



March 27, 2019

Shelley Rouillard, Director  
Dan Southard, Deputy Director—Office of Plan Monitoring  
Jennifer E. Marsh, Attorney III —Office of Enforcement  
James A. Willis, Senior Counsel  
Department of Managed Health Care  
980 9th Street, Suite 500  
Sacramento, CA 95814-2725

RE: KAISER FOUNDATION HEALTH PLAN INC. ENFORCEMENT MATTER NOs. 11-543  
& 15-082

Dear Ms. Rouillard, Mr. Southard, Ms. Marsh and Mr. Willis:

On behalf of the National Union of Healthcare Workers (“NUHW”), I am writing to provide the Department of Managed Health Care (“DMHC”) with evidence of Kaiser Permanente’s noncompliance with California law and the DMHC’s Cease and Desist Order issued in June of 2013.

During approximately the past two years, Kaiser has employed a care-delivery system for its enrollees in the Sacramento and Roseville areas that (1) deprives many enrollees of first-time non-urgent diagnostic appointments with a non-M.D. behavioral health therapist within 10 business days, (2) deprives enrollees of mental health services that are on par with medical and surgical services, and (3) creates inaccurate records regarding enrollees’ time-elapsd wait times for first-time non-urgent appointments with a non-M.D. behavioral health therapists.

In most of Kaiser’s service areas, Kaiser employs the following steps to evaluate enrollees’ mental health and to provide them with first-time diagnostic appointments with a non-M.D. behavioral health therapist (hereafter referred to as a “therapist”):

1. **Telephone Triage:** A therapist performs a triage assessment of each enrollee during a brief telephone call (10-15 minutes) in order to determine the nature and acuity of the enrollee’s mental health condition. If the enrollee requires care, the therapist directs the patient to a care setting consistent with the patient’s condition. For those patients requiring a non-urgent appointment with a therapist, the therapist schedules the patient to attend a date-specific and time-specific appointment with a therapist to receive a diagnostic assessment.
2. **Non-Urgent Diagnostic Assessment:** A therapist performs a diagnostic intake assessment (typically 60 minutes in duration for adult patients) to diagnose the enrollee’s condition and devise a treatment plan. California’s Timely Access Regulation requires

Kaiser to offer this diagnostic intake assessment appointment within 10 business days of the appointment request.

In Sacramento and Roseville, Kaiser employs a different system for delivering non-urgent diagnostic appointments to the hundreds of thousands of Kaiser enrollees who reside there. The first step noted above (Telephone Triage) is the same. The second step is very different. Rather than scheduling a date-specific and time-specific diagnostic assessment appointment for each patient, Kaiser instead instructs patients to walk in to one of two so-called “open-access clinics” to obtain a non-urgent diagnostic assessment appointment. The addresses of these “open-access clinics” are the following:

- 2031 Howe Ave. Sacramento, CA 95825
- 1660 East Roseville Parkway, Suite 100, Roseville, CA 95661

After patients arrive at Kaiser’s “open-access clinics,” appointments are handed out on a first-come, first-served basis. The clinics are often understaffed, requiring enrollees to sit in the clinics’ waiting rooms for as many as 4-5 hours while they wait for a diagnostic assessment. Due to the lengthy wait times, patients often form a line on the sidewalk outside the clinic before the doors are opened at 8:15 AM. These clinics, which operate Monday through Friday, stop taking new walk-in patients at 3:00 PM.

Kaiser therapists report that some patients go to the “open-access clinic,” but leave in frustration after waiting for several hours. Patients report that they cannot continue waiting because they must go to work, pick up their children, or attend to other responsibilities, and consequently cannot wait for hours and hours without any clarity about the timing of their appointment.

On busy days, the “open-access clinic” staff alerts Kaiser’s triage therapists (i.e., those who perform telephone triage assessments) that the “open-access clinic” is overwhelmed and understaffed, and that Kaiser is “closing” the clinic to patients. On particularly busy days, Kaiser officials reportedly turn patients away at the door from the “open-access clinics” due to their inability to serve the volume of patients arriving for care.

Patients’ reviews on Yelp offer some insight into patients’ experiences:

**Keith H.:** “Ridiculous. My wife needs treatment. We drove down yesterday and were told the wait would be 3 hours, so we drove back home. Cannot make an appointment. Got up early and drove down again today...”

**Maria G.:** “I should have listened to the reviews. After driving two hours away from home and waiting an additional two hours in the lobby to see someone for medication for my anxiety, PTSD, and depression I was told that I could not be referred to a psychiatrist or even helped at all because basically I am mentally damaged but not damaged enough due to scoring a 19 and not a 20

on their pathetic mandatory questionnaire that they make you fill out at check-in... DO NOT GO HERE IF YOU NEED PSYCHOLOGICAL HELP”

**Devan S.:** “Once again Kaiser wastes my time and disappoints me. Why anyone comes here for help I don't know. You'll sit in the waiting room for two hours and never be seen...”

If patients are not able to successfully navigate Kaiser’s onerous system for obtaining a diagnostic appointment within 10 business days, then Kaiser sends them a letter indicating they “failed to keep their appointment.” In other words, Kaiser’s records inaccurately indicate that the patient was offered an appointment within 10 business days, but failed to keep the appointment. In fact, the patient was never offered an appointment. In reality, Kaiser directed the patient to endure an antiquated and understaffed system that’s arguably worse than the DMV’s appointment system, where at least users can go online to obtain a date- and time-specific appointment with a DMV staffer.

Kaiser is fully aware that its walk-in clinics are understaffed. For example, during a meeting that took place on March 18, 2019, several Kaiser managers (including Jessica Liddell, Lou Lasprugato and Dana Van Aelstyn) acknowledged that the Roseville “open-access clinic” has 10 vacant and unfilled positions for therapists who perform diagnostic intake assessments.

Due to this system, Kaiser reportedly has failed to accurately document the outcomes of 10,000 patient requests for diagnostic assessment appointments. Each time a patient or a patient's provider initiates a request for a diagnostic assessment appointment, Kaiser records the date and time of the request with an electronic record called an "eConsult." When the patient receives their diagnostic appointment, Kaiser "closes" the eConsult with a second electronic record noting the date and time when the patient received the appointment. As a result of Kaiser's system of walk-in clinics, Kaiser managers have reported that there are approximately 10,000 eConsults that have never been "closed," indicating an apparent lack of documentation that Kaiser delivered these appointments to patients. Kaiser officials are reportedly now attempting to “close” these 10,000 eConsults.

NUHW has multiple concerns regarding Kaiser’s walk-in system. First, this system effectively deprives many enrollees of first-time diagnostic assessment appointments within 10 business days as required by California law. The walk-in clinics are understaffed, oversubscribed by patients, and designed to impose substantial burdens on patients attempting to obtain basic care from their health plan. Consequently, many patients give up on trying to access Kaiser’s behavioral health services. By placing unnecessary hurdles in the paths of patients, it has the effect of diminishing patients’ access to treatment.

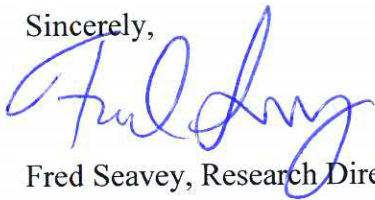
Secondly, Kaiser’s system of walk-in clinics for mental health services is substantially inferior to the appointment-setting systems for Kaiser enrollees seeking medical and surgical services.

Specifically, Kaiser places fewer appointment limitations on patients receiving medical and surgical care, especially from specialist providers. For example, if a Kaiser enrollee requires physical therapy or speech therapy, Kaiser schedules a date- and time-specific appointment for that enrollee with a specific therapist. In sharp contrast, patients with mental health disorders are consigned to an appointment system inferior to the DMV's. This disparate treatment was not contemplated by the legislators who passed California's Mental Health Parity Act.

Thirdly, Kaiser's system of walk-in clinics reportedly produces inaccurate data with regard to Kaiser enrollees' time-elapsd wait times for first-time non-urgent appointments with a therapist. Kaiser falsely indicates that its enrollees in the Sacramento and Roseville area are offered a non-urgent appointment within 10 business days. In fact, they are instructed to attempt to secure care from understaffed and oversubscribed walk-in clinics. Additionally, when enrollees are unable to obtain a diagnostic appointment from these clinics within 10 business days, Kaiser falsely blames the patient for "failure to keep an appointment" (also known by its abbreviation "FTKA"). In fact, Kaiser never offered the patients an appointment.

NUHW urgently requests that the DMHC investigate Kaiser's appointment-scheduling rule and its compliance with California laws and regulations. Please contact me with any questions.

Sincerely,



Fred Seavey, Research Director