



December 5, 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 of Southern California (Kaiser)'s behavioral health services. The complaint focuses on the health plan's care violations related to its contracted behavioral health providers, including Rula Mental Health, which are affecting thousands of Kaiser enrollees across the region.

I. Summary

In 2022, Kaiser Foundation Health Plan of Southern California (Kaiser) contracted with Rula Mental Health (Rula) to provide virtual psychotherapy to Kaiser enrollees with mild to moderate mental health disorders. On October 21, 2024, 2,400 licensed non-physician behavioral health therapists in Kaiser's internal provider network began a work stoppage that continues today. Due to the inadequacy of Kaiser's replacement services during the strike, Kaiser has been referring enrollees to Rula with conditions that disqualify them from receiving care from Rula. For example, Kaiser has referred enrollees with moderate to severe conditions and/or acute symptoms who cannot be treated by Rula. Consequently, these enrollees are referred back to Kaiser after participating in a single appointment with a Rula therapist. Kaiser's inappropriate referrals – intended to feign compliance with California's timely access requirements – result in unlawful treatment delays.

In addition, other enrollees experience delays caused by Kaiser's inadequate system for coordinating and monitoring enrollees' behavioral health care, its understaffed and inexperienced care coordination teams, the inaccessibility of Kaiser's record-keeping, appointment-scheduling, communications and other systems to Rula therapists, and Rula managers' improper referrals of Kaiser enrollees to Rula therapists who cannot care for them.

According to one enrollee:

I have been on the same medication for anxiety for over a decade now, and beginning in July started experiencing heightened anxiety mostly in my

body, leaving me feeling on edge and nervous. It was starting to affect me at work and in my relationship, so I reached out to Kaiser via phone, and they let me know I would first need an appointment with a therapist in order to make the referral.

On September 8, 2024, a Rula therapist performed a diagnostic evaluation and requested that Kaiser schedule a diagnostic evaluation for the enrollee with a Kaiser psychiatrist. The enrollee waited nearly two months for the appointment, which took place on October 29, 2024, despite the enrollee's repeated emails and phone calls to both Kaiser and Rula. In total, the enrollee waited 37 business days or 52 calendar days – more than double the maximum allowable wait time (15 business days) under California law.

II. Evidence

NUHW has received multiple complaints about the behavioral health care provided to Kaiser enrollees by Rula. These problems relate to Kaiser's inadequate systems for coordinating, providing, and monitoring enrollees' behavioral health care, and result in treatment delays that violate California law and harm enrollees.

1. **Inappropriate Enrollee Referrals by Kaiser:** Rula provides only virtual appointments with licensed non-physician behavioral health therapists for Kaiser enrollees with mild to moderate mental health disorders. Nonetheless, since October 21, 2024, Kaiser has been scheduling enrollees with moderate to severe conditions for treatment with Rula therapists. After providing only a single appointment to these enrollees, Rula then refers the enrollees back to Kaiser. Enrollees then wait to receive care from Kaiser. These improper referrals result in care delays that deprive enrollees of timely and appropriate treatment. For example, enrollees with complex obsessive compulsive disorders and psychiatric medication needs have been subjected to such improper referrals to Rula.
2. **Understaffed Care Coordination Teams:** When Rula therapists refer Kaiser enrollees back to Kaiser due to Rula's inability to treat them, the enrollees' referrals are supposed to be handled by Care Coordination Teams composed of licensed Kaiser therapists. Since October 21, 2024, these teams have lacked sufficient therapists to provide timely care coordination services and have included temporary staff with insufficient training and experience. Consequently, enrollees' referrals languish with the Care Coordination Teams, causing additional delays and missteps in their care.
3. **Inaccessibility of Medical Records and Care Coordination Systems:** According to Rula therapists who treat Kaiser enrollees, they do not have access to any of Kaiser's record-keeping, appointment-scheduling, communications and other systems. For example, they cannot access enrollees' electronic medical records, identify enrollees' other care providers (such as psychiatrists), or communicate with collateral care providers.

- 4. Improper Enrollee Referrals by Rula Managers to Rula Therapists:** Rula managers are improperly referring Kaiser enrollees to Rula therapists who cannot treat them. Even when Kaiser appropriately refers enrollees (*i.e.*, those with mild to moderate mental health disorders), Rula managers book some of these enrollees with Rula therapists who are not trained in certain treatment modalities or who cannot treat Kaiser enrollees in private practice because they are Kaiser employees. Consequently, Rula's therapists cancel appointments, sometimes just hours before enrollees' appointments. Enrollees must then be scheduled with other therapists, which can result in care delays that violate timely access standards.

The following information and chronology were provided to NUHW by a Kaiser enrollee in Southern California.¹

I am not one to reach out, leave a review, or complain. I'm the one to get half cooked food at a restaurant and eat it so I don't have to send it back. However, my experience with Kaiser over the last month plus, has left me so bewildered, frustrated, and hopeless, I felt the need to share:

I have been on the same medication for anxiety for over a decade now, and beginning in July started experiencing heightened anxiety mostly in my body, leaving me feeling on edge and nervous. It was starting to affect me at work and in my relationship, so **I reached out to Kaiser via phone, and they let me know I would first need an appointment with a therapist in order to make the referral.** They let me know that they refer out for these services, and scheduled me an appointment with a Rula therapist named Dr. Andres Garcia.

Below is a timeline of events that followed. Not in this timeline is the many phone calls that were made to both Kaiser and Rula to attempt to resolve this matter. In these phone calls, I expressed my desperation on many occasions, letting both Rula and Kaiser know how much I was struggling.

9/8/2024: Virtual appointment with Dr. Garcia with Rula

At this appointment, Dr. Garcia let me know that he would be submitting a referral for a psychiatric evaluation with Kaiser

9/10/2024: Email to Rula

Good Afternoon,

¹ The enrollee's name is omitted from this complaint, however the enrollee has given NUHW permission to share their name and contact information with DMHC.

My name is XXX XXX, and I recently had a meeting with Dr. Andres Garcia on 9/8/24. At the meeting he put in a referral for a psychiatrist appointment, but Kaiser has not yet received the information.

Please let me know if there are additional steps I need to take to this referral submitted to Kaiser.

Thanks so much!

9/12/2024: Email from Kylie Agustin at Rula Health:

Hello XXX,

I hope this email finds you well! Your therapist informed us that they spoke with you about being referred to a psychiatric provider for a medication evaluation. We are writing to you to inform you that we are processing this request.

Unlike with therapy, Rula is out of network with Kaiser insurance for psychiatry. We will submit the referral to your dedicated Kaiser liaison for the Kaiser team to facilitate an in-network psychiatry appointment. Someone from Kaiser will be in touch with you directly to coordinate an appointment.

Thank you,

Care Coordination

9/16/2024: Email back to Kylie at Rula Health:

Good Afternoon,

Just want to confirm that the referral has been sent over to Kaiser. They have not reached out, but I will connect with them tomorrow if the action has already been taken on your part.

Thank you so much!

10/2/2024: Email from Kaiser (again, after many phone calls):

Hello XXX,

We received your message indicating that your Rula therapist submitted a medication evaluation referral, however, we have not received. Can you please ask your therapist to send again?

Thank you.

Sincerely,

Kim Skavaril, LCSW

10/2/2024: Email to Kaiser:

I sent a copy of the Referral approval stating I was approved for the following service: Psychiatric Diagnostic Evaluation (1).

10/7/2024: Email from Kaiser:

Dear XXX,

Hello. I checked with Rula administrative office regarding status of medication evaluation referral. They advised me that you did not complete the intake process when meeting with the Rula clinician, and that the clinician did not submit a medication evaluation referral form. Perhaps you identified you were seeking medication, and the Rula clinician discontinued services and communicated they would refer you for the service? I am not sure exactly what transpired, but we do not have a referral and an intake from Rula is needed to generate the referral.

We can consider a couple of options moving forward. You can contact Rula and complete the intake with the previous clinician or a new one. That clinician can then generate a referral.

Or you can complete an intake at Kaiser Permanente to get a referral.

Or I can go ahead and refer you to one of our contracted providers, Center For New Directions, where you will meet with a RNP for intake AND medication evaluation in one appointment. This will probably be the fastest way to get medication. Normally we don't refer to Center for New Directions without an intake but given all these historical challenges I can make an exception.

Please let me know how you might like to proceed.

Thank you.

10/7/2024: Email from Kaiser

Hello XXX,

Thank you for this information and sorry this has been so challenging. We require a therapist refer you for the medication evaluation. I suggest that you ask your therapist to send that referral again as we have not received. I also messaged Rula administrative office in effort to obtain this referral. Once we receive we can connect you with services.

The document you attached is a copy of the Kaiser authorization letter for therapy with Rula. We have this document on file for you too. What is needed is a separate referral form from the Rula therapist which is called 'Medication Evaluation Referral' form.

We do not contract with Rula for medication management services. We do contract with Center for New Directions for that service, and of course you can elect to have medication management services in Kaiser Permanente too.

Thank you.

10/7/2024: Email from Rula after speaking with a care coordinator on the phone about the situation:

Hi XXX,

Robert here from Rula Support.

I have escalated this issue to the proper team, I'll let you know as soon as I have an answer to solve this issue for you.

Feel free to reach out if you have any questions or concerns.

Best,

10/7/2024 (after many calls to Kaiser to see if they could rectify the situation)

Hello Kylie,

Kaiser still has not received the referral from my therapist for a psychiatrist.

I have spoken to your representatives many times, and am unsure what the issue is in providing a referral to Kaiser. It has been over a month, and several attempts to facilitate this.

I have emailed on 9/16 and have not heard back.

I really need this referral submitted ASAP. This has been a very difficult time, and have now been waiting for 2 months to see a psychiatrist.

Any help you can provide in getting the promised referral from the therapist I saw would be greatly appreciated.

10/10/2024: Email back to Kaiser

Thank you for that information.

I would like to move forward with completing an intake at Kaiser Permanente to get a referral.

I am also unsure where the breakdown of communication happened.

That is frustrating, because on 9/12 I received an email from Kylie Agustin from Rula Health which stated:

Hello XXX,

I hope this email finds you well! Your therapist informed us that they spoke with you about being referred to a psychiatric provider for a medication evaluation. We are writing to you to inform you that we are processing this request.

Unlike with therapy, Rula is out of network with Kaiser insurance for psychiatry. We will submit the referral to your dedicated Kaiser liaison for the Kaiser team to facilitate an in-network psychiatry appointment. Someone from Kaiser will be in touch with you directly to coordinate an appointment.

10/29/2024: I saw a Kaiser psychiatrist for the medication evaluation appointment.

II. Analysis and Laws

California law requires health plans to comply with the following requirements:

Health plans must 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).

For appointments with specialist physicians, including psychiatrists, health plans must offer enrollees urgent appointments within 48-96 hours and non-urgent appointments within 15 business days of requests for appointments. For appointments with nonphysician mental health care or substance use disorder providers, health plans must offer urgent appointments within 48 hours and non-urgent appointments within 10 business days of requests for appointments unless a treating or referring clinician determines that a longer wait time will not be detrimental to enrollees' health. Health & Saf. Code, §§ 1367.03(a)(5)(A)-(F).

The obligation of a health plan to comply with the timely access requirements under Section 1367.03 shall not be waived if the health plan delegates to its provider groups or other contracting entities any services or activities that the health plan is required to perform. Health & Saf. Code, § 1367.03, subd. (c).

“A health care service plan shall ensure that all plan and provider processes necessary to obtain covered health care services, including, but not limited to, prior authorization processes, are completed in a manner that assures the provision of covered health care services to an enrollee in a timely manner appropriate for the enrollee's condition and in compliance with this section.” Health & Saf. Code, §§ 1367.03(a)(2).

Health care service plans must ensure that their networks have adequate capacity and availability of licensed providers to offer enrollees appointments for covered services that meet specific timeframes. Health & Saf. Code, § 1367.03, subd. (a)(5); Cal. Code Regs., tit. 28, § 1300.67.2.2, subd. (c).

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 must monitor the quality of care provided to its members, identify problems, and take effective action to improve care where deficiencies are identified, including accessibility, availability, and continuity of care. Health & Saf. Code, § 1300.70(a)(1), § 1300.70(a)(3), § 1300.70(b)(1)(D), § 1300.70(b)(2)(G)(3), § 1300.70(c)(1), § 1300.70(c)(5), and § 1300.70(d)(3).

Health plans must, in part, continuously review the quality of care provided to ensure that the level of care meets professionally recognized standards of practice, quality of care problems are identified and corrected, and appropriate care which is consistent with professionally recognized standards of practice is not withheld or delayed for any reason. Cal. Code Regs., tit. 28, § 1300.70, subd. (b)(1)(A)-(E).

In the case of the enrollee discussed above, the enrollee waited months to obtain an appointment with a psychiatrist to address “heightened anxiety mostly in my body, leaving me feeling on edge and nervous [and] starting to affect me at work and in my relationship.” At the time of the enrollee’s request, the enrollee had been receiving medication for an anxiety disorder for more than a decade.

The enrollee’s wait time from the date on which a Rula therapist requested a diagnostic evaluation appointment with a Kaiser psychiatrist (September 8, 2024) until the appointment date (October 29, 2024) was 37 business days or 52 calendar days – **more than double** the maximum allowable wait time for non-urgent appointments with specialist physicians (15 business days).

As noted above, Kaiser emailed the enrollee on September 12, 2024, stating in part: “Unlike with therapy, Rula is out of network with Kaiser insurance for psychiatry.” In other words, Kaiser referred the enrollee – who requested a diagnostic evaluation by a psychiatrist – to an external provider that does not provide these services. Additionally, Kaiser referred the enrollee knowing that Rula therapists do not have access to Kaiser’s electronic systems that would facilitate the timely scheduling of an appointment with a Kaiser psychiatrist. Furthermore, despite knowing that the enrollee had an anxiety disorder, Kaiser nonetheless subjected the enrollee to an anxiety-inducing series of obstructions and delays caused by Kaiser’s uncoordinated system of care.

These obstacles, which are detailed in the enrollee’s chronology, represent violations of the mental health parity act, which requires health plans to 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). According to the DMHC-Kaiser settlement agreement of October 11, 2023, Kaiser was cited for violating this precise provision of California law. The settlement agreement states: “Enrollees who seek behavioral health services face greater obstacles and challenges accessing behavioral health care and, even after obtaining it, retaining such care.” DMHC-Kaiser Settlement Agreement, paragraph 70.

Many of the other violations described above also constitute repeated violations for which Kaiser was cited one year ago. They include violations of timely access, quality assurance, provider network adequacy, and provider oversight standards, among others. The following are excerpts from the DMHC-Kaiser settlement agreement of October 11, 2023.

The Plan also lacks sufficient oversight of the external behavioral health contracted providers. As noted above, while the external contracted providers are contracted through the Medical Groups, the Plan has a continuing obligation to oversee these providers. However, the Plan does not have effective processes in place, including for Plan intervention, to ensure that enrollees referred to external contracted providers receive timely access to initial and follow-up care, or that the treatment provided by external contracted providers is compliant. Paragraph 34.

Specifically, in reference to behavioral health services, the Plan does not have an adequate system for monitoring and evaluating the care provided by the Medical Groups and external contracted providers (in-network providers that are contracted with the Medical Groups and are not directly employed by the Plan or the Medical Groups). Despite requirements that the Plan oversee quality of care, provider performance, and network adequacy, the Plan lacks systems and processes for adequate monitoring of the behavioral health policies and practices implemented by the Medical Groups and external contracted providers. The Plan's responsibility is more than passive monitoring; the Plan has an affirmative, continuous obligation to oversee the quality of its providers and provider network. Paragraph 32.

Health care service plans are required to have procedures in place for continuous review of the quality of care, performance of medical personnel, utilization of services and facilities, and costs. (Health & Saf. Code, § 1370.) To meet the Department's requirements for a QA program, the program must, in part, continuously review the quality of care provided to ensure that the level of care meets professionally recognized standards of practice, quality of care problems are identified and corrected, and appropriate care which is consistent with professionally recognized standards of practice is not withheld or delayed for any reason. (Cal. Code Regs., tit. 28, § 1300.70, subd. (b)(1)(A)-(E).) Paragraph 30.

Specifically, the Plan acknowledges that it is accountable for quality oversight and is required to establish a Quality Assurance Program that continuously reviews and monitors quality of care, performance of medical personnel, utilization of services and facilities, and costs, and that ensures a network that is adequate to timely and appropriately meet enrollees' behavioral health needs. As evidenced in repeated survey findings since 2006 and past enforcement actions, the Plan has not put adequate procedures in place to continuously review and maintain compliance with these requirements. Paragraph 31.

The Plan acknowledges that it lacks sufficient behavioral health providers in its Medical Groups and external contracted provider networks... This lack of clinical staff has resulted in excessive wait times for enrollee individual therapy appointments..." Paragraph 43.

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 services.

Since 2006, DMHC has repeatedly cited Kaiser for failing to adequately monitor its contracted behavioral health providers and for failing to ensure quality assurance compliance relating to the provision of behavioral health care services. It also has repeatedly cited Kaiser for violating the mental health parity act as well as legal standards governing provider network adequacy, timely access, clinical appropriateness and other standards. Last year, DMHC once again cited and fined Kaiser for such violations. To date, Kaiser has not implemented a corrective action work plan to remedy the multiple behavioral health violations for which it was cited one year ago.

NUHW requests that DMHC employ field auditing methods to evaluate Kaiser's compliance with state law and to protect enrollees' rights. In its Consent Agreement of July 30, 2007 (Enforcement Matter No. 07-202), DMHC instituted a 'no notice' spot check audit of a sampling of case files from Kaiser based on Kaiser's obligation "to make its books and records, including medical records of its contracted providers, available to the Department in accord with section 1380 of the Health and Safety Code." (pp. 5-6) NUHW requests that DMHC immediately implement a similar auditing system.

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, Attorney General
Mike McGuire, Senate President Pro Tempore
Robert Rivas, Speaker of the Assembly
Kim Johnson, Secretary, California Health and Human Services Agency
Kimberly Chen, Acting Deputy Secretary for Program and Fiscal Affairs, CalHHS
Sen. Scott Wiener
Assemblymember Mia Bonta
Sen. Caroline Menjivar
Don Moulds, CalPERS
Dr. Julia Logan, CalPERS