



November 15, 2024

Donna Loza, District Manager  
Candice Nagel, District Administrator  
Brenda Estigoy, District Administrator  
California Department of Public Health, Center for Health Care Quality  
Licensing and Certification San Diego District Office  
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San Diego, CA 92108-4402  
Email: CDPH-LNC-SANDIEGO@cdph.ca.gov

RE: Complaint Against Kaiser Hospice San Diego (License #080000129, License Facility ID: 080000385)

Dear Ms. Loza, Ms. Nagel and Ms. Estigoy,

On behalf of the National Union of Healthcare Workers (NUHW), I am submitting a complaint regarding certified hospice agencies run by Kaiser Permanente Southern California and their failure to meet Medicare's conditions of participation for hospice care. As a result, Medicare patients at Kaiser are receiving improper and unsafe care that is resulting in adverse patient outcomes. **Kaiser Foundation Hospital San Diego Hospice which is a licensed hospice agency, (License #080000129, License Facility ID: 080000385) is involved in this complaint and falls within the San Diego District Office's jurisdiction. The hospice agency office is located at 1830 California Ave, Corona, CA 9288110992 San Diego Mission Rd, Building 2, Suite 3401, San Diego, CA 92108, but patient care is primarily provided within patient's homes.**

## I. Background

NUHW represents Medical Social Workers, at ten of Kaiser's licensed hospices in Southern California. These staff members provide various forms of care and core services to hospice patients and their families, including psychosocial assessments of patients upon admission to hospice, emotional support and counseling to patients and their families, and critical resource coordination.

For many months, Kaiser's hospice agencies have experienced unsafe and inadequate staffing levels among Medical Social Workers that impede patients' and families' access to timely and appropriate services. These problems have become particularly acute since NUHW members at Kaiser's Southern California hospice agencies began a strike of indeterminate length on October 21, 2024. Since then, Kaiser has failed to adequately backfill the striking hospice staff.

Typically, at **Kaiser Hospice San Diego (License #: 080000129)**, five full-time medical social workers (MSWs) are assigned to staff Kaiser San Diego's hospice program. As of 11/8/2024, Kaiser was assigning

only two temporary staff to perform the duties of the five full time MSWs across the hospice agency. Additionally, the temporary MSWs are not providing consistent care to patients and families because Kaiser is rotating different and new sets of temporary staff through the agency on an intermittent basis. Furthermore, there reportedly have been multiple days since October 21, 2024 when there were no MSWs assigned to cover hospice services in San Diego.

At **Kaiser Hospice Fontana (License #:24000833)**, typically four full time MSWs and two per diem MSWs are responsible for hospice patients. However, as of 11/10/2024, Kaiser reportedly was assigning only a single temporary MSW to provide care and services to patients and families.

At **Kaiser Hospice Riverside (License #: 25000333)**, typically three full-time MSWs and one per diem MSW are responsible for hospice patients and families. However, as of 11/11/24 only two full time and one per diem MSW were reportedly assigned to provide care and services to patients and families.

## **II. Non-Compliance and Adverse Patient Outcomes**

Prior to the strike, when the aforementioned agencies were “fully staffed” with MSWs, they had difficulty meeting Medicare’s hospice conditions of participation, including the requirement to provide a comprehensive psychosocial assessment within five days of electing hospice care and the update to the comprehensive assessment within the fifteen day time frame. Since October 21, 2024, Kaiser’s capacity to meet these legal requirements and patients’ needs has sharply deteriorated due to the severe understaffing of these services described above.

Medicare regulations clearly state that a comprehensive assessment that identifies the physical, psychosocial, emotional, and spiritual needs of the patient (42 CFR 418.54(c)) must be completed no later than 5 calendar days after the election of hospice care (42 CFR 418.54(b)). The comprehensive assessment cannot be completed by the nurse alone. Federal regulations specify that comprehensive assessments must be completed by the interdisciplinary group (42 CFR 418.54(b)) and that interdisciplinary group must include a medical social worker (42 CFR 418.56(a)(1)). Additionally, federal regulations specify that medical social services must be provided by a medical social worker (42 CFR 418.64(c)) and that a hospice must routinely provide all core services, including medical social services, in a manner consistent with acceptable standards of practice.

Currently, Kaiser hospice facilities are not reportedly complying with the aforementioned standards and are causing adverse outcomes for patients.

For example, multiple patients who were admitted to **Kaiser San Diego Hospice** between the dates 10/21/24 and 11/8/24 reported pain to replacement MSWs on duty. These replacement MSWs documented the pain and documented that they would follow up with nursing or a supervisor for pain management. However, no follow-up occurred. Hospice nurses only learned about the pain after doing their routine visits to patients’ homes. Consequently, patients experienced pain for days without it being managed. This clearly violates the “Rights of the patient” outlined in 42 CFR 418.52(c)(1) to “receive effective pain management and symptom control from the hospice for conditions related to the terminal illness.”

In a second example, NUHW received a report of a male patient at **Kaiser San Diego Hospice** receiving hospice services in a home in the South Bay/Chula Vista area. The hospice agency became aware that the patient was suicidal, but there were no MSWs available to do the involuntary psychiatric evaluation. Eventually the assigned hospice physician was sent to do the assessment. This patient was not ultimately put on psychiatric hold, but he and his family still required a high level of ongoing psychosocial support, (2-3 visits per week). His wife and caretaker, who is struggling to cope, still had not received adequate medical social services multiple days after the event. We believe that this event occurred between 10/21/24 and 11/7/24. Per 42 CFR 418.64(c) and 42 CFR 418.64(d), “Medical social services must be provided by a qualified social worker, under the direction of a physician. Social work services must be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of these services” and “Counseling services must be available to the patient and family to assist the patient and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process.”

A third example pertains to **Kaiser Hospice Fontana**. Since October 21, 2024, we understand that Elizabeth Toyooka has been sitting on the Interdisciplinary Group (IDG), which is responsible for planning and providing care, as the IDG's required Medical Social Worker participant. While Elizabeth Toyooka is a MSW, she is a supervisor and not an employee of any of the Southern California regional hospice agencies and therefore doesn't directly do patient care. Medicare regulations are clear that an MSW must be a part of the IDG, that the members of the IDG must be the ones providing the care and services offered by the hospice, and that the group, in its entirety, must supervise the case and services. (42 CFR 418.56(a)(1)). Therefore, Elizabeth Toyooka's participation in the interdisciplinary group does not sufficiently fulfill Medicare's requirements since she is not directly interacting or caring for the patients. Additionally, because Elizabeth Toyooka does not provide patient care and does not have the ability to update the care plan, it is unclear if the comprehensive assessments, which must include the psychosocial and emotional needs of the patient (42 CFR 418.54(c)), are being updated correctly and within the fifteen-day required frequency.

Similar documentation issues are happening at **Kaiser Hospice Riverside**. Because temporary MSWs are not being given direct access to Kaiser's EHR system and instead keeping paper records, they are unable to update patients' care plans, which are housed in their EHRs. Instead, managers are reportedly taking photos of paper records and placing them in the “media tab” within the patient's medical record. This file is not part of the care plan and does not update the care plan accordingly.

Furthermore, Kaiser's failure to make patients' EHRs available to temporary MSWs means they are unable to access previous visit notes from other providers, and other members of the care team are unable to access the visit notes from the MSWs in a timely manner. Medicare specifies a clear standard for coordination of services, according to which hospice agencies must “Provide for and ensure the ongoing sharing of information between all disciplines providing care and services in all settings, whether the care and services are provided directly or under arrangement.” (42 CFR 42 CFR 418.56(e)(4)).

### **III. Request**

NUHW requests that CDPH take urgent action to enforce Medicare participation requirements and to protect the rights of Medicare enrollees and their families to receive hospice care that meets the conditions of participation as outlined by 42 CFR 418. We request that CMS investigate and conduct an audit of Kaiser's hospice services. We request that sanctions be imposed for any violations along with appropriate enforcement and monitoring to ensure Kaiser fulfills its requirements as a certified hospice agency.

We are available to talk on the phone if you have any further questions or would like more information during your investigation.

Sincerely,

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