

SUMMARY OF FINDINGS:

The California Department of Managed Health Care’s Final Report on Kaiser Permanente’s Mental Health Services (March 2013)

On March 18, 2013, the California Department of Managed Health Care (DMHC) released a 23-page [report](#) detailing the results of its investigation of Kaiser Permanente’s mental health services in California. The DMHC cited Kaiser for violating four broad areas of California law. Additionally, the DMHC referred these violations to its Office of Enforcement, which will now determine whether to take legal action and/or impose administrative, civil or criminal penalties against Kaiser.

The DMHC’s findings affirm the exhaustive [complaint](#) that the National Union of Healthcare Workers (NUHW) submitted to the agency in November of 2011. NUHW’s members include 2,500 clinicians who provide mental health care to Kaiser’s patients throughout California. In its complaint, NUHW detailed how Kaiser’s systematic understaffing of mental health clinics forced patients to endure lengthy appointment delays in violation of California law. With seven million members, Kaiser is California’s largest HMO and is the state’s largest private-sector provider of mental health services.

The following is a summary of the factual findings and deficiencies detailed in the DMHC’s report of March 18, 2013:

I. Kaiser Forces Patients to Endure Excessive Wait Times for Appointments: Kaiser committed “systemic access deficiencies” by forcing its patients to wait excessively long periods of time for mental health services. (p. 15) Under California’s “timely access” regulations, HMOs are required to provide appointments to patients within 10 business days of their request for mental health services. The DMHC’s findings underscore the severity of Kaiser’s failures. For example, the report identifies three medical centers in Southern California where “less than half” of the patients were seen within the required timeframe. (p. 13-14) At some facilities, these failures persisted for ten consecutive months and were so grave that only one-third of Kaiser’s patients were seen in a timely fashion during certain months. (p. 14) In Northern California, one Kaiser facility that’s noted in the report treated fewer than 40% of its patients within the required timeframe. This failure during five consecutive months ending January 2012. (p. 14)

According to the DMHC, “The Plan and The Permanente Medical Group (TPMG) both acknowledged the seriousness of this issue.” (p. 14) The DMHC goes on to note:

“Enrollees with medical or mental health conditions must be seen by an appropriate health care provider within appropriate intervals (e.g. clinical, regulatory, etc.) in order to effectively treat the condition and/or prevent further deterioration of the enrollee’s health. If the Plan does not effectively monitor wait times and ensure that enrollees are not waiting excessively for an initial appointment or between appointments with their provider, significant numbers of enrollees with untreated or prolonged health conditions may suffer harm.” (p. 10)

The DMHC determined that Kaiser failed to correct its violations during the past seven months following formal notification of Kaiser by the agency. The DMHC notes that “the Plan did not submit detailed corrective action plans that include detailed assessments of the reasons or root causes for each area of non-compliance as directed by the Department in a letter to the Plan dated November 15, 2012.” (p. 12)

Furthermore, the DMHC states the following:

“The Department believes the findings discussed in this deficiency potentially pose significant access barriers for Plan members. Members with medical or mental health conditions must be seen by an appropriate health care provider within appropriate intervals in order to effectively treat the condition and/or prevent further deterioration of the enrollee’s health. As such, the Department believes the described identified barriers to care require prompt action. These matters will be immediately referred to the Department’s Office of Enforcement.” (p. 12)

In response to the DMHC’s findings, Kaiser proposed an improper workaround that would have allowed it to be considered “compliant” with California law as long as 80% of Kaiser’s patients are seen within the required timeframe. In its report, the DMHC calls Kaiser’s proposal “noncompliant,” noting that Kaiser would only begin to take action when more than 20% of its members “cannot obtain an appointment within the mandated timeframes.” (p. 17) The DMHC states:

“The Department believes that findings discussed in this deficiency to be serious with potential to bar timely access to needed care for a significant number of the Plan’s members. As such, the Department will closely monitor the Plan’s prompt correction of these substantial barriers to accessing care in part by conducting a Follow Up Survey within six months.” (p. 17)

In reference to an earlier regulatory filing by Kaiser, the DMHC also notes that Kaiser's "October 2010 Timely Access implementation filing contains an obsolete methodology that was found to be non-compliant in practice. An amendment must be filed to reflect changes." (p. 18)

II. Kaiser 'Cooks the Books' on Patients' Appointment Wait Times: Kaiser's internal record-keeping system contains numerous problems – including parallel sets of "paper waiting lists" that differ from the HMO's electronic records – which conceal patients' lengthy wait times. (pp. 5-6) The report describes four particular practices that result in "inaccurate reports of wait times." (p. 6)

According to the DMHC:

"Inaccurate data leads to inaccurate reports, which hinders the Plan's ability to effectively identify access problems, and to take action to resolve those problems. Enrollees who suffer from excessive wait times at underreported medical centers and facilities may continue to experience delays of health care services, deterioration of the enrollees' conditions, and dissatisfaction with the Plan's service and care." (p. 6)

III. Kaiser Failed to Adequately Monitor and Correct Its Violations: Kaiser failed to adequately monitor and correct its violations of patients' rights. Furthermore, records show that Kaiser was aware of its violations of state law, but failed to correct them.

According to the DMHC, a number of Kaiser's violations are systemic and are connected to the HMO's faulty method for calculating patients' appointment wait times. For example, the agency found that Kaiser uses a system of "averages" that produces false conclusions about patients' wait times and "hinders the Plan's ability to detect patterns of non-compliant wait times and leads to incomplete compliance reports." (p. 9)

The DMHC notes that "a number of the medical centers' monthly wait times appeared to be compliant (i.e., had an average of 14 calendar days or less) even though up to 40 percent of their appointments may be one or more days over the 14-day standard." (p. 9) The DMHC continues:

"Therefore, the Plan is in violation of Rules 1300.67.2.2(c) and (d), because its monitoring system, without accounting for wait times individually, did not alert the Plan to serious timely access issues for individual enrollees." (p. 10)

Even where Kaiser identified some of its access deficiencies, Kaiser's "reports show that these access deficiencies remained unresolved or, if resolved, were resolved several months after the date of the initial identification." (p. 15)

IV. Kaiser Gave Inaccurate Information to Patients about Treatment Options: Kaiser provided “inaccurate educational materials” to its members that had the effect of dissuading them from pursuing medically necessary care and violated state and federal mental health parity laws, according to the DMHC. (p. 19)

In its report, the DMHC described information that Kaiser provided to its patients, such as “Frequently Asked Questions” for first-time patients and materials posted on Kaiser’s website. In these materials, Kaiser inaccurately told its members they were eligible for only a limited number of visits per year and that “long-term individual therapy is unavailable to enrollees.” (p. 18). Under Mental Health Parity laws, Kaiser cannot place such limits on patients with serious mental illness. “These statements are in error because the Plan is required to provide coverage for serious mental illnesses under the same terms and conditions as medical conditions.” (p. 19)

“While the Plan has educational materials available at facilities, some of them describe limitations in benefits that are not compliant with the law, and contain misleading or confusing statements, as shown in multiple examples cited in this deficiency. These materials make recommendations that would act to *minimize* the use of certain health care services required to be covered by the Plan under the Mental Health Parity Act... The Plan’s failure to provide consistent and effective health education services, as shown in the inaccurate materials distributed to enrollees, may have discouraged some enrollees from seeking and accessing medically necessary behavioral health services.” (p. 20 emphasis in original)

The DMHC’s Compliance Actions against Kaiser Permanente: In its report, the DMHC notes that Kaiser has failed to adequately correct its deficiencies during the seven months since the DMHC delivered a confidential “Preliminary Report” to Kaiser on August 8, 2012. The DMHC will begin a follow-up inspection of Kaiser sometime during the six months after March 18, 2013. Furthermore, due to the seriousness of Kaiser’s violations, DMHC officials have referred Kaiser’s violations to the agency’s Office of Enforcement. The latter has the power to take legal action or impose administrative, civil or criminal penalties against Kaiser.