gathers-personal-health-data-on-millions-of-americans-11573496790>.

<sup>5</sup> *Id.*

<sup>6</sup> The Guardian, "Google's secret cache of medical data includes names and full details of millions—whistleblower," Ed Pilkington, November 12, 2019, <https://www.theguardian.com/technology/2019/nov/12/google-medical-data-project-nightingale-secret-transfer-us-health-information>.

not provided adequate notice of the data sharing.<sup>7</sup> Alarmed by reports of the privacy and competition concerns associated with Project Nightingale, we wrote a letter to Google on November 19, 2019, requesting additional information from the company regarding its use and protection of personal data collected from Ascension.<sup>8</sup> Google responded on December 6, 2019.<sup>9</sup>

Though Google began its response by telling us that the company was “proud to provide more details on Google’s work supporting Ascension,” the response ultimately did not provide us with all of the information we asked for. Google, for example, did not provide us with a “full and complete list of patient-level information” that the company is receiving from Ascension, nor did it provide an exact number of health records that it had received under Project Nightingale. Instead, it stated that a number of inquiries were best answered by Ascension.<sup>10</sup>

It is critical that lawmakers receive comprehensive information about Project Nightingale, which serves as a case study of Google’s more extensive foray into electronic health records. According to recent reports, Google has “struck partnerships with some of the country’s largest hospital systems and most-renowned health-care providers,” allowing it to “view or analyze tens of millions of patient health records in at least three-quarters of U.S. states” in an effort to develop “a search tool, similar to its flagship search engine,” for health records.<sup>11</sup> While improving the sharing, accessibility, and searchability of health data for providers could almost certainly lead to improvements in care, the role of Google in developing such a tool warrants scrutiny. In 2017, Google’s handling of 1.6 million patient records in the United Kingdom was deemed legally “inappropriate” by regulators.<sup>12</sup> And according to the *Wall Street Journal*, “some potential [Google] partners” in the healthcare space “have been put off by...the company’s aggressive maneuvers to acquire data without providing enough information on how it would be used.”<sup>13</sup>

To help us better understand the nature of the partnership between Google and Ascension, we request answers to the following questions no later than March 23, 2020:

1. In our November 2019 letter to Google, we asked the company whether Ascension patients are provided notice of Google’s retention and use of electronic medical records.

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<sup>7</sup> The Guardian, “I’m the Google whistleblower. The medical data of millions of Americans is at risk,” November 14, 2019, Anonymous, <https://www.theguardian.com/commentisfree/2019/nov/14/im-the-google-whistleblower-the-medical-data-of-millions-of-americans-is-at-risk>.

<sup>8</sup> Letter from Senators Blumenthal, Warren, and Cassidy to Mr. Sundar Pichai, CEO, Google LLC, and Mr. Tariq Shaikat, President, Industry Products and Solutions, Google Cloud, Google LLC, November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.11.20%20-%20Google%20Ascension%20-%20Health%20Care%20-%20FINAL.pdf>.

<sup>9</sup> Letter from Dr. David Feinberg, Head of Google Health, Google LLC, to Senators Blumenthal, Warren, and Cassidy, December 6, 2019.

<sup>10</sup> *Id.*

<sup>11</sup> Wall Street Journal, “Inside Google’s Quest for Millions of Health Records,” Rob Copeland, Dana Mattioli, and Melanie Evans, January 11, 2020, <https://www.wsj.com/articles/paging-dr-google-how-the-tech-giant-is-laying-claim-to-health-data-11578719700>.

<sup>12</sup> The Guardian, “Google DeepMind 1.6m patient record deal ‘inappropriate,’” Alex Hern, May 16, 2017, <https://www.theguardian.com/technology/2017/may/16/google-deepmind-16m-patient-record-deal-inappropriate-data-guardian-royal-free>.

<sup>13</sup> Wall Street Journal, “Inside Google’s Quest for Millions of Health Records,” Rob Copeland, Dana Mattioli, and Melanie Evans, January 11, 2020, <https://www.wsj.com/articles/paging-dr-google-how-the-tech-giant-is-laying-claim-to-health-data-11578719700>.

Google responded that “providing notice to patients of uses and retention of [personal health information] by a covered entity and its business associates is the responsibility of the covered entity.”<sup>14</sup>

- a. Does Ascension provide advanced notice to patients of Google’s retention and use of electronic medical records? If so, how is such notice provided? If not, why not?
  - b. Does Ascension allow patients to opt out of data sharing, including potential research and medical studies, with Google? If not, why not?
2. In our November 2019 letter to Google, we requested information about which, and to what extent, Google employees have direct access to electronic medical records provided by Ascension. Google responded that only Google employees “specifically approved by Ascension” could access personal health information: “[b]efore Google employees can access Ascension medical record data...they must be individually approved by Ascension.”<sup>15</sup>
- a. How many Google employees has Ascension approved to access Ascension medical record data?
  - b. What factors does Ascension consider in approving Google employees to access Ascension medical record data? Under what conditions can these employees access Ascension data?
  - c. How does Ascension ensure that non-approved Google employees cannot access Ascension medical record data? Have any Google employees without explicit approval accessed Ascension medical record data during the course of Project Nightingale?
  - d. Has Ascension approved any third-parties besides Google and Ascension employees to access health records under Project Nightingale?
3. In our November 2019 letter to Google, we asked the company to provide “the full and complete list of patient-level information” that it was receiving from Ascension. Google stated that “Ascension will have insight into the details of the individual health records provided to Google.”<sup>16</sup> What is the full and complete list of patient-level information that Google is receiving from Ascension?
4. In our November 2019 letter, we asked Google how many individuals’ health records the company had received under Project Nightingale. Google stated that “Ascension will have insight into the number of individual health records provided to Google.”<sup>17</sup> How

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<sup>14</sup> Letter from Dr. David Feinberg, Head of Google Health, Google LLC, to Senators Blumenthal, Warren, and Cassidy, December 6, 2019, p. 3.

<sup>15</sup> *Id.*, p. 5.

<sup>16</sup> *Id.*, p. 6.

<sup>17</sup> *Id.*, p. 6.

many individuals' health records has Ascension provided Google under Project Nightingale?

5. Does Ascension currently have arrangements or plans to conduct research or medical studies based on patient health records in collaboration with Google?
6. In its response to our questions about how Google employees could use data obtained from Ascension, Google told us that "Google is required by its BAA [Business Associate Agreement] with Ascension to use [personal health information] only to provide services to Ascension and for purposes permitted or required by the BAA."<sup>18</sup> What specific services has Google provided to Ascension under Project Nightingale? What uses are permitted or required by the BAA? Will Google provide information to Ascension showing which test orders could be increased or decreased to maximize revenue?

In its December 2019 response, Google stated, "To our knowledge, there has not been a breach or attempted breach" of Project Nightingale "that would present a risk of any outside party obtaining access to" personal health information.<sup>19</sup> Is Ascension aware of any breach or attempted breach that would present a risk of any outside party obtaining access to personal health information?

Sincerely,



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Elizabeth Warren  
United States Senator



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Richard Blumenthal  
United States Senator



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Bill Cassidy, M.D.  
United States Senator

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<sup>18</sup> *Id.*, p. 4.

<sup>19</sup> *Id.*, p. 7.