
KAISER'S MENTAL HEALTH CARE CRISIS



NATIONAL UNION OF HEALTHCARE WORKERS



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Kaiser Permanente's mental health care crisis

Kaaiser Permanente is failing its mental health patients. In September 2014, after more than a year of stonewalling its patients and employees, Kaiser finally paid a \$4 million fine levied against it by state regulators because of the HMO's chronic, illegal, and too often tragic failures in mental health care.

Spurred by whistleblower complaints from Kaiser's own mental health clinicians, an investigation by the California Department of Managed Health Care (DMHC) found the HMO guilty of "serious" and "systemic" violations of California law that put mental health patients at risk. The result: In June 2013, the DMHC hit Kaiser with the second largest fine in the agency's history for forcing thousands of patients to endure illegally lengthy waits for care, falsifying patients' appointment records, and violating the California Mental Health Parity Act, which requires HMOs to provide psychiatric services that are on par with their primary health services.

Kaiser appealed, but faced with the prospect of a hearing during which patients and whistleblowers would have given public testimony regarding Kaiser's deficient care, the HMO's lawyers finally threw in the towel. The National Union of Healthcare Workers (NUHW), which represents 2,500 mental health professionals at more than 100 facilities throughout California, stands with the thousands of patients who have suffered as a result of Kaiser's violations in applauding the DMHC for holding Kaiser accountable. But Kaiser's mental health care crisis is only getting worse. Kaiser clinicians have provided the DMHC with ample evidence that Kaiser continues to delay

and deny care to its mental health patients, in violation of state and federal law, and that the crisis is intensifying as Kaiser adds hundreds of thousands of members to its rolls under the Affordable Care Act and the Medi-Cal carve-in.

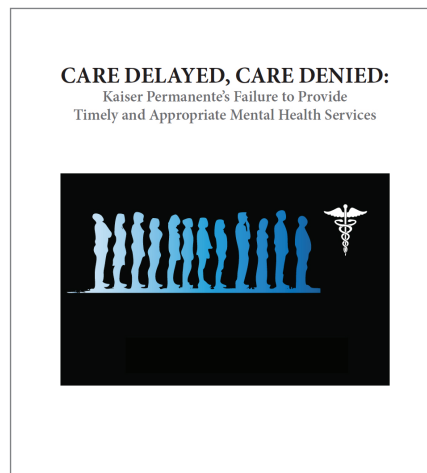
Kaiser simply does not staff its psychiatry departments with enough psychologists, therapists, and social workers to handle the caseload. And that caseload is growing rapidly. This year Kaiser's enrollment has increased by nearly 350,000 members in California under the Affordable Care Act, and

Kaiser's mental health services became responsible for an additional 97,000 patients as a result of the Medi-Cal carve-in. Withholding services while increasing membership is an effective way to score record profits — Kaiser has made more than \$14.5 billion since 2009, and this year's profits have shattered last year's record by 40 percent — but it has led to woefully inadequate care, as well as five class-action lawsuits filed by patients and families who say Kaiser's violations contributed to tragic outcomes, including suicides.

The parallels with the scandal that engulfed the Veterans Affairs Administration earlier this year are striking and prompted NUHW in June 2014 to call for a federal investigation into Kaiser's mental health services.

Meanwhile, Kaiser's violations continue. Data provided by Kaiser clinicians to the DMHC show that Kaiser is still understaffing its psychiatric services and in some cases instructing clinicians to falsify records to conceal long wait times for appointments. (See page three.)

The DMHC is expected to release a follow-up



Kaiser clinicians documented the HMO's mental health care crisis in a report, "Care Delayed, Care Denied," that prompted a DMHC investigation.

survey of Kaiser's mental health services in December. While the findings in that survey are not yet known, a hint was proffered in September by a DMHC official. At a mental health forum in Santa Rosa, Calif., hosted by Congressman Mike Thompson and Sonoma County Supervisor Shirlee Zane, during which Kaiser was blasted by patients who had suffered as a result of its inadequate psychiatric services, Sherrie Lowenstein, the DMHC's deputy director for legislative affairs, vowed, "We are not done with Kaiser."

Considering the severity of the violations, and considering the preponderance of evidence indicating that Kaiser continues to violate the law, NUHW members are prepared to strike if Kaiser does not take immediate action in bargaining sessions with its mental health clinicians to guarantee adequate staffing, timely care for its mental health patients, and sustainable working conditions for its clinicians.

Unless Kaiser fixes its broken mental health care system, Kaiser mental health patients will continue to endure illegal and unethical wait times for appointments; Kaiser enrollees in need of ongoing one-on-one therapy will be forced to seek care outside of Kaiser; and many patients in need of acute care will go untreated, sometimes with tragic consequences.

For more on Kaiser's mental health failures and the efforts of Kaiser clinicians to reform the HMO, see NUHW.org/Kaiser.

The crisis continues

The DMHC's investigative findings, cease-and-desist order, and \$4 million fine focus largely on timely initial access — first-time appointments for new patients. Though Kaiser vowed to fix the problems causing delays in initial access, it did not address the fundamental cause: understaffing.

Instead, Kaiser merely rearranged the deck chairs on the sinking ship, shifting resources from return access (treatment appointments) to initial access (diagnostic appointments). But shifting resources merely shifted the delays. With clinicians now required to prioritize first-time appointments at the expense of treatment appointments, new patients may find it easier to get into the system for a diagnostic session, but the wait times for second appointments, when the therapy process actually begins, have grown longer and longer. For patients struggling with depression, anxiety, or bi-polar disorder, a long wait for the commencement of care can be an insurmountable obstacle.

Today, more than two years after the DMHC first presented its findings to Kaiser in August 2012, clinicians at Kaiser clinics throughout California report wait times for return access that range from two weeks to two months or even longer. While some clinics report that initial access has improved, data show that some Kaiser clinics are still failing to provide timely diagnostic appointments.

Continuing violations of state and federal laws documented by Kaiser clinicians and submitted to the DMHC include the following:

- In April 2014, one of Kaiser's Southern California clinics required patients with acute conditions — including auditory hallucinations — to wait more than seven weeks for an appointment.
- In May 2014, Kaiser failed to provide timely routine mental health appointments to more than 60% of first-time adult patients seeking care at Kaiser's Oakland and Richmond facilities, according to

Wait times at Kaiser San Francisco

Status	Problem/Reason	Days since appointment initiated	Days lapsed before first attempt to contact patient	Number of attempts to contact patient
Appointment needed	Domestic violence	9	8	1
Appointment needed	Possible sexual assault	9	8	1
Appointment needed	Depression	8	8+	0
Appointment needed	Domestic violence	9	8	0

In September 2014, 83.1% of adult patients at Kaiser's San Francisco facility experienced wait times of ten days or more for first-time appointments, according to Kaiser's internal records. Additional records, shown above, indicate that Kaiser waited eight days to contact three separate enrollees for whom appointments were requested for "domestic violence" and "possible sexual assault." A patient requesting treatment for "depression" had yet to be contacted after eight days.

Oakland

	Total first-time patients	Patients not seen within 10 business days
April 2014	430	230 (57%)
May 2014	451	295 (65%)

Richmond

	Total first-time patients	Patients not seen within 10 business days
April 2014	184	54 (29%)
May 2014	171	104 (61%)

Routine staffing fluctuations caused a massive failure in Kaiser's Oakland and Richmond clinics in the spring of 2014. The two clinics failed to provide timely appointments for more than 60% of first-time adult patients in May, marking the low point of a long period of inadequate care. During the eight-month period between October 2013 and May 2014, these two facilities alone failed to provide timely mental health appointments to 1,141 patients in violation of California's timely access regulations.

data supplied by Kaiser. This was the low point of an eight-month period between October 2013 and May 2014 during which these two facilities alone failed to provide timely appointments to 1,141 patients.

- In July 2014, Kaiser instructed employees in at least one clinic to falsify appointment records rather than provide patients with urgent appointments within 48 hours, as mandated by state law.

- In August 2014, Kaiser's psychiatry department in San Francisco was so severely understaffed that dozens of patients' calls to the Triage Team languished in the voicemail system for more than a week before staff could even listen to them, let alone respond to them.

- As of September 2014, pediatric patients requiring neuropsychological testing waited 22 weeks before receiving a phone call from Kaiser's San Francisco psychiatry department to schedule an appointment, according to Kaiser's records.

- In September 2014, 83.1% of adult patients at Kaiser's San Francisco facility experienced wait times of ten days or more for first-time appointments, according to Kaiser's internal records. Additional records indicate that Kaiser waited eight days to contact three separate enrollees for whom appointments were requested for "domestic violence" and "possible sexual assault."

Enrollment rises, staffing stagnates, care declines

As a health plan, Kaiser is required to maintain adequate staffing of health providers to meet the needs of its enrollees. This means managing current staff, planning for attrition and unforeseen absences, accurately projecting enrollment increases, and staffing accordingly.

Huge enrollment increases

Throughout 2013, Kaiser Permanente ignored its clinicians' warnings that increased enrollment under the Affordable Care Act would exacerbate the delays in its mental health services. It urged increased staffing to handle the inevitable growth in caseload.

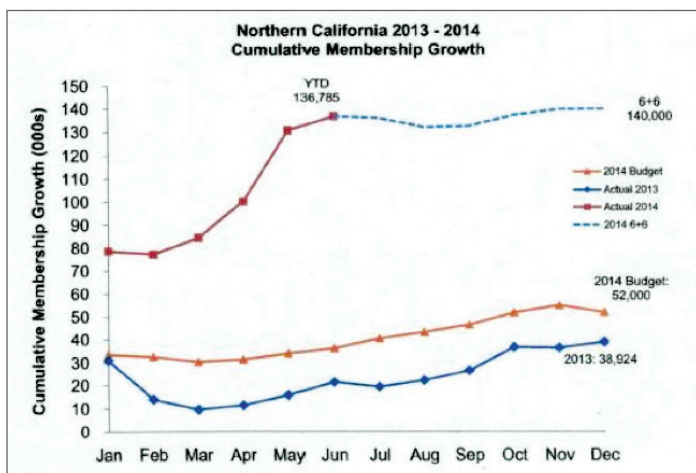
Kaiser's own data illustrate its dramatic failure to plan for this influx. In each quarter of 2014, Kaiser's projections for enrollment growth were way off the mark. By September, Kaiser had added 346,232

new enrollees to its California membership — a 4.9% increase — after projecting and budgeting for just 100,000 new enrollees.

In other words, Kaiser executives failed to plan for the largest piece of healthcare legislation in the past fifty years.

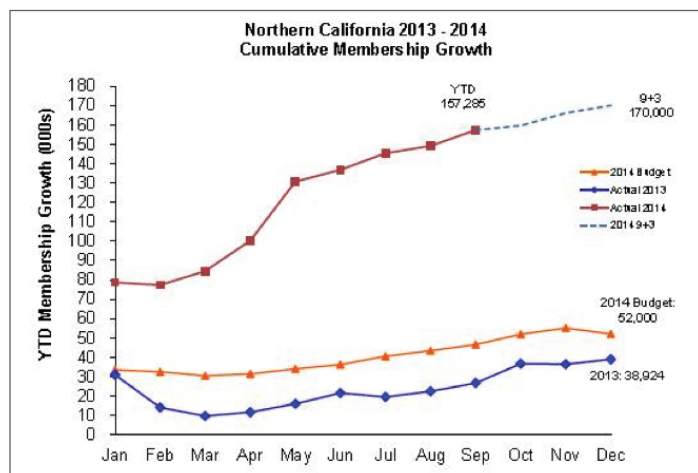
Another factor that Kaiser overlooked in its enrollment projections is the Medi-Cal carve-in. On January 1, 2014, Kaiser became responsible for providing outpatient mental health services and substance abuse disorder services for Kaiser enrollees whose care is reimbursed under the Medi-Cal program. Under state law, these services had formerly been "carved out" and provided by counties rather than by Kaiser. In 2014, however, California reversed that policy and required HMOs such as Kaiser to "carve in" these services, thereby adding 97,308 patients (as of September 30) for whom

Northern California, June 2014



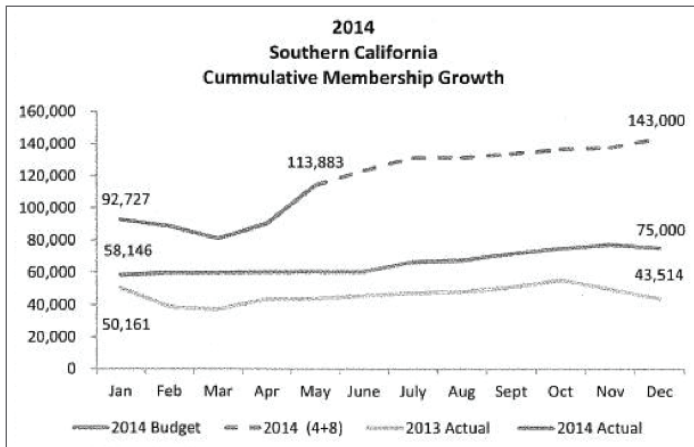
In Northern California, Kaiser's "actual" growth for the month of June 2014 exceeded its "budgeted" growth by more than 100,000 enrollees. At year's end, Kaiser estimated its "actual" growth will exceed its "budgeted" growth by approximately 90,000 enrollees.

Northern California, September 2014



In September 2014, Kaiser's updated membership figures for Northern California reported additional membership growth and a revised estimate of the plan's year-end membership, which exceeds its budgeted figure by 118,000 enrollees.

Southern California, May 2014



A similar pattern occurs in Southern California where, by year's end, Kaiser's "actual" enrollment growth is expected to exceed "budgeted" enrollment growth by nearly 70,000 enrollees.

Enrollment growth vs. staffing

	Total California enrollees receiving outpatient behavioral health services	In-house non-MD behavioral health providers (FTEs)
December 2013	7,055,016	2,148.2
June 2014	7,427,160	2,187.4
Increase	372,144	38.2
% Increase	5.3%	1.8%

This table provides a detailed review of the severe mismatch between Kaiser's enrollment growth and the growth of its non-M.D. mental health staff in California.

Kaiser's psychiatry departments became responsible for providing various outpatient mental health services.

Again, Kaiser ignored its clinicians' warnings that the Medi-Cal carve-in would not only increase the number of patients seeking mental health services, but would bring in more patients in need of acute care, further taxing already strained resources.

In an internal email dated October 24, 2013, Dr. Adam Travis, chief of psychiatry for Fremont and Union City, Calif., admitted that Kaiser was unprepared to deliver services to enrollees affected by the Medi-Cal carve-in:

"We currently have about 52,000 Medi-Cal KP members who have not been receiving outpatient MH [mental health] benefits at KP because those benefits had been carved out by their counties... Effective January 1, 2014, we must now provide outpatient MH benefits to these additional 52,000 members regionwide. TPMG [The Permanente Medical Group] Leadership recognizes that the medical centers that are internalizing the MH care for these members are not currently staffed to provide this care...."

Stagnant staffing levels

The DMHC's 2013 findings affirmed clinicians' claims that Kaiser's mental health services were failing due to low staffing levels. With huge enrollment increases in 2014 due to the Affordable Care Act and the Medi-Cal carve-in, the hole is getting deeper.

Throughout 2014, as Kaiser's California membership increased by 4.9%, far beyond its projections, Kaiser increased its staffing levels for mental health clinicians by just 1.8%. During the first six months of the year, Kaiser's California enrollment grew three times faster than the number of clinicians providing care in its behavioral health clinics. Kaiser simply isn't adding enough clinicians to keep pace with its current membership growth, let alone fix the huge historical staffing deficits that its clinics have suffered for years.

Kaiser also has failed to plan for the impending departure of a significant portion of its mental health workforce. Nearly 15% of Kaiser's in-house, non-M.D. behavioral health providers are over age 64 and thus eligible for retirement. Nearly 30% are over age 59, with retirement on the horizon.

In addition, Kaiser has failed to perform even basic workforce planning for its staff of mental health clinicians. At its Oakland and Richmond, Calif., facilities, for example, Kaiser reported that its massive

Kaiser mental clinicians eligible for retirement

	Southern California clinicians*	% of all clinicians	Northern California clinicians**	% of all clinicians	Northern and Southern California clinicians	% of all clinicians
All clinicians	1,164	100%	1,320	100%	2,484	100%
Clinicians over age 64	236	20.3%	131	9.9%	368	14.8%
Clinicians over age 59	435	37.4%	295	22.4%	730	29.3%

Source: Kaiser Permanente, Workforce Data supplied to NUHW, 2012 and 2014.

* Figures reflect provider demographics as of December 2012. Subsequently, Kaiser ceased including providers' age among the workforce data that it provides to NUHW.

** Figures reflect provider demographics as of October 2014.

failure in May 2014 to provide timely access to more than 60% of first-time adult patients — more than 1,300 enrollees — was caused by the retirement of one clinician, the transfer of a second, and medical leave required by a third. In other words, Kaiser's inability to absorb routine fluctuations in staffing forced hundreds of patients to endure lengthy, illegal delays of mental health services.

Under California law, Kaiser is responsible for monitoring and expanding its provider network in

accordance with its membership growth. Kaiser has failed to adequately staff its mental health services; to project or plan for enrollment growth under the Affordable Care Act and the Medi-Cal carve-in; to manage routine fluctuations in staffing; to prepare for the retirement of 15% of its clinicians; and to aggressively hire new clinicians. These failures have gravely impaired its psychiatric services and negatively impacted the lives of thousands of Kaiser's most vulnerable members.

Record profits, hard-line bargaining tactics

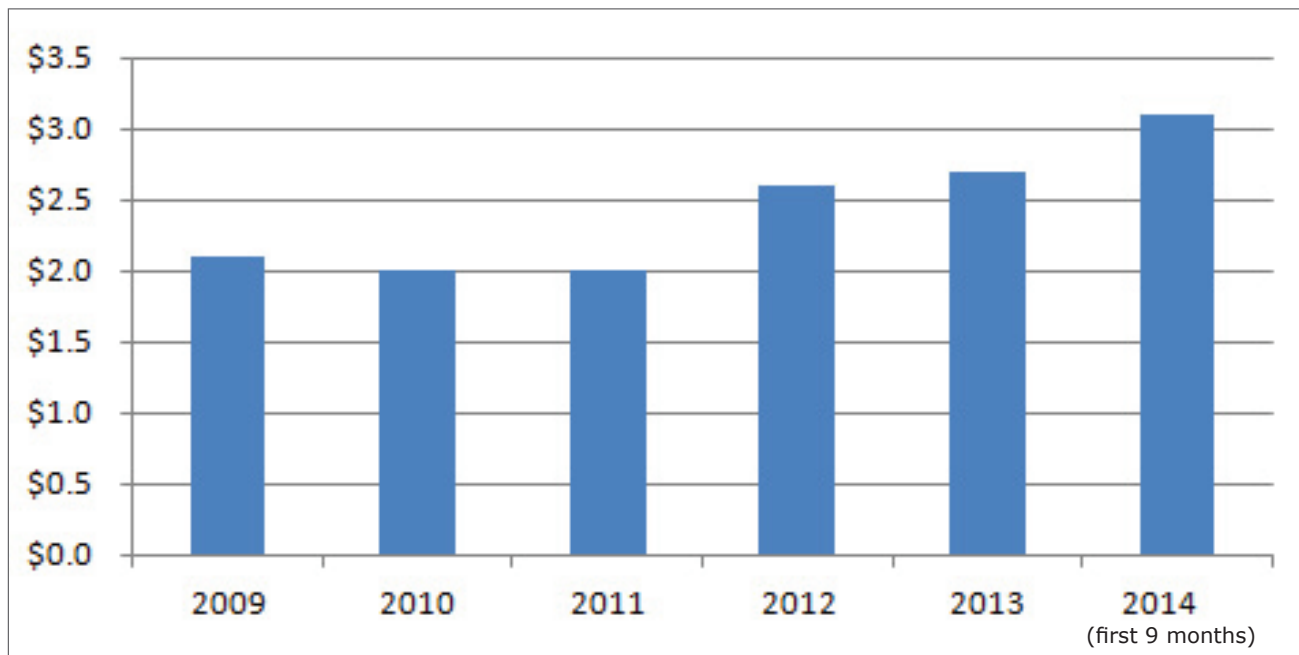
Kaiser's mental health clinicians have been working without a contract for four years. From the outset of negotiations, Kaiser has refused to discuss the staffing deficiencies in its psychiatric services. In press articles and in communications with its workforce, Kaiser has dismissed clinicians' well-documented concerns as "a labor dispute." All the while, Kaiser has taken a hard line on its proposals to cut employee health benefits and retirement.

Kaiser has steadfastly ignored the concerns and advice of its clinicians even though the clinicians have proven right every step of the way throughout this mental health care crisis.

Kaiser's repeated refusals to treat its employees as true partners in health care prompted clinicians to take matters into their own hands by documenting Kaiser's violations of state and federal law and presenting their findings to Kaiser management. After getting rebuffed again by Kaiser, clinicians submitted their report, "Care Delayed, Care Denied," to the California Department of Managed Health Care, which launched a fifteen-month investigation that resulted in a damning May 2013 report, followed by a cease-and-desist order and a \$4 million fine.

Meanwhile, Kaiser has demanded cuts to employee health benefits and retirement plans. Kaiser's

Kaiser's record-breaking profits



Since 2009, Kaiser has made \$14.5 billion in profit. Profits in each year between 2012 and 2014 have set records. Kaiser's profits for the first nine months of 2014 are up 40% over the same period last year, thanks to increased enrollment under the Affordable Care Act.

proposed cuts only exacerbate the staffing problems in mental health services. Kaiser clinicians have warned management about a “demographic time bomb”: With nearly 15% of its mental health workforce age 64 or older, Kaiser faces the impending retirement of a large number of highly experienced clinicians.

These cuts violate a commitment Kaiser made to its mental health clinicians when they were hired. Retiree health care is a benefit that many worked their entire careers to achieve only to see Kaiser threaten to make significant cuts to it. The current benefits package has been an effective tool for recruiting thousands of dedicated clinicians, and it will be an important tool for recruiting many more.

Kaiser demanded these cuts despite its record-breaking profits and skyrocketing executive compensation. The HMO has made more than \$14.5 billion in profit since 2009. So far this year, the Affordable Care Act has funneled more than 442,000 new members onto Kaiser’s rolls nationwide and helped boost the corporation’s profits by 40% over last year’s record profits. In the first nine months of 2014, Kaiser has made \$3.1 billion in profits.

In federal tax returns filed November 4, 2014, Kaiser reported paying \$10.2 million to George Halvorson in 2013 even though Halvorson resigned his job as CEO in June of that year. Halvorson’s \$10.2 million included \$7.1 million in “bonus and incentive compensation.”

In light of these enormous sums, the cuts Kaiser has proposed are not only unnecessary, but cynical and clearly profit-driven, as are the anemic staffing levels in its psychiatry clinics.

These numbers conflict with the message Kaiser has been sending to its employees for the past two years. In Northern California in 2013 and 2014, Kaiser held mandatory meetings that required employees to sit through disingenuous “Turbulent Times” presentations that claimed the HMO was facing great economic uncertainty in light of the Affordable Care Act. These presentations were designed to foster doubt and insecurity in the minds of employees so that they would accept Kaiser’s thin staffing model and agree to Kaiser’s proposed cuts to health and retirement benefits. Instead, these meetings, paired with Kaiser’s profit statements, only reinforce the notion that Kaiser is not bargaining in good faith.

No plan in sight

When Kaiser finally dropped its appeal and paid the DMHC's \$4 million fine on September 8, 2014, it sought to blunt the bad press by announcing a plan to improve its mental health services even while maintaining its denial of any problems with those services. Despite the fanfare, Kaiser has not submitted any such plan to the DMHC nor to its mental health clinicians. Indeed, there has been no mention of such a plan in the two months since that announcement.

Kaiser has failed to make any apparent effort to expand its in-house staff of mental health clinicians in response to its greater-than-expected membership growth in 2014. Under California law, Kaiser is responsible for monitoring and expanding its staff of providers in accordance with its membership growth. Each month, Kaiser distributes internal newsletters that contain membership data and these data show that Kaiser was fully aware that its actual membership growth had sharply exceeded its projected growth during the first half of 2014. Similarly, by mid-2014 Kaiser was fully aware that its year-end enrollment would exceed its projected enrollment by approximately 160,000 enrollees. Yet there is no evidence that Kaiser has undertaken any efforts to expand its staff accordingly.

Kaiser's only concrete measure to alleviate the crisis has been to increase its efforts to outsource psychiatric services to ValueOptions in Northern California and to other for-profit subcontractors in Southern California. Kaiser is required to bargain with its NUHW members over the details of the outsourcing arrangements, and to do so, Kaiser needs to provide the union with data regarding patient access and staffing. Yet Kaiser has refused to provide this information unless its clinicians sign non-disclosure agreements that would carry \$100,000 fines per clinician per violation should they pass on any of that information to their colleagues, state regulators, or the press.

NUHW members do not oppose the use of subcontractors as a short-term stop-gap measure to care for their patients while Kaiser launches a robust recruitment and hiring program for in-house psychologists, therapists, and social workers. But outsourcing is not a viable long-term solution to this crisis for the following reasons:

- Contractors are only taking on the lowest-risk patients, leaving higher acuity patients for in-house staff. Higher acuity patients require more time and care, which means that outsourcing does not significantly decrease the workload for in-house clinicians.
- There are simply not enough contracted therapists in these outsourcing networks to handle the overflow.
- Kaiser cannot efficiently monitor and track the progress of care handled by outside contractors.
- Some of the subcontractors hired by Kaiser have records of substandard care that have harmed patients and brought fines and penalties.
- Outsourcing mental health services does not align with Kaiser's model of integrated care, and does not meet the criteria of mental health parity laws.

Silencing the workforce

NUHW members' activism has not come without a price. Kaiser has aggressively retaliated against mental health clinicians for reporting illegal practices that jeopardize the care and safety of their patients. Kaiser has attempted to intimidate and silence clinicians by targeting them with investigations, disciplinary actions, and illegal terminations. NUHW has filed two complaints with the California attorney general regarding Kaiser's violations of the state's whistleblower protection laws. In one case, Kaiser attempted to discipline a Fremont, Calif., psychologist who, after interviewing a patient by phone and then finding that the clinic's first available appointment was three weeks out, noted in the patient's chart, "patient needs to be seen sooner." In addition, multiple mental health clinicians have filed lawsuits against Kaiser alleging they were illegally terminated for raising concerns about Kaiser's substandard mental health care.

NUHW members take very seriously their role as patient advocates. Healthcare workers do not enter the field to get rich; their goal is to provide quality care for those in need. As a union, NUHW keeps that mission front and center, never relinquishing members' rights to speak out. NUHW does not sign non-disclosure agreements with employers; it does not prevent its members from speaking out; and its members do not trade economic gains for their acquiescence or silence on issues of patient and worker safety.

By contrast, Kaiser works closely with its "partnership" unions to ensure that their members do not publicly criticize Kaiser. These labor-management agreements reached their nadir in May 2014, when SEIU signed a corrupt deal with the California Hospital Association. Kaiser was a signatory to the deal in which SEIU promised that in return for the opportunity to unionize 60,000 California healthcare workers, SEIU would not criticize the deal's signatory healthcare corporations or support legislation they dislike. Under the terms of the deal,

SEIU explicitly agreed to prohibit its members from participating in "communications that degrade or attack a signatory hospital or health system or the hospital industry as a whole includ[ing] communications raising concerns about hospital pricing and executive compensation in health care."

In other words, SEIU formally abdicated its watchdog role, sold out its members, and is now actively campaigning in support of the political goals of the employers. This was most clear recently when SEIU sided with Kaiser against Proposition 45, which would have curbed rising healthcare costs for working families. SEIU also is working with employers to lobby for increased Medi-Cal reimbursements to boost healthcare corporations' already huge profit margins. This is the very definition of a company union.

The effects reach far beyond healthcare workers. For four years, as Kaiser's NUHW mental health clinicians have brought the HMO's mental health care failures to public attention, SEIU, which represents the clerical workers who schedule mental health appointments, has remained silent. Its members have been gagged by their union's "partnership" with Kaiser and are barred from reporting the long wait times they see and the methods by which Kaiser attempts to conceal those wait times.

Without NUHW to counter the conspiracy of silence and blow the whistle on these illegal and unethical practices, Kaiser's systemic understaffing of its mental health services, which has often led to tragic outcomes, even suicides, would not have been brought to the attention of state regulators and the public.

Kaiser, knowing that it cannot co-opt NUHW as it has SEIU, instead tried to silence and marginalize caregivers through retaliation, non-disclosure agreements, and stonewalling at the bargaining table.

When unions abdicate their watchdog role in favor of "partnership" with healthcare corporations, patients lose, healthcare workers lose, and the public loses.

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