



NATIONAL UNION OF HEALTHCARE WORKERS

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September 1, 2022

Dr. Mark Ghaly, Secretary
California Health & Human Services Agency
1215 O Street
Sacramento, CA 95814

Via hand delivery

Dear Dr. Ghaly:

Today marks the start of Suicide Prevention Month. It is also 3,356 days – more than nine years – since the Department of Managed Health Care (DMHC) fined Kaiser Permanente \$4,000,000 for making patients wait too long to receive behavioral health care. Then, in 2013, after a two-year long investigation, Kaiser told the public that timely access problems were “well on the way to a resolution.”¹

As you know, 2,000 in-house psychologists, social workers, marriage and family therapists, and substance use counselors are now on strike because Kaiser Permanente’s failure to provide its enrollees with timely access to behavioral health care has never been remedied. The documented facts are that conditions at Kaiser Permanente have got worse, not better. Every day, we hear from patients whose health is worsening dangerously because they cannot get the care they need. Here is a statement made to our union by a former Kaiser patient, and posted to our website² this past Tuesday:

My primary doctor prescribed an SSRI with zero follow up or psych referrals. I then had a suicide attempt but was discharged from ER with again no follow-up care. I called over and over to get into therapy and on different medications, and they offered me an “emergency psych appointment” three weeks later, after it had already taken a week just to reach someone. So four weeks from a serious suicide attempt. I ended up driving to Richmond for their psych ER clinic and waited about eight hours to be seen and change my meds. I still did not receive follow-up care.

This testimonial is not unusual – it is tragically commonplace. In the years and months leading up to our strike, NUHW submitted reams of evidence that Kaiser violates timely access laws and compromises enrollees’ health. This month, NUHW has communicated with DMHC ten more times, documenting Kaiser’s failure to comply with state and federal patient protection laws during the strike.

We are gravely concerned that, unless you take immediate and decisive action, using the full powers of your office under the law to protect Kaiser patients, many of them will suffer irreparable harm.

¹ Colliver, Victoria. “Kaiser fined \$4 million over mental health access.” San Francisco Chronicle, 6/25/2013.

² <https://nuhw.org/kaiser-dont-deny/patient-stories>, retrieved 8/31/2022.

We acknowledge that in recent months, DMHC has taken what are, for that department, unprecedented steps to investigate what Director Mary Watanabe herself has referred to as “systemic” problems with behavioral health services at Kaiser.³ DMHC first initiated a “non-routine” investigation of the health plan; it then also expedited investigation of certain categories of individual patient complaints.

Yet that “non-routine” investigation is not scheduled to conclude until the end of 2023, and the second investigation begun since the start of the strike has thus far yielded no official findings and no action to protect Kaiser patients, despite irrefutable documentary evidence that Kaiser has canceled thousands of behavioral health appointments without making arrangements for replacement care, as required by law.

Kaiser patients in need of behavioral health care cannot and should not wait for the slow grind of these bureaucratic investigations. The State of California has tools at its disposal to provide Kaiser patients with immediate protections. We implore you to use them now, before one more patient comes to harm.

In particular, the evidence already in your possession more than justifies that until further notice, Kaiser patients should be permitted to seek out-of-network care from any licensed behavioral health provider at Kaiser’s cost, minus any copayment they would have made for in-network services under their plan. As Director Watanabe stated even before the strike began, “we have enough information to indicate that there is a problem with access to care of behavioral health services at Kaiser.”⁴ Given that fact, and the abundant and continually mounting evidence of grievously delayed care since the strike began, directing Kaiser to reimburse patients for all out-of-network behavioral health care is clearly warranted.

As NUHW has previously suggested, the State of California could also assign personnel to monitor – in real time – Kaiser’s behavioral health patients’ appointment schedules and patient charts, in order to document and address treatment delays or denials of care. We understand that, because DMHC was designed to regulate health plans rather than providers of health care services, it may not be sufficiently staffed to do this. The Health and Human Services Agency (HSS), however, can certainly marshal the personnel needed to enforce timely access laws pertaining to behavioral health care during this crisis.

On-site inspections are commonly carried out by other departments, and personnel borrowed from the Department of Health Care Services, among others, could be assigned this essential task. Indeed, if the Board of Barbering and Cosmetology could carry out 10,794 inspections in one year⁵, we hope and believe that HHS would prioritize intervention into wait times for behavioral health care at 130 Kaiser facilities in Northern California. If HHS cannot do so, it is all the more justified in extending immediate access of Kaiser patients to non-contracted providers.

Kaiser Permanente acts as if behavioral health care is like elective surgeries that can be cancelled, delayed, or even completely denied with little consequence. The meager fines and penalties

³ Testimony to the Senate Select Committee on Mental Health and Addiction, 8/10/2022.

⁴ Ibid.

⁵ https://www.barbercosmo.ca.gov/about_us/responsibilities.shtml, retrieved 8/31/2022.

historically levied upon Kaiser by DMHC – which are pennies next to Kaiser’s nearly \$100 billion annual budget – have reinforced that behavior, and caused Kaiser to discount these sanctions a cost of doing business.

We know differently: delayed behavioral care can be deadly. Secretary Ghaly, with the energy and the vision that have characterized your leadership of California’s health care system, please honor Suicide Prevention Month by acting now, strongly and with all deliberate speed, to protect Kaiser patients.

Yours truly,

The members of the National Union of Healthcare Workers at Kaiser Permanente

CC: Mary Watanabe, Director, DMHC
Gavin Newsom, Governor
Rob Bonta, Attorney General
Toni Atkins, Senate Pro Tempore
Anthony Rendon, Speaker of the Assembly

Attachments:

1. Complaint submitted by NUHW to DMHC, dated August 11, 2022.
2. Supplementary evidence submitted by NUHW to DMHC, dated August 12, 2022.
3. Supplementary evidence submitted by NUHW to DMHC, dated August 13, 2022.
4. Supplementary evidence submitted by NUHW to DMHC, dated August 16, 2022.
5. Supplementary evidence submitted by NUHW to DMHC, dated August 17, 2022
6. Supplementary evidence submitted by NUHW to DMHC, dated August 19, 2022.
7. Supplementary evidence submitted by NUHW to DMHC, dated August 25, 2022 (9:58 a.m.)
8. Supplementary evidence submitted by NUHW to DMHC, dated August 25, 2022 (1:07 p.m.)
9. Supplementary evidence submitted by NUHW to DMHC, dated August 27, 2022
10. Supplementary evidence submitted by NUHW to DMHC, dated August 31, 2022