

June 5, 2014

The Honorable Eric Holder, Jr., Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

On behalf of the National Union of Healthcare Workers (NUHW), I write to request that the U.S. Department of Justice investigate possible legal and criminal violations at Kaiser Permanente (“Kaiser”) that are identical to the recent violations reportedly committed at the Veterans Health Administration (VHA).

Last year, the California Department of Managed Health Care (DMHC) cited and fined Kaiser \$4 million for forcing patients to undergo lengthy, illegal waits for mental health appointments and for concealing patients’ appointment delays through the use of paper waiting lists. The violations – documented in the DMHC’s 23-page report,¹ fine,² and “Cease and Desist Order”³ – are described as “systemic” and “serious” by agency officials. They include the following documented violations:

- **Excessive Wait Times for Appointments:** Kaiser forced its patients to endure lengthy waits for mental health appointments in violation of California’s timely access rules. Notably, California employs the same timely access standard as the VHA (e.g., 14 days for a non-urgent appointment). The scale and severity of Kaiser’s violations are documented by the DMHC. For example, the agency’s investigatory report describes three Kaiser medical centers in Southern California where “less than half” of Kaiser’s patients were seen within the required timeframe. (DMHC, “Final Report,” pp. 13-14) At some facilities, these failures persisted for ten consecutive months.
- **Paper Waiting Lists:** The DMHC cited Kaiser for using “paper wait lists” that concealed patients’ lengthy and illegal wait times. Furthermore, the HMO was cited for three additional “appointment practices” that produced “inaccurate reports of wait times.”
- **Failure to Correct Violations:** Kaiser was cited for failing to adequately monitor its patients’ wait times and for failing to correct the problems despite the fact that company officials were aware of them.

- **Misinformation to Patients:** Kaiser was also cited for providing inaccurate information to its patients that had the effect of dissuading them from pursuing medically necessary care. These actions, according to the DMHC, are violations of mental health parity laws. (DMHC, “Final Report,” p. 19)

Subsequent developments underscore the seriousness of Kaiser's violations. In recent months, patients have filed three class-action lawsuits against Kaiser alleging that excessive wait times are contributing to tragic suicides and other harm to patients. In Redwood City, California, a Kaiser mental health clinic has experienced an unprecedented spate of seven suicides in a matter of months, which clinicians believe is directly connected to the serious understaffing of Kaiser's mental health clinics.

In Georgia, a Kaiser patient suffering from "psychosis, paranoia, delusions... impaired judgment... physical aggression, loose association, racing thoughts" tragically murdered his wife of 40 years and then attempted suicide. In March of 2014, plaintiffs sued Kaiser in state court alleging that Kaiser's failure to provide adequate and timely care to the patient led to this tragic murder and attempted suicide.⁴

During the past 11 months, internal whistle-blowers have filed two complaints with California Attorney General Kamala Harris alleging that Kaiser has illegally retaliated against them for reporting Kaiser's substandard mental health care and for assisting government investigators.

As in the case of the VHA, a system of managerial bonuses appears to play a key role in Kaiser's violations. Kaiser rewards its managers with bonuses that are tied to the HMO's profitability, thereby incentivizing managers to hold down costs by, for example, under-staffing its clinics.

Kaiser's practices affect millions of U.S. consumers and have important effects on our nation's system of health care. With 9.3 million members in eight states and the District of Columbia, Kaiser is the nation's largest nonprofit HMO. It serves more patients than the VHA and its membership is growing rapidly. In recent months, approximately a quarter million consumers have enrolled in Kaiser via the Affordable Care Act. Meanwhile, the Obama administration has described Kaiser as an important model for restructuring our nation's healthcare delivery system.

As you know, numerous members of Congress have requested that your office conduct an inquiry into possible criminal violations at the VHA. Their requests refer to various areas of possible inquiry, including secret waiting lists, the potential destruction of documents, the falsification of records (what is widely referred to as “the cooking of books”), the harm experienced by patients, and possible wrongful deaths. Last week, the VA's Office of Inspector General reported that it contacted your office and is coordinating its investigation with the

Department of Justice regarding any potential violations of criminal and/or civil law, according to the OIG's interim report dated May 28, 2014.⁵

Given the identical nature of the reported violations at Kaiser as well as the factual findings already obtained by California healthcare regulators, I request that your office launch a similar investigation of Kaiser. The Department of Justice (DoJ) and the Federal Bureau of Investigation (FBI) have the authority, knowledge, and resources to perform an effective criminal investigation of these matters.

I urge you to utilize all available resources in such an inquiry. If the allegations are founded, I urge you to ensure the guilty parties are prosecuted to the fullest extent of the law. Thank you for your consideration of this important request.

Sincerely,



Sal Rosselli, President

cc: The Honorable Barack Obama, President of the United States
The Honorable Kamala Harris, California Attorney General
Carri Twigg, Associate Director, White House Office of Public Engagement

¹ Department of Managed Health Care, "Final Report: Routine Medical Survey of Kaiser Foundation Health Plan, Inc. Behavioral Health Services," Matter No. 11-543, March 6, 2013. Available at: <http://nuhw.org/wp-content/uploads/2014/01/DMHC-FinalReportKaiserMentalHlthSvc3-18-13.pdf>

² Department of Managed Health Care, "Accusation," Matter No. 11-543, June 24, 2013. Available at: <http://nuhw.org/wp-content/uploads/2014/01/DMHC-DisciplinaryFilingVsKaiser6-24-13.pdf>

³ Department of Managed Health Care, "Cease and Desist Order," Matter No. 11-543, June 24, 2013. Available at: <http://nuhw.org/wp-content/uploads/2014/01/DMHC-CeaseDesistOrderVsKaiser6-24-13.pdf>

⁴ Alex Blatt v. Kaiser Foundation Health Plan of Georgia, Inc., State Court of Gwinnett County, State of Georgia, filed March 17, 2014.

⁵ VA Office of Inspector General, "Veterans Health Administration – Interim Report – Review of Patient Wait Times, Scheduling Practices, and Alleged Patient Deaths at the Phoenix Health Care System," Matter No. 14-02603-178, May 28, 2014, p. ii.