



November 19, 2024

Mary Watanabe, Director
Dan Southard, Chief Deputy Director
Sarah Ream, General Counsel
Sonia Fernandes, Deputy Director, Office of Enforcement
Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814-2725

Dear Ms. Watanabe, Mr. Southard, Ms. Ream and Ms. Fernandes:

On behalf of the National Union of Healthcare Workers (NUHW), I am submitting a complaint regarding Kaiser Foundation Health Plan's cancellation of thousands of enrollees' behavioral health appointments across Southern California. The complaint focuses on a written, internal Kaiser protocol for canceling patients' appointments that violates state law and the contingency plan that Kaiser filed with DMHC on October 18, 2024.

I. Evidence

On November 12, 2024, NUHW filed a complaint with DMHC regarding a telephone script that Kaiser uses to communicate with Kaiser enrollees in Southern California who are on "waitlists" for individual appointments with licensed non-physician behavioral health therapists.

NUHW obtained additional evidence, contained in Exhibit A, regarding cancellation of appointments by Kaiser.

Exhibit A is a protocol authored by Kaiser entitled, "Program Continuity Cancellation." It is used by Kaiser's clerical staff calling Kaiser enrollees about scheduled appointments with behavioral health therapists who are on strike.

Exhibit B is the strike contingency plan that Kaiser submitted to DMHC on October 18, 2024 (as an amendment to Kaiser Foundation Health Plan's Exhibit E-1).

II. Analysis and Laws

Exhibit A instructs Kaiser's clerical staff to attempt two phone calls to enrollees to discuss their upcoming individual appointments that Kaiser cannot provide due to the ongoing work stoppage. During the second attempt, if clerical staff is unsuccessful in contacting enrollees or re-scheduling appointments for them, the protocol instructs clerical staff to do the following, with the term "WL" referring to "wait list" (emphasis in original):

- “CANCEL Original appointment”
- “Leave voice message about appointment cancellation information.”
- “Send patient appointment NOT available letter”
- “ADD patient to provider WL and these patients will be called back within 30 days.”
- “Sign and Close Encounter”

This and other protocols in Exhibit A are sharply at odds with the commitments in Kaiser’s contingency plan, Exhibit B, as well as state law. For example, Kaiser makes the following commitments on page 2 of its contingency plan regarding two of its three “key objectives” for its contingency plan: “Prompt Appointment Rescheduling and Availability” and “Uniform Reporting Structure for Plan Oversight.”

- Kaiser’s contingency plan says it will make three member outreach attempts to enrollees whose treatment appointments are being canceled. Meanwhile, Kaiser’s internal procedures instruct clerical staff to make only two outreach attempts.
- Kaiser’s contingency plan says it will place enrollees on waitlists for only two weeks. Kaiser’s internal procedures instruct its staff to place them on waitlists for 30 days.
- Kaiser’s contingency plan says clinical staff will perform a risk assessment of every enrollee following the second week of the strike. Kaiser’s internal procedures make no reference to performing risk assessments.
- Kaiser’s contingency plan says its clerical staff will perform a “warm transfer to a KP crisis therapist for further assessment and/or escalation to clinical managers for clinically appropriate follow-up care” when Kaiser cannot offer an appointment within the timeliness standard. Kaiser’s internal procedures contain no discussion or instructions to clerical staff about warm transfers.

In addition, whistleblowers report that Kaiser is using the protocols in Exhibit A to cancel appointments not only for patients with mild to moderate conditions, but also for those with complex conditions including serious mental illness. This patient population is at high risk of decompensation without timely and appropriate treatment.

The following are excerpts from page 2 of Kaiser’s contingency plan (emphasis added):

Prompt Appointment Rescheduling and Availability

- Affected members will receive a phone call from a KP staff member in advance of their currently scheduled appointment to assist with rescheduling appointments. When an appointment cannot be offered

within the timeliness standard, the member will receive a **warm transfer** to a KP crisis therapist for further assessment and/or escalation to clinical managers for clinically appropriate follow-up care. For members who cannot be reached after multiple attempts, letters and/or emails via kp.org will be sent and tracked for follow-up.

Uniform Reporting Structure for Plan Oversight

- The Plan's Southern California Quality Department ("Quality") will obtain a report of all impacted members detailing the status of the member communication (ex. was the member left a message if they could not be reached, whether a rescheduled appointment within the timeliness standard was offered, or if an appointment was offered out of the timeliness standard).
 - If the member was not reached, Quality will confirm that **three (3) member outreach attempts** were made.
 - If the member prefers to wait to be seen by their clinician who is on strike, the member will be scheduled for their appointment after the strike ends, as long as the duration of the strike is less than two (2) weeks. If the strike is longer than **2 weeks**, a **risk assessment** will be performed to determine if the member's clinical needs warrant an appointment with a different behavioral health clinician even if the member prefers to await the return of their behavioral health provider.
 - If the member accepts a rescheduled appointment, Quality will confirm that the appointment is offered within the timeliness standard and that the member was given appropriate information.
 - If the member was offered an appointment outside of the timeliness standard, Quality will confirm that risk indicators are escalated.

California law requires that when it is necessary for a provider or enrollee to reschedule an appointment, the appointment shall be promptly rescheduled in a manner that is appropriate for the enrollee's health care needs and ensures continuity of care consistent with good professional practice. Additionally, health plans are required to arrange for care from out-of-network providers if timely and geographically accessible care is unavailable from in-network providers. Health and Safety Code §1367.03, subd. (a)(3); 1374.72, subd. (d); California Code of Regulations title 28 sections 1300.67.2.2 (c)(3) and 1300.74.72(c) and (d).

Health plans shall ensure that enrollees do not face barriers to scheduling behavioral health appointments that do not exist for non-behavioral health appointments. Health & Saf. Code, § 1374.72, subd. (a).

Health plans shall ensure that enrollees are provided with timely behavioral health care services that are consistent with each enrollee's treatment plan, individualized behavioral health care needs, good professional practice, and timely access standards.

Health & Saf. Code, §§ 1367.03, 1374.72; Cal. Code Regs., tit. 28, §§ 1300.70, subds. (a)(3), (b)(1), (b)(2)(G), (b)(2)(H).

Health plans shall provide urgent appointments within 48 hours and non-urgent appointments with licensed non-physician clinicians within 10 business days unless a treating or referring clinician determines that a longer wait time will not be detrimental to enrollees' health. Cal. Health & Safety Code § 1367.03.

Health plans shall "provide or arrange for the provision, 24 hours per day, 7 days per week, of triage or screening services by telephone..." Furthermore, subsection A requires that plans "ensure that telephone triage or screening services are provided in a timely manner appropriate for the enrollee's condition, and that the triage or screening waiting time does not exceed 30 minutes." Cal. Health & Safety Code § 1367.03(a)(8).

III. Request

NUHW requests that DMHC take urgent action to enforce California law and to protect the rights of Kaiser enrollees to obtain timely and appropriate behavioral health care. Kaiser's violations of its own contingency plan raise obvious concerns about its fulfillment of other responsibilities. They underscore the need for DMHC to carefully investigate its practices, especially given Kaiser's widespread violations of enrollees' rights in 2022. We request that DMHC broaden and intensify its oversight activities in order to protect enrollees' rights. NUHW stands ready to assist in whatever way may be helpful. Please contact me with any questions or requests.

Sincerely,



Fred Seavey

cc: Rob Bonta, Californian Attorney General
Mike McGuire, Senate President Pro Tempore
Robert Rivas, Speaker of the Assembly
Kim Johnson, Secretary, California Health and Human Services Agency
Scott Wiener, Chair, Senate Select Committee on Mental Health
Richard Roth, Chair, Senate Committee on Health
Mia Bonta, Chair, Assembly Committee on Health
Don Moulds, CalPERS
Dr. Julia Logan, CalPERS

EXHIBIT A

Program Continuity Cancellation:

1st Attempt:

- Use: .CLERICALFIRSTOUTREACH
 - o If Patient Answers:
 - Use: .OPENAVAILABLE (Please follow all the steps in the smartphrase)
 - o If Patient DOES NOT answer:
 - ARE ABLE to find SAME DATE/TIME of Original appointment:
 - Cancel original appointment and book rescheduled appointment on SAME DATE & Time
 - Leave a voice message informing patient of appointment change.
 - Send patient a letter by using ".APPTPATIENTLETTER"
 - Sign/close the encounter.
 - UNABLE to find SAME DATE/TIME of Original appointment:
 - Leave voice message about appointment cancellation information.
 - Use: ".pleasecallbackoutreachO"
 - DO NOT CANCEL ORIGINAL APPOINTMENT
 - "X" out of encounter without signing.

2nd Attempt:

- Use: .CLERICALSECONDOUTREACH
 - o If Patient Answers:
 - Use: .OPENAVAILABLE (Please follow all the steps in the smartphrase)
 - o If Patient DOES NOT answer:
 - ARE ABLE to find SAME DATE/TIME of Original appointment:
 - Cancel original appointment and book rescheduled appointment on SAME DATE & Time
 - Leave a voice message informing patient of appointment change.
 - Send patient a letter by using ".APPTPATIENTLETTER"
 - Sign/close the encounter.
 - UNABLE to find SAME DATE/TIME of Original appointment:
 - Leave voice message about appointment cancellation information.
 - CANCEL Original appointment
 - Send patient appointment NOT available letter ".NOAPPTPATIENTLETTER"
 - ADD patient to provider WL and these patients will be called back within 30 days.
 - Sign and Close Encounter

EXHIBIT B

KAISER FOUNDATION HEALTH PLAN, INC.

**NUHW Behavioral Health Clinician Strike
Southern California Region**

Exhibit E-1 - CONFIDENTIAL

AMENDMENT

Kaiser Foundation Health Plan, Inc. (the “Plan”) is submitting this Amendment to the Department of Managed Health Care (the “Department”) to notify the Department of a potential strike in the Plan’s Southern California region and provide information on our strike contingency plans.

Background

On October 10, 2024, Kaiser Permanente (“KP”) received notice from the National Union Healthcare Workers (“NUHW”) of its intent to conduct an open-ended strike in the Plan’s Southern California region. NUHW represents nearly 2,400 Southern California KP mental health professionals in the Psych-Social Chapter, which includes psychologists, social workers, counselors, therapists, case managers, and psychiatric nurses. KP’s Inpatient Behavioral Health Care will be unaffected by this work stoppage.

KP respects the rights of employees to work with and support the work of their representative unions. We also believe the best way to reach agreement is through discussion and meaningful engagement at the bargaining table.

KP is proud of our long history of having a highly unionized workforce. In fact, we employ more union employees than any other health care organization in the country. We are also committed to providing an excellent work environment for our mental health and addiction medicine health care professionals, including continuing to provide competitive wages and benefits that are at or above market averages. We will continue to bargain in good faith with NUHW and look forward to reaching a new mutually beneficial agreement.

Strike Contingency Planning

The Plan has comprehensive plans in place to minimize potential disruptions should an NUHW strike occur. KP hospitals, emergency departments, and medical offices will remain open and operate as usual during the strike. KP will continue to provide mental health care during the work stoppage as our goal is to ensure timely mental health care for all our members who need it. Members will have the opportunity to be seen by another mental health professional in the Plan’s extensive behavioral health provider network if their specific provider participates in the strike.

The contingency plan focuses on three key objectives: communication, prompt appointment rescheduling and availability, and a uniform reporting structure for Plan oversight. Please see below for a description of this reporting structure.

Communication

- Members will be informed of how to access behavioral health care during the strike via KP's Member Services department through the following mechanisms: a dedicated line for issues and resolutions, kp.org, Appointment & Advice Call Center, and local KP behavioral health clinics.
- Affected members with scheduled appointments in behavioral health will be sent direct messages about the anticipated strike in advance of their appointments. Direct messages will be sent via text, email, and kp.org alerts to notify members that their appointments will need to be rescheduled.
- Talking points are being developed and will be given to psychiatrists and therapists to assist with member questions.
- Additionally, Member Services FAQs have been developed to assist our Appointment and Advice Call Center with fielding member questions pertaining to the strike.

Prompt Appointment Rescheduling and Availability

- Affected members will receive a phone call from a KP staff member in advance of their currently scheduled appointment to assist with rescheduling appointments. When an appointment cannot be offered within the timeliness standard, the member will receive a warm transfer to a KP crisis therapist for further assessment and/or escalation to clinical managers for clinically appropriate follow-up care. For members who cannot be reached after multiple attempts, letters and/or emails via kp.org will be sent and tracked for follow-up.

Uniform Reporting Structure for Plan Oversight

- The Plan's Southern California Quality Department ("Quality") will obtain a report of all impacted members detailing the status of the member communication (ex. was the member left a message if they could not be reached, whether a rescheduled appointment within the timeliness standard was offered, or if an appointment was offered out of the timeliness standard).
 - If the member was not reached, Quality will confirm that three (3) member outreach attempts were made.
 - If the member prefers to wait to be seen by their clinician who is on strike, the member will be scheduled for their appointment after the strike ends, as long as the duration of the strike is less than two (2) weeks. If the strike is longer than 2 weeks, a risk assessment will be performed to determine if the member's clinical needs warrant an appointment with a different behavioral health clinician even if the member prefers to await the return of their behavioral health provider.
 - If the member accepts a rescheduled appointment, Quality will confirm that the appointment is offered within the timeliness standard and that the member was given appropriate information.
 - If the member was offered an appointment outside of the timeliness standard, Quality will confirm that risk indicators are escalated.
- Member Relations ("MR") will review daily work stoppage grievance data report to identify cases received.
- An Investigative Review ("IR") will be sent to the appropriate designee to assist with resolving issue and a resolution letter will be sent to the member. The Chief of the local medical office,

or their designee, where the member receives their behavioral health services, will receive IR for complaints and grievances for additional review. IR review will assist effectuation requests made by the member (appointment scheduling, referral, etc.). MR will effectuate issue requests and will collaborate with the Plan's Southern California Medical Group for assistance when needed.

- A committee with behavioral health specialty expertise will review IRs. Behavioral health physicians will render decisions related to medical necessity issues.

The Plan anticipates that it will amend this Amendment filing the week of October 21st with more real time information.