NUHW NATIONAL UNION OF HEALTHCARE WORKERS
866-968-NUHW • nuhw.org • info@nuhw.org

January 14, 2022

Margaret E. O'Kane, President
National Committee for Quality Assurance
1100 13th Street, N.W., Suite 1000
Washington, DC 20005

VIA EMAIL: okane@ncqa.org, barton@ncqa.org, donohue@ncqa.org

Re: Kaiser Foundation Health Plan, Inc. of Hawaii

Dear President O'Kane:

I am writing to share evidence that Kaiser Foundation Health Plan, Inc. of Hawaii ("Kaiser"), which is currently accredited by the NCQA, is apparently committing serious violations of multiple NCQA accreditation standards. The purpose of this letter is to share evidence of these allegations and to request a meeting with the team of NCQA staff that will be conducting the NCQA's upcoming accreditation review of Kaiser beginning January 25, 2022.

The NCQA accredits four separate health plans in Hawaii operated by Kaiser that cover more than 250,000 consumers. All four of the plans are scheduled for NCQA accreditation reviews beginning on January 25, 2022.

Accreditation Status of Kaiser Foundation Health Plan, Inc.'s Hawaii Health Plans

PLAN NAME	INSURANCE TYPE	PRODUCT TYPE	ENROLLMENT	CURRENT PLAN RATING	NEXT REVIEW DATE
KFHP – Hawaii	Commercial	HMO	167,340	4.5 of 5	01/25/2022
KFHP – Hawaii	Medicare	HMO	33,644	4.5 of 5	01/25/2022
KFHP – Hawaii	Medicaid HMO	HMO	43,860	4.5 of 5	01/25/2022
KFHP – Hawaii	Exchange	HMO	7,191	Accredited	01/25/2022

Source: NCQA's website accessed on January 12, 2022.

The National Union of Healthcare Workers (NUHW) serves as the collective-bargaining agent for approximately 51 licensed non-physician mental health clinicians (e.g., psychologists, licensed clinical social workers, and licensed mental health counselors) who are employed by Kaiser and deliver outpatient treatment to Kaiser's 250,000 enrollees at seven clinics and a call center on Oahu, Maui, and the Big Island. Kaiser also delivers behavioral health services to enrollees residing on Kauai and Molokai.

During the course of our work, NUHW became aware of Kaiser's serious, systemic violations of state and federal laws designed to protect patients' access to timely and appropriate mental health services. These apparent violations also represent breaches of the NCQA's accreditation standards. Upon uncovering Kaiser's violations, NUHW alerted Kaiser's executives; however, Kaiser has failed to correct them. Consequently, on November 3, 2021, NUHW filed the complaint contained in Exhibit A with the Hawaii Department of Commerce and Consumer Affairs (DCCA), which licenses and regulates health plans. The complaint contains evidence of Kaiser's violations, including internal records such as access data, appointment-scheduling records, and email correspondence. On December 13, 2021, Kaiser's Greg Christian (President, Hawaii Market, Kaiser Foundation Health Plan) submitted a formal response to the DCCA in which Kaiser did not deny the allegations contained in NUHW's complaint.

The records contained in the attached complaint also document Kaiser's apparent violations of the NCQA's core performance measures that serve as the basis for the NCQA's accreditation system. These measures include, but are not limited to, the following:

- Quality Management and Improvement (QI)
- Utilization Management (UM)
- Rights and Responsibilities (RR)
- Network Management (NET)
- Quality Oversight and Governance (QOG)

Kaiser's apparent violations of NCQA's standards are both severe and widespread. They affect thousands of enrollees and place their health and safety at risk. For example, the NCQA's QI standards require health plans to provide appointments for routine behavioral health office visits within 10 business days. In Hawaii, thousands of Kaiser's enrollees wait at least **40 to 50 days** to obtain such care, with children and adolescent patients waiting **78 days** at one clinic site.

Kaiser also fails to ensure the availability of behavioral health practitioners within its delivery system and fails to assess the accuracy of its practitioner directories. For example, Kaiser lists 188 clinicians on its external panel of licensed non-physician behavioral health clinicians. However, only 28 percent of these clinicians are actually accepting Kaiser enrollees for care, according to Kaiser's internal records. Furthermore, most of the external clinicians who are providing care to Kaiser's enrollees offer only limited access to care and/or require enrollees to endure weeks-long waits for appointments.

With respect to triaging and referring enrollees for behavioral health care, Kaiser instructs its 250,000 enrollees to phone Kaiser's Integrated Behavioral Health Call Center to request care and assistance for mental health and substance use disorders (MH/SUDs). Kaiser regularly staffs the call center with only five full-time clinicians, which results in enrollees often waiting upwards of 30 to 60 minutes before they can speak with a clinician. Such long wait times result in daily call abandonment rates of 20% to 45%. For those enrollees who cannot wait and instead request return calls, they typically wait between one and four weeks for a first call-back attempt by a triage clinician due to Kaiser's severe under-staffing of its triage services.

NUHW would like to meet with the NCQA's staff who will be conducting the accreditation review of Kaiser beginning January 25, 2022 in order to discuss our concerns regarding Kaiser's substandard practices and to provide NCQA with additional information not contained in the attached records.

One of the NCQA's core goals is consumer protection, which the NCQA notes is "essential to [its] vital mission of improving health care quality through measurement, transparency and accountability." We are confident we can assist the NCQA in pursuing this important mission. As I noted above, we are extremely concerned that Kaiser's practices place the health and safety of thousands of its enrollees at risk. The NCQA is duty-bound to investigate the evidence referenced above in order to ensure that consumers are not misinformed about Kaiser's compliance with the NCQA's standards.

We look forward to your response. Please contact Fred Seavey at fseavey@nuhw.org regarding next steps.

Sincerely,

Sal Rosselli, President

cc: Mary Barton, MD, Vice President of Performance Measurement, NCQA
Sharon King Donohue, General Counsel, NCQA

EXHIBIT A

NUHW NATIONAL UNION OF HEALTHCARE WORKERS

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November 3, 2021

Colin M. Hayashida, Insurance Commissioner
Hawaii Department of Commerce and Consumer Affairs
P.O. Box 3614
Honolulu, Hawaii 96811-3614

VIA EMAIL: colin.m.hayashida@dcca.hawaii.gov

Re: Kaiser Foundation Health Plan, Inc.

Dear Commissioner Hayashida:

On behalf of the National Union of Healthcare Workers ("NUHW"), I am writing to request that the Department of Commerce and Consumer Affairs Insurance Division investigate Kaiser Foundation Health Plan's apparent violations of state and federal law, including Hawaii's provider network adequacy rules, the Patients' Bill of Rights and Responsibilities Act, the federal Mental Health Parity and Addiction Equity Act, utilization review requirements, and medical necessity standards, as well as other laws and regulations governing Kaiser's provision of mental health services to Hawaii residents.

With 15,000 members in two states, NUHW serves as the collective-bargaining agent for approximately 51 licensed non-physician mental health clinicians (e.g., psychologists, licensed clinical social workers, and licensed mental health counselors) who are employed by Kaiser Foundation Health Plan ("Kaiser") and deliver outpatient treatment to Kaiser's approximately 260,000 enrollees at seven clinics[1] and a call center on Oahu, Maui, and the Big Island.[2]

During the course of our work, NUHW has become aware of Kaiser's apparently systematic, chronic, and severe violations of state and federal laws designed to ensure patients' access to timely and appropriate mental health services. Clinicians have alerted Kaiser's executives about the apparent violations, however Kaiser has failed to correct them. (See Exhibit 1 for a letter sent by clinicians to Kaiser's executives on August 13, 2021.) We request that the Insurance Division immediately investigate Kaiser's practices, which severely delay thousands of enrollees' access to mental health services and place their health and safety at risk.

I. Summary

A variety of evidence—including Kaiser Hawaii's internal access data, appointment-scheduling records, email correspondence, NUHW survey data, and testimony from Kaiser's clinicians—indicates that Kaiser is violating multiple state and federal laws.

[1] Prior to the pandemic, Kaiser's behavioral health clinicians delivered care at 10 of Kaiser's clinics.

[2] Kaiser also delivers behavioral health services to enrollees residing on Kaui and Molokai.

Kaiser's network of licensed non-physician mental health providers across Hawaii is severely inadequate, in apparent violation of Haw. Rev. Stat. § 431:26-103. As a result, thousands of Kaiser's enrollees with mental health and substance use disorders (MH/SUDs) experience unreasonable and systematic delays at virtually each step of the care process, including triage assessments, diagnostic evaluations, urgent appointments, and individual treatment appointments with clinicians. These delays violate industry norms, breach professionally recognized standards of care, fail to meet enrollees' needs, and put enrollees' health and safety at risk.[3]

Enrollees' care delays are often extraordinarily long. The National Committee for Quality Assurance (NCQA), which accredits Kaiser, establishes 10 business days as the outer limit by which enrollees must be seen for non-urgent behavioral health appointments. In Hawaii, thousands of Kaiser's enrollees wait at least **40 to 50 days** to obtain such care, with children and adolescent patients waiting **78 days** at one clinic site.

With respect to triage assessments, Kaiser instructs its 260,000 enrollees to phone Kaiser's Integrated Behavioral Health Call Center to request care and assistance for MH/SUDs. Kaiser regularly staffs the call center with only five full-time clinicians, which results in enrollees often waiting on hold upwards of 30 to 60 minutes before they can speak with a clinician. Such long wait times result in daily call abandonment rates of 20% to 45%. For those enrollees who cannot wait on hold and instead request a return call, they typically wait between one and four weeks for a first call attempt from a triage clinician due to Kaiser's severe under-staffing of its triage services.

Regarding individual follow-up treatment appointments, internal Kaiser data indicate that the statewide average wait for the next available individual follow-up treatment appointment was at least 33 and 34.5 business days, respectively, for adult and child/adolescent enrollees during a 12-week period from June 17 to September 9, 2021. Such waits violate professionally recognized clinical standards.

NUHW also analyzed Kaiser's network of "external" clinicians with whom it contracts to complement the care provided by Kaiser's directly employed or "internal" clinicians. Although Kaiser lists 188 clinicians on its panel of external therapists, only 28 percent of these clinicians are actually accepting Kaiser enrollees for care, according to Kaiser's internal records. Furthermore, most of the external clinicians who are providing care to Kaiser's enrollees offer only limited access to care and/or require enrollees to endure weeks-long waits for appointments.

In addition to provider network adequacy violations, evidence suggests that Kaiser is violating multiple provisions of Hawaii law such as the "Patients' Bill of Rights and Responsibilities Act" (§ 432E), including but not limited to utilization review standards (§ 432E-9) and medical necessity provisions (§ 432E-1.4). For example, § 432E requires HMOs to perform "continuous

[3] In addition to our concerns about Kaiser's inadequate network of licensed non-physician mental health clinicians, we are also concerned that Kaiser lacks sufficient numbers of psychiatrists, whose responsibilities include prescribing and managing enrollees' psychiatric medications. Kaiser's internal records indicate that enrollees also endure unreasonable waits for appointments with psychiatrists. These waits dramatically exceed standards established by the National Committee for Quality Assurance. NUHW does not serve as a collective-bargaining agent for Kaiser's psychiatrists.

review of quality of care" and "utilization of health services" in a manner consistent with "the appropriate standard of care." Nonetheless, Kaiser apparently fails to perform such a review of its behavioral health services—including enrollees' treatment progress—as evidenced by the chronic and widespread care delays experienced by its enrollees in contravention of professionally recognized standards of care.

Additionally, Kaiser reportedly fails to comply with Haw. Rev. Stat. § 431:26-103(c), which requires health carriers to provide enrollees with out-of-network care when a health carrier does not have a participating provider available or has an insufficient number of providers available.

With respect to Haw. Rev. Stat. § 432D-28 (requires HMOs to comply with federal laws such as the Mental Health Parity and Addiction Equity Act of 2008 and the Patient Protection and Affordable Care Act), Kaiser's systematic understaffing of its MH/SUD services appears to place improper treatment limitations on enrollees with MH/SUDs by effectively restricting their access to a substandard number of outpatient individual treatment appointments per year.

II. Laws and Regulations

Hawaii's Insurance Code (HI Rev Stat § 431:26-103) establishes standards that health insurers and HMOs ("health carriers")[4] are required to meet with respect to provider network adequacy. The Insurance Code states the following:

> A health carrier providing a network plan shall maintain a network that is sufficient in numbers and appropriate types of providers, including those that serve predominantly low-income, medically underserved individuals**, to assure that all covered benefits will be accessible without unreasonable travel or delay.** (§ 431:26-103(a)(1)) (emphasis added)

Section 431:26-103(b) states in part:

> The [Insurance] commissioner shall determine sufficiency in accordance with the requirements of this section by considering **any reasonable criteria, which may include but shall not be limited to**...
>
> (5) **Waiting times for an appointment** with participating providers...
>
> (7) **The ability of the network to meet the needs of covered persons**, which may include low-income persons, children and adults with serious, chronic, or complex

[4] The insurance code's network adequacy requirements apply to HMOs. Hawaii law states: "'Health carrier' or 'carrier' means an entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a health insurance company, a health maintenance organization, a hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services." (Haw. Rev. Stat. § 431:26-101)

health conditions or physical or mental disabilities, or persons with limited English proficiency... (emphasis added)

Section 431:26-103(c) specifies that if a health carrier "does not have a participating provider available" or "has an insufficient number or type of participating provider available to provide the covered benefit to the covered person without unreasonable travel or delay," the health carrier "shall have a process to ensure that a covered person obtains a covered benefit at an in-network level of benefits, including an in-network level of cost-sharing, from a nonparticipating provider, or shall make other arrangements acceptable to the commissioner…"

When a health carrier's provider network "cannot provide reasonable access," it must "inform covered persons of the process a covered person may use to request access to obtain a covered benefit from a nonparticipating provider" (§ 431:26-103(c)(2)). Furthermore, health carriers must "ensure that requests to obtain a covered benefit from a nonparticipating provider are addressed in a timely fashion appropriate to the covered person's condition" (§ 431:26-103(c)(4)).

"The health carrier shall establish and maintain a system that documents all requests to obtain a covered benefit from a nonparticipating provider pursuant to this subsection and shall provide this information to the commissioner upon request" (§ 431:26-103(c)(5)).

Section 431:26-103(d)(2) requires health carriers to monitor, on an ongoing basis, their provider networks.

Additionally, § 431M-4(b)(1) ("Mental health and alcohol and substance use disorder treatment insurance benefits") states: "All mental health services shall be provided under **an individualized treatment plan** approved by a physician, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed mental health counselor, advanced practice registered nurse, or licensed dietitian treating eating disorders, and **must be reasonably expected to improve the patient's condition**." (emphasis added)

Section 431M-2(b) requires that all individual and group health insurance "policies and contracts… shall not impose any financial requirements or treatment limitations on mental health or substance use disorder benefits that are more restrictive than the predominant financial requirements and treatment limitations, either quantitative or nonquantitative, imposed on medical and surgical benefits in accordance with the Mental Health Parity and Addiction Equity Act of 2008."

Hawaii's Patients' Bill of Rights and Responsibilities Act (Haw. Rev. Stat. § 432E) requires health plans to fulfill a number of requirements. Section 432E-9(a) ("Utilization review") requires the following: "Every managed care plan shall establish procedures for **continuous review of quality of care, performance of providers, utilization of health services, facilities**, and costs" (emphasis added). Section 432E-9(c) states in part: "The utilization review requirements and administrative treatment guidelines of the health maintenance organization **shall not fall below the appropriate standard of care and shall not impinge upon the independent medical judgment of the treating health care provider**" (emphasis added).

Section 432E-1 defines "Utilization review" as "a set of formal techniques designed **to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings**. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review" (emphasis added).

Section 432E-1.4 ("Medical necessity") of the Act defines, in relevant part, medically necessary treatment as treatment which is "known to be effective in improving health outcomes; provided that: (A) Effectiveness is determined first by scientific evidence; (B) If no scientific evidence exists, then by professional standards of care."

Section 432E-7 ("Information to enrollees") requires managed care plans to provide updated lists of participating providers to enrollees "on a regular basis indicating… whether the provider is accepting new patients."

Finally, § 432D-28 ("Federal law compliance") states the following regarding compliance with federal laws such as the Mental Health Parity and Addiction Equity Act of 2008: "A health maintenance organization shall comply with applicable federal law. The commissioner shall enforce the consumer protections and market reforms relating to insurance as set forth in the federal Patient Protection and Affordable Care Act , Public Law 111-148."

III. Background Information

A. Appointment Types and Patient Workflow: It is necessary to provide some background information regarding Kaiser's appointment types and patient workflow before providing details and documentation of Kaiser's appointment delays.

Triage Assessment: Typically, enrollees' first point of contact with Kaiser's behavioral health services is a statewide Integrated Behavioral Health Call Center located in the Ala Moana area of Oahu. The Call Center, which operates on weekdays between 8:00am and 5:00pm, is the gateway through which enrollees typically pass in order to receive care for their conditions.

The Call Center is staffed by five full-time and one part-time clinicians who perform brief telephone triage assessments of most enrollees, determine if there is medical necessity warranting further care, assess for any safety risks, determine each enrollee's level of acuity, and connect the enrollee to appropriate care and services (e.g., non-urgent, urgent, emergent, substance use disorder, medication support by a psychiatrist, therapy groups and classes, etc). For example, after performing a triage assessment, a clinician might direct an enrollee to an emergency room due to active suicidal ideation. For a second enrollee with symptoms of moderate depression or PTSD, a clinician might schedule the enrollee for a non-urgent diagnostic evaluation performed by a clinician.

Enrollees reach the Call Center through various channels. Kaiser, via its website and other materials, instructs enrollees to phone the Call Center to request care and assistance for MH/SUDs. Secondly, a Kaiser provider or staff member can send an electronic message to the

Call Center to request that a patient receive a triage assessment.[5] For example, a primary care physician might send an eConsult asking the Call Center clinicians to phone an enrollee who exhibits symptoms of a MH/SUD during a primary care visit and consents to receiving a triage assessment. Thirdly, the Call Center receives transfer calls and urgent crisis calls from Kaiser facilities across the state. For example, an enrollee might walk into Kaiser's Maui Lani clinic and report they are suicidal, prompting a clerk to connect the enrollee directly with the Call Center's clinicians.

Non-Urgent Diagnostic Evaluation: After performing a telephone triage assessment, Call Center clinicians schedule most enrollees for individual non-urgent appointments with clinicians to receive an initial diagnostic evaluation (also called an "intake assessment"). The purpose of the evaluation, which typically lasts 60-90 minutes, is to diagnose an enrollee's MH/SUD and design an appropriate treatment plan. Typically, the clinician who performs the initial diagnostic evaluation also serves as the enrollee's treating clinician. The NCQA, which accredits Kaiser, establishes 10 business days as the outer limit by which enrollees must be seen for non-urgent behavioral health appointments.

Urgent Appointment: For those enrollees experiencing self-harm, suicidal ideation, an acute crisis, the onset of a psychotic episode or other conditions, Call Center clinicians facilitate urgent individual appointments with a clinician. The NCQA establishes 48 hours as the outer limit by which enrollees must be seen for urgent appointments.

Individual Treatment Appointments: Following a diagnostic evaluation, an enrollee typically receives a series of individual follow-up appointments with their clinician to treat their MH/SUD. Such treatment, typically delivered in 30-60 minute appointments, may be supplemented by therapy groups and psychoeducation classes. National non-profit clinical associations such as the American Academy of Child and Adolescent Psychiatry (AACAP) and the American Psychological Association (APA) publish clinical practice guidelines that recommend the frequency, dosage, and duration of treatment for patients with various diagnoses. The APA is among the premier standard-setting organizations for mental health care in the United States. For example, the APA's treatment recommendations are based on effectiveness studies with either weekly or biweekly therapy for the treatment of Post-Traumatic Stress Disorder (PTSD) in adults,[6] depression in adults and adolescents,[7] and obsessive-compulsive disorder in children.[8]

B. Kaiser's Network of Clinicians: Kaiser employs approximately 51 clinicians to deliver the full spectrum of behavioral health services to its approximately 260,000 enrollees in Hawaii. In

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[5] These electronic messages include "eConsults" as well as messages sent through other electronic staff messaging systems.

[6] APA, "Clinical Practice Guideline for the Treatment of PTSD," 2017. Available at: https://www.apa.org/ptsd-guideline/ptsd.pdf Also, see Appendix B, available at: https://www.apa.org/ptsd-guideline/appendices.pdf

[7] APA, "Clinical Practice Guideline for the Treatment of Depression across Three Age Cohorts." Available at: https://www.apa.org/depression-guideline/adults

[8] The AACAP recommends at least weekly psychotherapy as the "clinical standard" for the treatment of OCD in children. "AACAP Official Action: Practice Parameter for the Assessment and Treatment of Children and Adolescents with Obsessive-Compulsive Disorder," Journal of the American Academy of Child and Adolescent Psychiatry, Vol. 51, No. 1, January 2012. Available at: https://www.jaacap.org/article/S0890-8567(11)00882-3/pdf

addition to these "internal" providers, Kaiser also contracts with 188 "external" clinicians who practice privately in the community and who typically treat not only Kaiser enrollees but also non-Kaiser patients who pay cash or whose care is reimbursed by other commercial and public payers. These external therapists are independent contractors. Below, this complaint provides more details about the "external" clinicians, including a breakdown of the numbers of these clinicians who currently are and are not accepting Kaiser's enrollees for treatment.

IV. Evidence of Kaiser's Apparently Illegal Practices

As noted above, Hawaii law requires health carriers to maintain an adequate network of providers to ensure that all covered benefits are accessible "without unreasonable travel or delay." As far as evaluating provider network adequacy, Hawaii law instructs the Insurance Commissioner to consider "any reasonable criteria, which may include but shall not be limited to… waiting times for an appointment with participating providers… [and] the ability of the network to meet the needs of covered persons…" As noted above, Hawaii law establishes additional requirements related to utilization review.

NUHW has assembled evidence of Kaiser's excessive appointment wait times and its inability to meet the needs of many enrollees with MH/SUDs. Below, this evidence is presented for each of four types of MH/SUD services: triage assessments, initial diagnostic evaluations, urgent appointments, and individual treatment appointments.

A. Triage Assessments: The NCQA's standards require health plans to ensure that enrollees can access care for a non-life threatening emergency within six hours. At Kaiser, due to the understaffing of its triage services, enrollees routinely wait far longer to obtain a telephone triage assessment, which is simply the first step in eventually receiving the care cited by the NCQA. With only five full-time therapists, Kaiser's Behavioral Health Services Call Center cannot adequately respond to the approximately 100 to 150 telephone calls it receives daily as well as an unknown number of written triage requests delivered to the Call Center by eConsult and other staff messages.

According to clinicians, most enrollees who phone the Call Center often wait on hold for upwards of **30 to 60 minutes** before they can speak to a clinician. Such long wait times result in a **"call abandonment rate" that is typically 20% to 45%** (the term "abandonment" refers to patients who hang up before speaking to someone). Assuming a call volume of 125 calls per day, this abandonment rate translates into 25 to 56 enrollees who are abandoning Kaiser's gateway to behavioral health services each day. Some of these patients may never call back and may forgo care due to the access obstacles presented by Kaiser's understaffed Call Center.

In addition to those who abandon their calls altogether, another segment of the enrollees waiting on hold hang up and attempt to reach Kaiser through other telephone numbers. Oftentimes, these enrollees end up speaking with a clerk, who sends an electronic message to Call Center clinicians requesting that a clinician phone the enrollee. Many of these patients wait one to four weeks

before they receive a 'call back' attempt from the Call Center, according to clinicians.[9] Similar waits for a phone call are experienced by enrollees whose original triage requests are communicated to the Call Center by eConsult and other staff messages sent by an enrollee's primary care physician, specialty physician, or psychiatrist.

During the past four months, the number of enrollees awaiting 'call backs' from the Call Center has ranged from as few as 10-20 to as many as 100-200 enrollees at any given time. Enrollees awaiting 'call backs' are listed in EPIC Health Connect (Kaiser's electronic information-management system) in three separate folders: (1) "Staff Messages," (2) "CC Charts," and (3) "E-Visits."

- "Staff Messages" records messages from clerks, physicians and other referrers within Kaiser who refer a patient for behavioral health services. This list includes enrollees who speak with clerks after abandoning Kaiser's triage phone line and phone a Kaiser clerk to seek assistance.
- "CC Charts" houses all messages from Kaiser staff members who route a progress note about a patient to the triage therapists as a means of referring the patient to behavioral health services.
- "E-Visits" consists of emails sent automatically to the Call Center for those enrollees who register high scores on Kaiser's online depression assessment survey, which indicates symptoms of severe depression.[10] The Call Center clinicians are expected to phone these enrollees, perform a formal telephone triage assessment, and connect them with appropriate treatment. At the end of September 2021, there were approximately 50 enrollees awaiting phone calls on the "E-Visits" list, with some having waited for 1.5 months for a call back.

These three lists are effectively wait lists of enrollees requiring behavioral health triage assessments.

Notably, messages in both the "Staff Messages" and "CC Charts" folders are not permanent features of a patient's electronic medical record. As soon as messages in either folder are resolved as completed, the messages are deleted and are not recorded or memorialized in the patient's chart, according to clinicians. Consequently, Kaiser's record-keeping system appears to leave no enduring record indicating how long each patient waits for a response from the Call Center.

B. Initial Diagnostic Evaluations: NCQA's accreditation standards (QI 4, Element A) establish 10 business days as the outer limit by which enrollees must be seen for non-urgent behavioral health appointments. At Kaiser, internal records indicate that most enrollees are waiting **four to**

[9] During the past four months, wait times have varied, according to clinicians. Currently, enrollees often wait one to four weeks for a call back attempt. Several months ago, enrollees often waited four to eight weeks for a call back attempt.

[10] When an enrollee completes an online depression assessment survey, the enrollee's response to each question is assigned a numerical value. The numerical values for all of the survey questions are summed and then placed on a depressive symptoms rating scale to make an assessment of the severity of the enrollee's symptoms (e.g., mild, moderate, or severe). These processes are performed automatically (i.e., no human intervention).. Likewise, an email is sent automatically to the Call Center when an enrollee scores as exhibiting symptoms of severe depression.

eight times longer than the NCQA's maximum wait times. Furthermore, these records indicate that child and adolescent enrollees are enduring the longest waits. For example, as of June 24, 2021, the first available diagnostic evaluation for a child or adolescent patient at Kaiser's mental health clinic on the Big Island was 78 days later.

NUHW has documented Kaiser's excessive appointment wait times by assembling a variety of internal records, which are contained in the exhibits below.

Exhibit 2: **Appointment-Availability Spreadsheet of June 18, 2021**. On June 18, 2021, a Kaiser supervisor sent an email in which she shared internal data on wait times for various categories of mental health appointments delivered by both clinicians and psychiatrists on Maui, Oahu, and the Big Island. The email, which is headed by a subject line of "appt stats," states the following: "Fyi - info on how far out we are scheduling." Attached to the email is an Excel file with a filename of "IBH Access 06.17.21.xlsx." [11] Images of the Excel file are contained in Exhibit 2 and are reproduced below.

The Excel file contains a chart entitled "Kaiser Hawaii Behavioral Health Access" that indicates that as of June 17, 2021, the next available therapist-provided diagnostic evaluation appointments for adult and child/adolescent patients at Kaiser's clinics on the three islands were between 41 and 52 days later. These figures are taken from the columns labeled "DE" (which according to the chart signifies "diagnostic evaluation for new patient intake") in the columns of the chart headed by the labels "Adult Therapist" and "Child Therapist."

Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 6/17/21

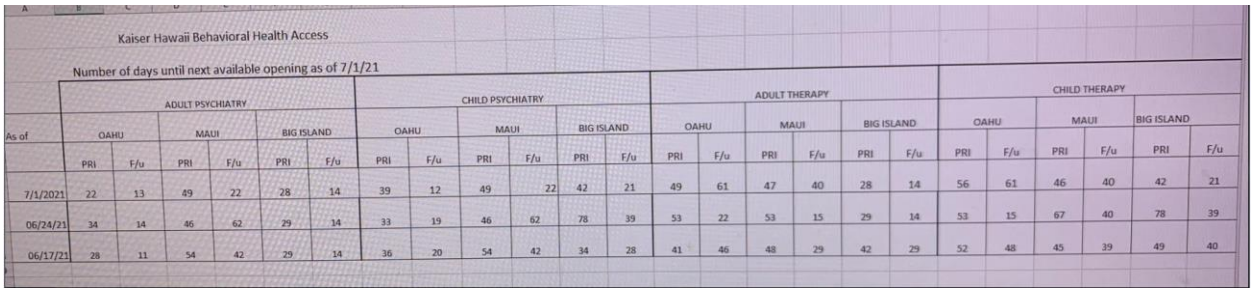
	Adult Pscyhiatrist		Child Psychiatrist		Adult Therapist		Child Therapist	
	DE	Follow up appt	DE	Follow up appt	DE	Follow up appt	DE	Follow up appt
Oahu	28	11	39	20	41	46	52	48
Maui	54	42	54	42	48	29	45	39
Big Island	29	14	34	28	42	29	49	40

DE= Diagnostic evaluation for new patient intake

[11] "IBH" refers to "Integrated Behavioral Health," the term that Kaiser uses to refer to its behavioral health services unit in Hawaii.

Exhibit 3: **Appointment-Availability Spreadsheet of July 2, 2021.** On July 2, 2021, the Kaiser supervisor sent another email containing internal data on wait times for various categories of mental health appointments delivered by both clinicians and psychiatrists at various Kaiser clinic sites. The email, with the subject line "Staffing & Coverage," states in part the following: "Hi, Pls find attached… Weekly IBH access report - the reality of the wait." The email contains several attachments, including an Excel spreadsheet with a filename of "IBH Access 2021.xlsx." Images of the Excel file are contained in Exhibit 3 and are reproduced below.

The Excel file contains a chart entitled "Kaiser Hawaii Behavioral Health Access" that indicates that as of July 1, 2021, the next available therapist-provided diagnostic evaluation appointments at Kaiser's clinics on the three islands averaged 41.3 and 48.0 days for adult and child patients, respectively. These figures are taken from the columns labeled "PRI" beneath the headings "Adult Therapy" and "Child Therapy." Kaiser uses the term "PRI" to refer to initial diagnostic evaluation appointments.



Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 7/1/21

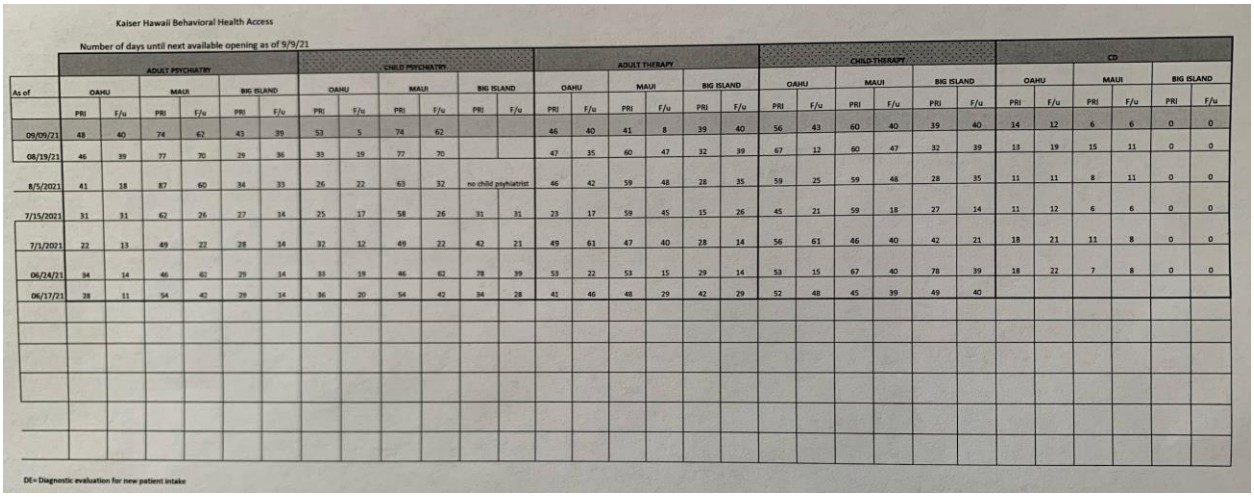
	ADULT PSYCHIATRY						CHILD PSYCHIATRY						ADULT THERAPY						CHILD THERAPY					
As of	OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND	
	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u
7/1/2021	22	13	49	22	28	14	39	12	49	22	42	21	49	61	47	40	28	14	56	61	46	40	42	21
06/24/21	34	14	46	62	29	14	33	19	46	62	78	39	53	22	53	15	29	14	53	15	67	40	78	39
06/17/21	28	11	54	42	29	14	36	20	54	42	34	28	41	46	48	29	42	29	52	48	45	39	49	40

Exhibit 4: **Email and Appointment-Availability Spreadsheet of September 10, 2021.** On September 10, 2021, the Kaiser supervisor sent another email containing internal data on wait times. The email, with the subject line "9/9/21 access report," states in part the following:

> Morning!
>
> Attached is the access report for your reference.
> Next return for an adult on Maui is 8 days with Dattola; next return with all other adult therapists is in 40 days.

The email contains an Excel spreadsheet as an attachment with a filename of "IBH Access 09.09.21.xlsx." Images of the Excel file are contained in Exhibit 4 and are reproduced immediately below.

The Excel file contains a chart entitled "Kaiser Hawaii Behavioral Health Access" that provides data on wait times for various categories of appointments from seven dates in 2021: June 17, June 24, July 1, July 15, August 5, August 19 and September 9. Unlike the prior two reports, the "access report" dated 9/9/21 includes data on the next available appointment for enrollees with "chemical dependency" (CD) disorders. As in the prior access report, the term "PRI" refers to initial diagnostic evaluation appointments.



Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 9/9/21

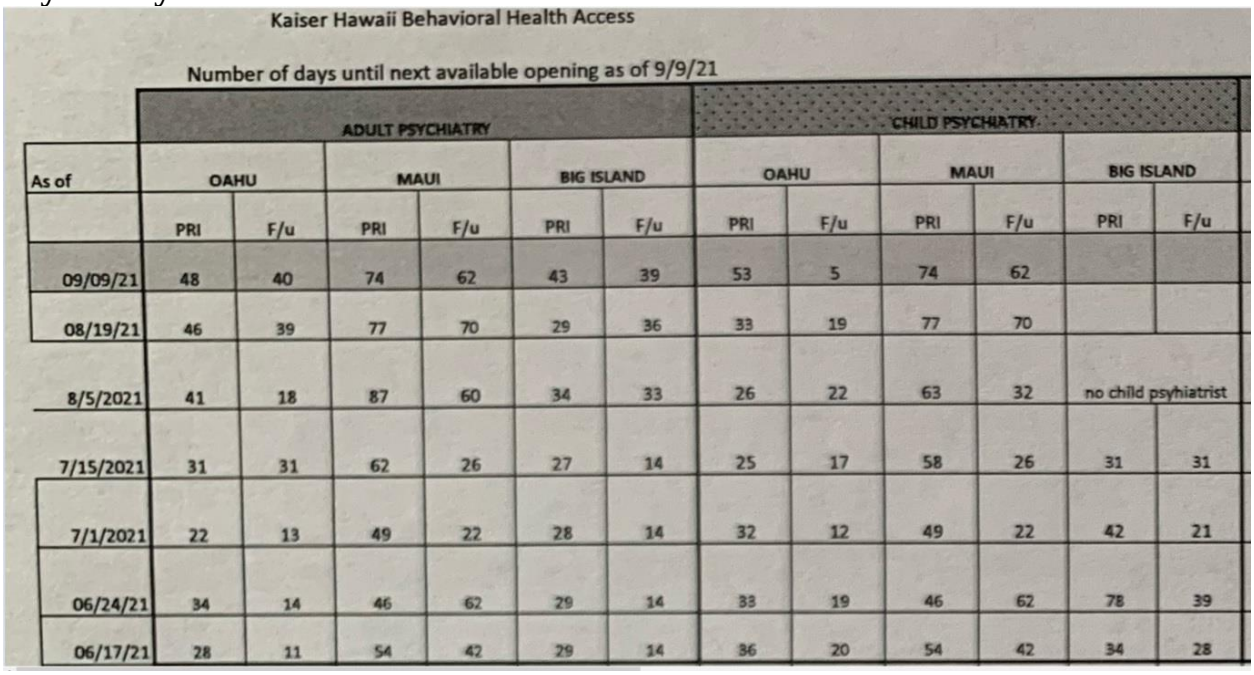
As of	ADULT PSYCHIATRY						CHILD PSYCHIATRY						ADULT THERAPY						CHILD THERAPY						CD					
	OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND	
	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u
09/09/21	48	40	74	62	43	39	53	5	74	62			46	40	41	8	39	40	56	43	60	40	39	40	14	12	6	6	0	0
08/19/21	46	39	77	70	29	36	33	19	77	70			47	35	60	47	32	39	67	12	60	47	32	39	13	19	15	11	0	0
8/5/2021	41	18	87	60	34	33	26	22	63	32	no child psyhiatrist		46	42	59	48	28	35	59	25	59	48	28	35	11	11	8	11	0	0
7/15/2021	31	31	62	26	27	34	25	17	58	26	31	31	23	17	59	45	15	26	45	21	59	18	27	14	11	12	6	6	0	0
7/1/2021	22	13	49	22	28	34	32	12	49	22	42	21	49	61	47	40	28	14	56	61	46	40	42	21	18	21	11	8	0	0
06/24/21	34	14	46	62	29	34	33	19	46	62	78	39	53	22	53	15	29	14	53	15	67	40	78	39	18	22	7	8	0	0
06/17/21	28	11	54	42	29	34	36	20	54	42	34	28	41	46	48	29	42	29	52	48	45	39	49	40						

DE= Diagnostic evaluation for new patient intake

Given the dimensions of the chart, NUHW took images of each subsection of the report to facilitate the viewing of the data. Below are images of each subsection: Psychiatry, Therapy, and Chemical Dependency.

Using the data, NUHW computed average wait times for various appointment types and geographies across the multiple measurement points. The results of this analysis are presented in tables beneath each subsection. Importantly, this report provides data on appointment wait times over a 12-week time period, indicating that Kaiser's lengthy appointment waits are not a one-time aberration but rather a persistent feature of its care delivery system. Also, the charts in Exhibits 2-4 reveal that Kaiser's managers collect and monitor data on appointment availability, and consequently they are aware of enrollees' excessive wait times and Kaiser's apparent violations of Hawaii law. Lastly, these charts represent a data source that the Insurance Commissioner can pursue in its investigation.

Psychiatry



Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 9/9/21

	ADULT PSYCHIATRY						CHILD PSYCHIATRY					
As of	OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND	
	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u
09/09/21	48	40	74	62	43	39	53	5	74	62		
08/19/21	46	39	77	70	29	36	33	19	77	70		
8/5/2021	41	18	87	60	34	33	26	22	63	32	no child psyhiatrist	
7/15/2021	31	31	62	26	27	14	25	17	58	26	31	31
7/1/2021	22	13	49	22	28	14	32	12	49	22	42	21
06/24/21	34	14	46	62	29	14	33	19	46	62	78	39
06/17/21	28	11	54	42	29	14	36	20	54	42	34	28

During the 12-week period, the statewide average wait for Kaiser's next available initial diagnostic evaluation with a psychiatrist was 43.7 and 46.9 days, respectively, for adult and child/adolescent enrollees. These delays are more than quadruple the maximum wait times permitted by the NCQA (10 business days). These figures understate the actual average wait times since, after July 15, 2021, Kaiser reports it had no child psychiatrist appointments available on the Big Island.

With respect to trends during the 12-week period, it is notable that appointment delays sharply increased for every geography and category of psychiatrist appointments except for follow-up child appointments on Oahu. In many cases, the increases were massive. For example, in one case the appointment delays nearly quadrupled from June 17 to September 9 (i.e., the number of days until the next available follow-up appointment on Oahu increased from 11 to 40 days). This sharp increase in appointment delays is very troubling and merits urgent investigation.

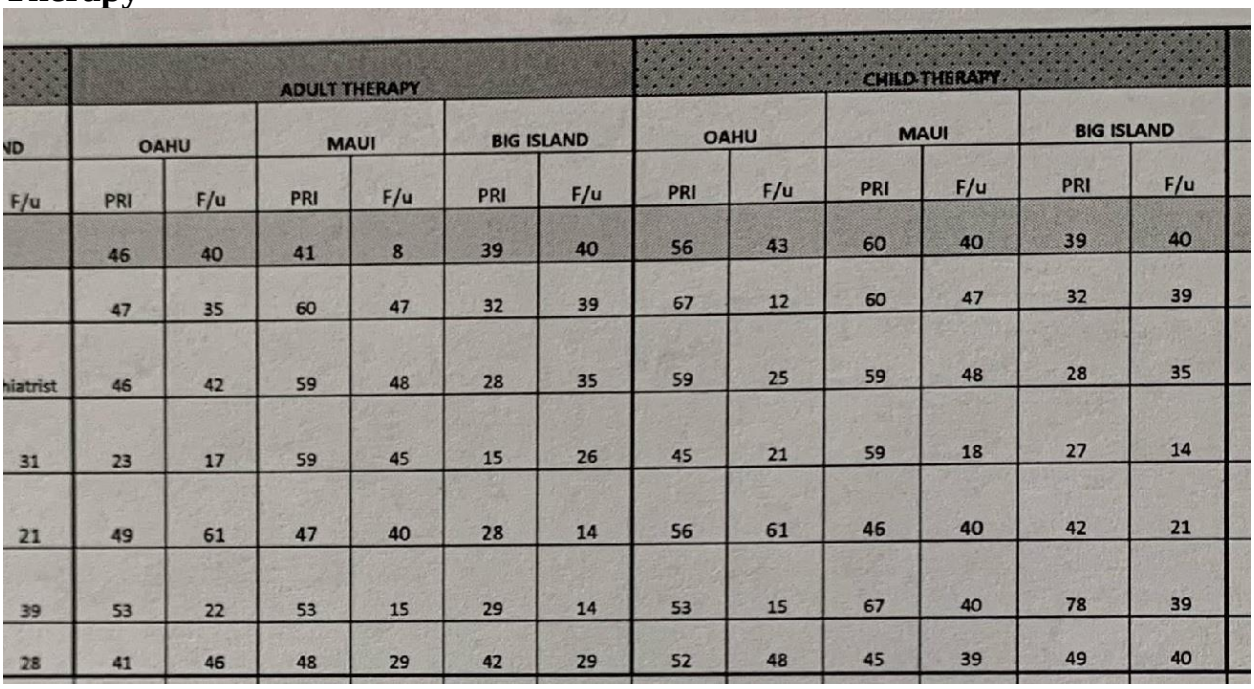
Average Number of Days until Next Available Initial Appointment with a Psychiatrist: June 17-September 9, 2021.

	Oahu	**Maui**	**Big Island**	**Statewide**
Adult Psychiatry	35.7	64.1	31.3	43.7
Child Psychiatry	34.0	60.1	46.3	46.9

Source: The figures in this table are calculated from data presented in the Excel file emailed by the Kaiser supervisor on September 10, 2021. The image of the Excel file is available in Exhibit 4. As far as the Big Island, Kaiser's chart indicates that there were no Child appointments available after 7/15/21 because

there was "no child psychiatrist" at the clinic. NUHW computed averages across the dates for which figures were available. Consequently, the average figures in the table understate the wait times.

Therapy



	ADULT THERAPY						CHILD THERAPY					
ND	OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND	
F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u
	46	40	41	8	39	40	56	43	60	40	39	40
	47	35	60	47	32	39	67	12	60	47	32	39
hiatrist	46	42	59	48	28	35	59	25	59	48	28	35
31	23	17	59	45	15	26	45	21	59	18	27	14
21	49	61	47	40	28	14	56	61	46	40	42	21
39	53	22	53	15	29	14	53	15	67	40	78	39
28	41	46	48	29	42	29	52	48	45	39	49	40

During the 12-week period, the statewide average wait for Kaiser's next available initial diagnostic evaluation appointment with a non-physician clinician was 42.1 and 51.4 days, respectively, for adult and child/adolescent enrollees. These delays are four and five times longer than the maximum wait times permitted by NCQA standards (10 business days).

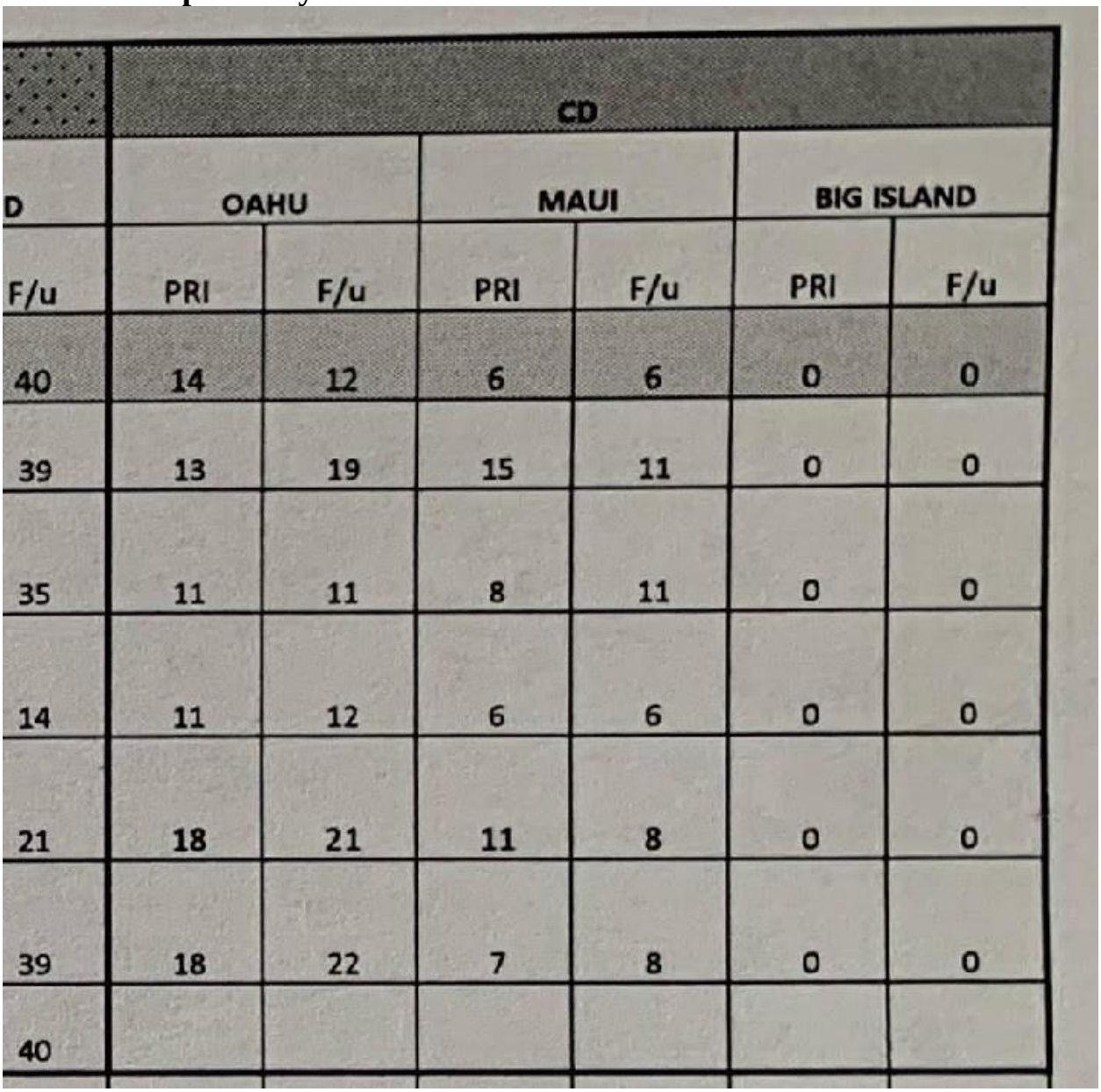
As far as trends during the 12-week period, appointment waits for three of the six subcategories of appointments and geographies lengthened while three of them shortened. For all six subcategories, the average wait times vastly exceeded the NCQA's 10-business day standard. For example, the best-performing subcategory (30.4 days for Adult therapy on the Big Island) was three times longer than the NCQA standard (10 business days).

Average Number of Days until Next Available Initial Diagnostic Evaluation Appointment with a Non-Physician Behavioral Health Therapist: June 17-September 9, 2021.

	Oahu	Maui	Big Island	Statewide
Adult Therapy	43.6	52.4	30.4	42.1
Child Therapy	55.4	56.6	42.1	51.4

Source: The figures are calculated from data presented in the Excel file emailed by a Kaiser supervisor on September 10, 2021. The image of the Excel file is available in Exhibit 4.

Chemical Dependency



	CD					
D	OAHU		MAUI		BIG ISLAND	
F/u	PRI	F/u	PRI	F/u	PRI	F/u
40	14	12	6	6	0	0
39	13	19	15	11	0	0
35	11	11	8	11	0	0
14	11	12	6	6	0	0
21	18	21	11	8	0	0
39	18	22	7	8	0	0
40						

Figures on availability of chemical dependency appointments were not included in the two prior access charts emailed by the Kaiser supervisor. In the chart contained in Exhibit 4, no figures are presented for the June 17 measurement date. Meanwhile, all of the figures for the Big Island are listed as "0." The latter figures raise suspicions because none of the nearly 200 other measurements had a value of zero days for any service during any time period. Lastly, Kaiser's access data does not indicate whether its chemical dependency appointments are with a non-physician or physician provider.

Average Number of Days until Next Available Initial Chemical Dependency Appointment: June 24-September 9, 2021.

	Oahu	Maui	Big Island
Chemical Dependency Appt.	14.2	8.8	0

Source: The figures are calculated from data presented in the Excel file emailed by a Kaiser supervisor on September 10, 2021. The image of the Excel file is available in Exhibit 4.

Exhibits from Kaiser's Epic System: NUHW obtained additional records that corroborate the aggregate data presented in the emails and charts sent by the Kaiser supervisor. This corroborating evidence consists of records from Epic, Kaiser's electronic appointment-scheduling system.

Some background information about Kaiser's appointment-scheduling records is necessary. Kaiser's Epic system displays each available unbooked appointment slot by appointment type, length of appointment, date and time of appointment, department, provider's name, and clinic/provider location.

When an enrollee needs to book an appointment, a Kaiser staff person queries the Epic system to identify the available appointment slots by searching for "Open Times by Date & Time." In response, the Epic system returns a screen with a grid that lists the available appointment slots in chronological order beginning with the soonest available appointment slot. A Kaiser staff person can then book an enrollee into an open appointment slot.

The following evidence consists of the appointment-availability grids resulting from searches for the first available diagnostic evaluation appointments and return (follow-up) treatment appointments performed by non-physician behavioral health therapists. Separate searches were performed by island and by patient population (adults vs. children/adolescents) in order to examine enrollees' wait times across various services and geographies. The screens displaying the appointment-availability grids contain the date on which the query was performed (see the bottom right hand corner), thereby permitting the calculation of the elapsed wait time in both calendar and business days.

The fourth column of the appointment-availability grids, labeled "Pri?," indicates whether the appointment slot is intended for a diagnostic intake evaluation (indicated by the term "Pri") or for individual follow-up treatment (indicated by a blank cell). Diagnostic intake evaluations require at least 60 minutes for adults and 90 minutes for children and adolescents, according to professional guidelines and Medicare billing standards. Thirty-minute appointment slots labeled "Pri" were excluded from our analysis since they are often unused fragments of longer appointment slots.[12]

[12] According to clinicians, 30-minute intake slots sometimes appear in the scheduling system when a clinician books a 60-minute intake in a 90-minute slot, leaving 30 remaining minutes that Epic presents as unused.

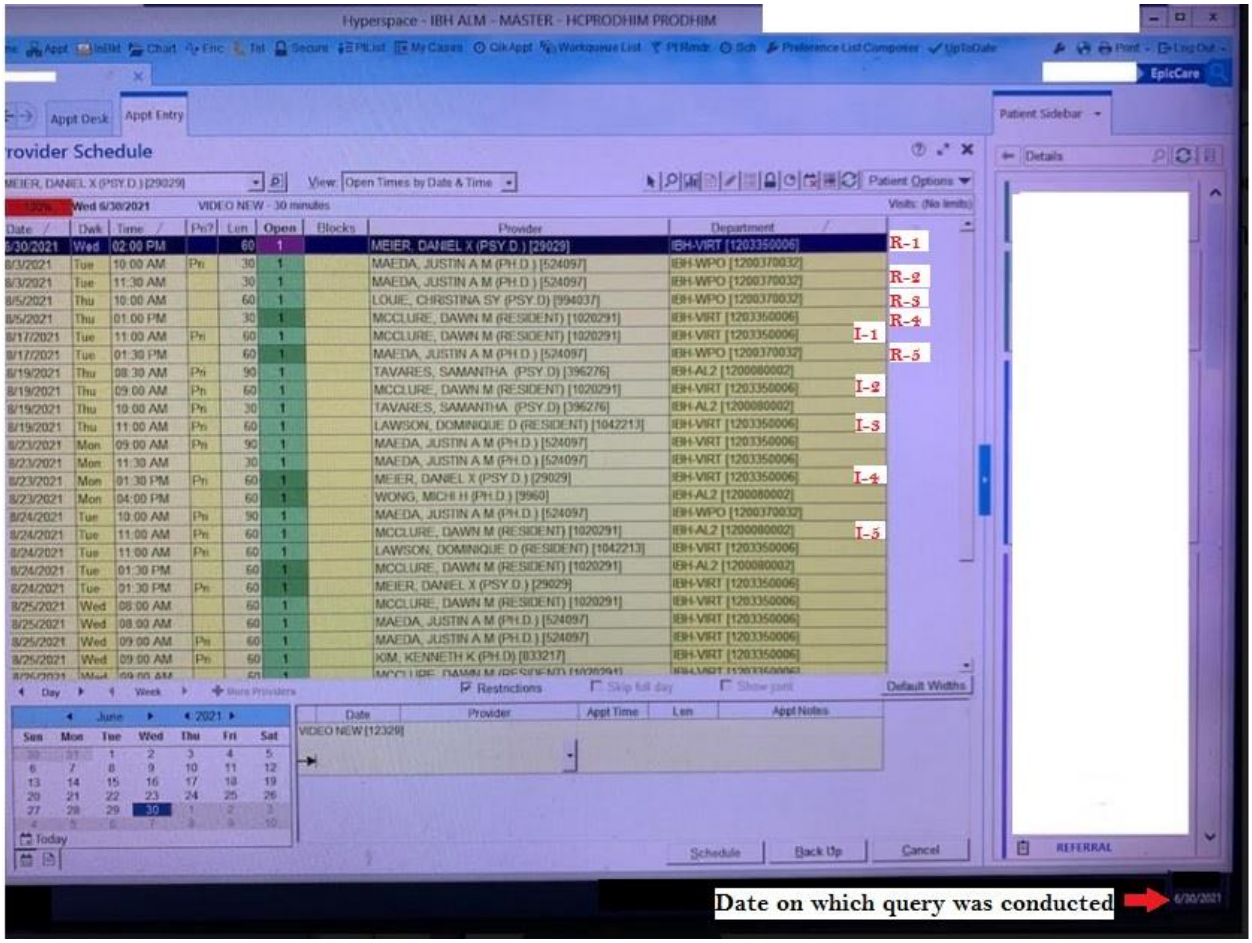
Beneath the images of the appointment-availability grids, we have inserted summary tables displaying the elapsed wait times derived from the grids. The summary tables, which were prepared by NUHW, also contain references to the annotations that NUHW placed onto the images in order to facilitate the Insurance Commissioner's review of this evidence.[13] NUHW has redacted some extraneous icons on the images in order to protect the identities of whistleblowers. None of the images contains any protected health information.

NUHW's summary tables display the five earliest appointments. In some cases, an unbooked appointment slot may appear on the same day that a query is performed. At first glance, this immediately available appointment slot appears to indicate abundant appointment availability. However, it is typically an anomaly that is produced when a patient cancels their appointment at the last minute, thereby freeing up the appointment slot. Consequently, in order to evaluate appointment availability, it is necessary to analyze a larger sample of appointment slots (for example, analyzing the dates of the five or more soonest appointments).

Lastly, it is important to note that the wait times for individual follow-up treatment appointments understate the waits that enrollees actually endure for such care. Each enrollee can only receive individual follow-up treatment from their treating clinician. Consequently, the first available individual treatment appointment is only available to enrollees for whom that particular therapist is their treating provider.

Exhibit 5: Adult Intake Appointments and Return Appointments on Oahu. The following is an appointment-availability grid from Epic produced in response to a query made on June 30, 2021 for the soonest available intake appointments on Oahu, where Kaiser provides behavioral health services from its clinics in Ala Moana (ALM and AL2) and Waipio (WPO). These two clinics are Kaiser's largest behavioral health clinics in Hawaii. Diagnostic "intake" evaluation appointments are 60 minutes in length for adult enrollees. As noted in the table below, the elapsed wait time for the soonest available intake appointment was 34 business days (approximately 7 weeks), more than triple the maximum timeframe established by the NCQA (10 business days). The grid also displays the soonest available return treatment appointments.

[13] NUHW can provide the Insurance Commissioner with unannotated images.

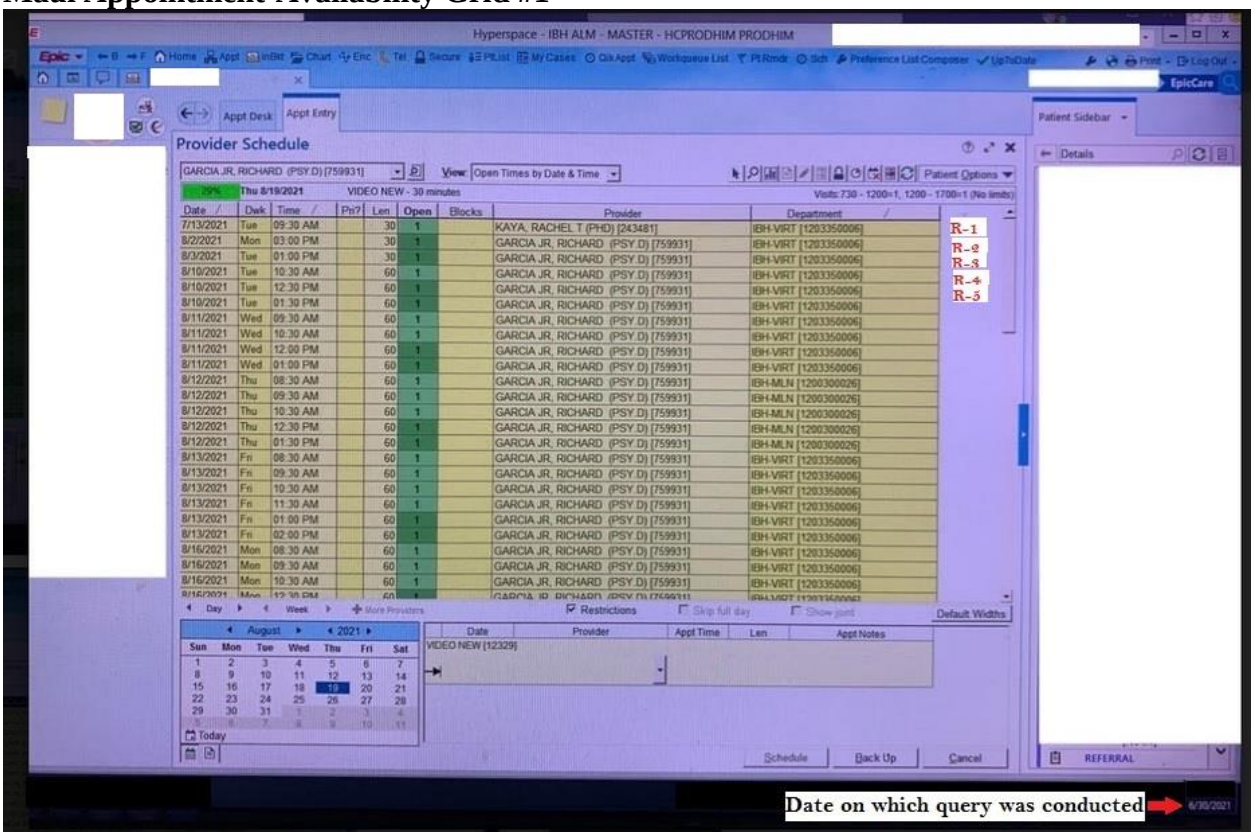

Hyperspace - IBH ALM - MASTER - HCPRODHIM PRODHIM
Appt Desk
Appt Entry
rovider Schedule
MEIER, DANIEL X (PSY.D.) [29029]
View: Open Times by Date & Time
Wed 6/30/2021
VIDEO NEW - 30 minutes
Patient Options
Visits: (No limits)
Date | Dwk | Time | Pn? | Len | Open | Blocks | Provider | Department
6/30/2021 | Wed | 02:00 PM | | 60 | 1 | | MEIER, DANIEL X (PSY.D.) [29029] | IBH-VIRT [1203350006]
8/3/2021 | Tue | 10:00 AM | Pn | 30 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/3/2021 | Tue | 11:30 AM | | 30 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/5/2021 | Thu | 10:00 AM | | 60 | 1 | | LOUIE, CHRISTINA SY (PSY.D) [994037] | IBH-WPO [1200370032]
8/5/2021 | Thu | 01:00 PM | | 30 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/17/2021 | Tue | 11:00 AM | Pn | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/17/2021 | Tue | 01:30 PM | | 60 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/19/2021 | Thu | 08:30 AM | Pn | 90 | 1 | | TAVARES, SAMANTHA (PSY.D) [396276] | IBH-AL2 [1200880002]
8/19/2021 | Thu | 09:00 AM | Pn | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/19/2021 | Thu | 10:00 AM | Pn | 30 | 1 | | TAVARES, SAMANTHA (PSY.D) [396276] | IBH-AL2 [1200880002]
8/19/2021 | Thu | 11:00 AM | Pn | 60 | 1 | | LAWSON, DOMINIQUE D (RESIDENT) [1042213] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 09:00 AM | Pn | 90 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 11:30 AM | | 30 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 01:30 PM | Pn | 60 | 1 | | MEIER, DANIEL X (PSY.D.) [29029] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 04:00 PM | | 60 | 1 | | WONG, MICHI H (PH.D.) [9960] | IBH-AL2 [1200880002]
8/24/2021 | Tue | 10:00 AM | Pn | 90 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/24/2021 | Tue | 11:00 AM | Pn | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-AL2 [1200880002]
8/24/2021 | Tue | 11:00 AM | Pn | 60 | 1 | | LAWSON, DOMINIQUE D (RESIDENT) [1042213] | IBH-VIRT [1203350006]
8/24/2021 | Tue | 01:30 PM | | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-AL2 [1200880002]
8/24/2021 | Tue | 01:30 PM | Pn | 60 | 1 | | MEIER, DANIEL X (PSY.D.) [29029] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 08:00 AM | | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 08:00 AM | | 60 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 09:00 AM | Pn | 60 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 09:00 AM | Pn | 60 | 1 | | KIM, KENNETH K (PH.D) [833217] | IBH-VIRT [1203350006]
R-1
R-2
R-3
R-4
I-1
R-5
I-2
I-3
I-4
I-5
Day
Week
Restrictions
Skip full day
Show joint
Default Widths
June
2021
Sun Mon Tue Wed Thu Fri Sat
Today
Date | Provider | Appt Time | Len | Appt Notes
VIDEO NEW [12329]
Schedule
Back Up
Cancel
Patient Sidebar
Details
REFERRAL
Date on which query was conducted
6/30/2021

Elapsed Wait Times for Five Soonest Adult Intake and Return Appointments on Oahu: June 30, 2021

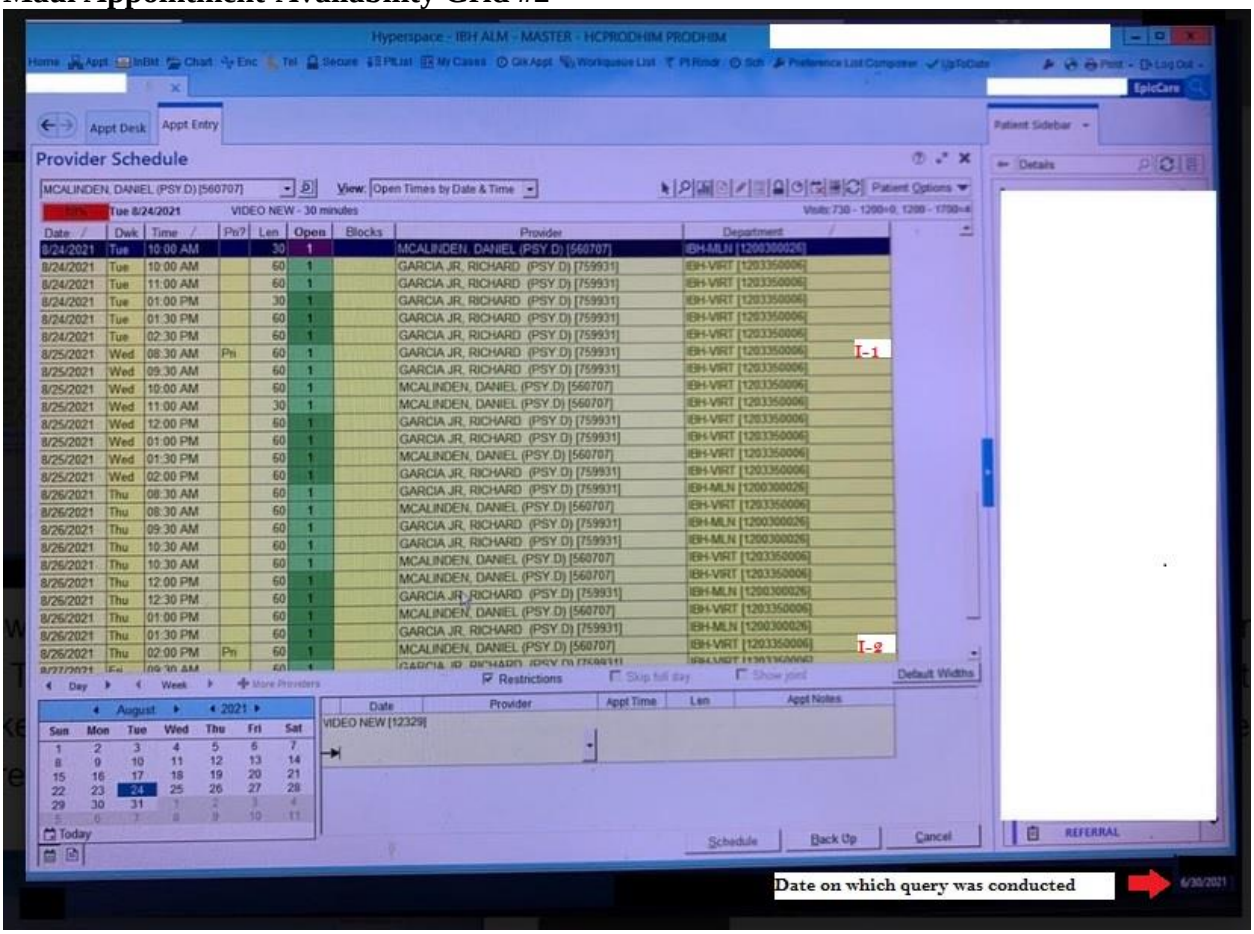
Type of Appointment	**Length of Appt.**	**Date of Soonest Available Appt. Slots**	**Elapsed Wait Time** (Calendar Days)	**Elapsed Wait Time** (Business Days)	**Key for Image** (in red)
Intake (PRI)	60 min	8/17/21	49	34	I-1
Intake (PRI)	60 min	8/19/21	51	36	I-2
Intake (PRI)	60 min	8/19/21	51	36	I-3
Intake (PRI)	60 min	8/23/21	55	38	I-4
Intake (PRI)	60 min	8/24/21	56	39	I-5
Return	60 min	6/30/21	0	0	R-1
Return	30 min	8/3/21	35	24	R-2
Return	60 min	8/5/21	37	26	R-3
Return	30 min	8/5/21	37	26	R-4
Return	60 min	8/17/21	49	34	R-5

Exhibit 6: **Adult Intake Appointments and Return Appointments on Maui.** The following is an appointment-availability grid from Epic produced in response to a query made on June 30, 2021 for the soonest intake appointments for adult enrollees on Maui, where Kaiser delivers behavioral health services at its clinic in Maui Lani (MLN). This clinic is Kaiser's third largest behavioral health clinic in Hawaii. Due to the excessive wait times for diagnostic evaluation appointments, the appointment-availability grid is displayed across two screens, resulting in two images below (Maui Appointment-Availability Grid #1 and Maui Appointment-Availability Grid #2). The elapsed wait time for the soonest available intake appointment is 40 business days (8 weeks), which is quadruple the maximum timeframe established by the NCQA (10 business days). The next soonest available intake appointments are later in time and are not viewable on these screens. Consequently, the table records them as "N/A" for "not available." The grid also displays the soonest available return treatment appointments.

Maui Appointment-Availability Grid #1



Maui Appointment-Availability Grid #2



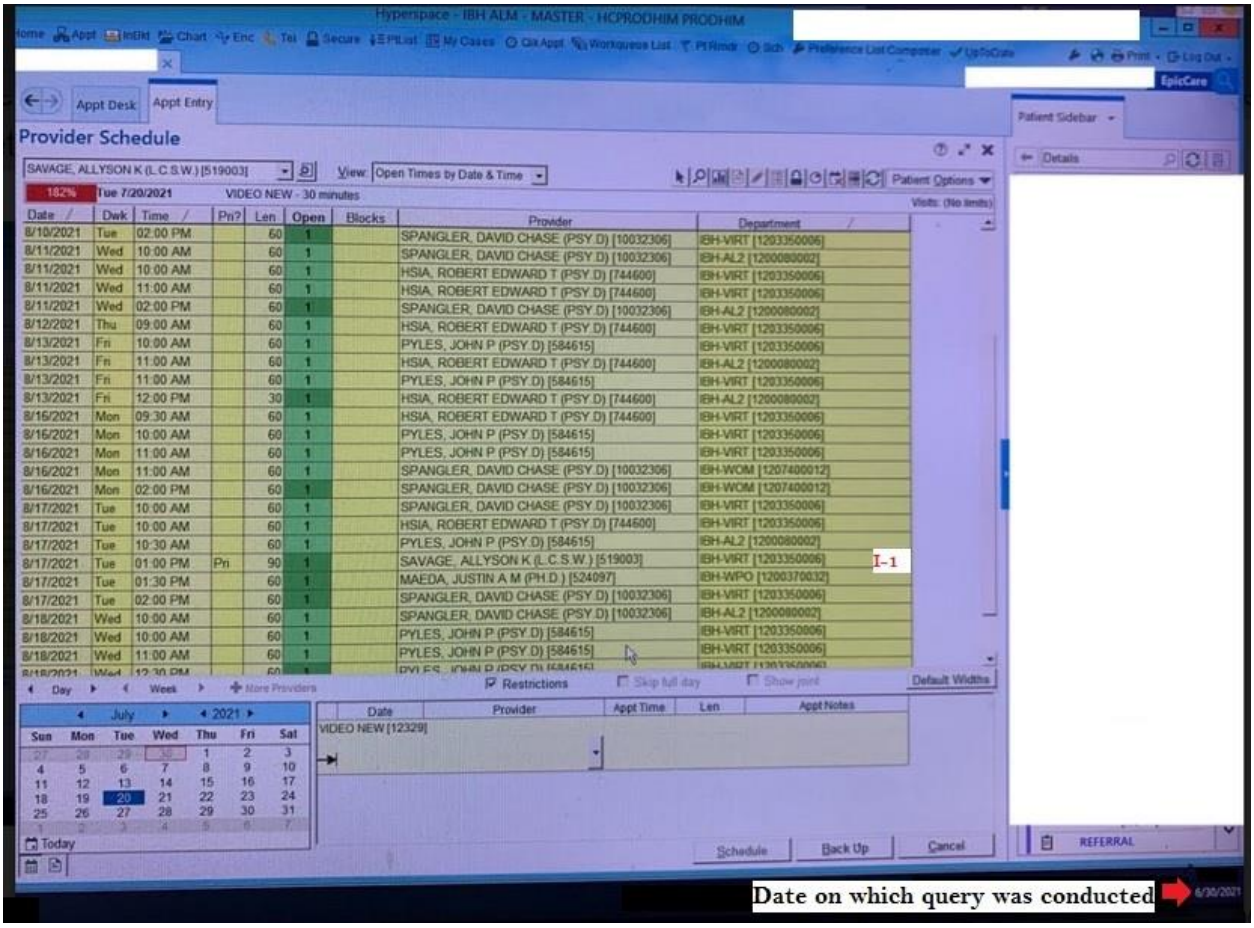
Elapsed Wait Times for Five Soonest Adult Intake and Return Appointments on Maui: June 30, 2021

Type of Appointment	**Length of Appt.**	**Date of Soonest Available Appt. Slots**	**Elapsed Wait Time** (Calendar Days)	**Elapsed Wait Time** (Business Days)	**Key for Image** (in red)
Intake (PRI)	60 min	8/25/21	57	40	I-1
Intake (PRI)	60 min	8/26/21	58	41	I-2
Intake (PRI)	N/A	N/A	N/A	N/A	I-3
Intake (PRI)	N/A	N/A	N/A	N/A	I-4

Intake (PRI)	N/A	N/A	N/A	N/A	I-5
Return	30 min	7/13/21	14	9	R-1
Return	30 min	8/2/21	34	23	R-2
Return	30 min	8/3/21	35	24	R-3
Return	60 min	8/10/21	42	29	R-4
Return	60 min	8/10/21	42	29	R-5

Exhibit 7: **Child/Adolescent Intake Appointments on Oahu.** The following is an appointment-availability grid from Epic produced in response to a query made on June 30, 2021 for the soonest intake appointments for child and adolescent enrollees on Oahu.[14] The elapsed wait time for the soonest available intake appointment is 34 business days (approximately 7 weeks), which is more than triple the maximum time frame established by the NCQA (10 business days). As far as the availability of follow-up treatment appointments, figures are not included in NUHW's table below because, for those clinicians who treat both adults and children/adolescents, an open follow-up slot can be used for either patient population. Consequently, the appointment-availability grid provides us with more generalized data on the waits for adults and children.

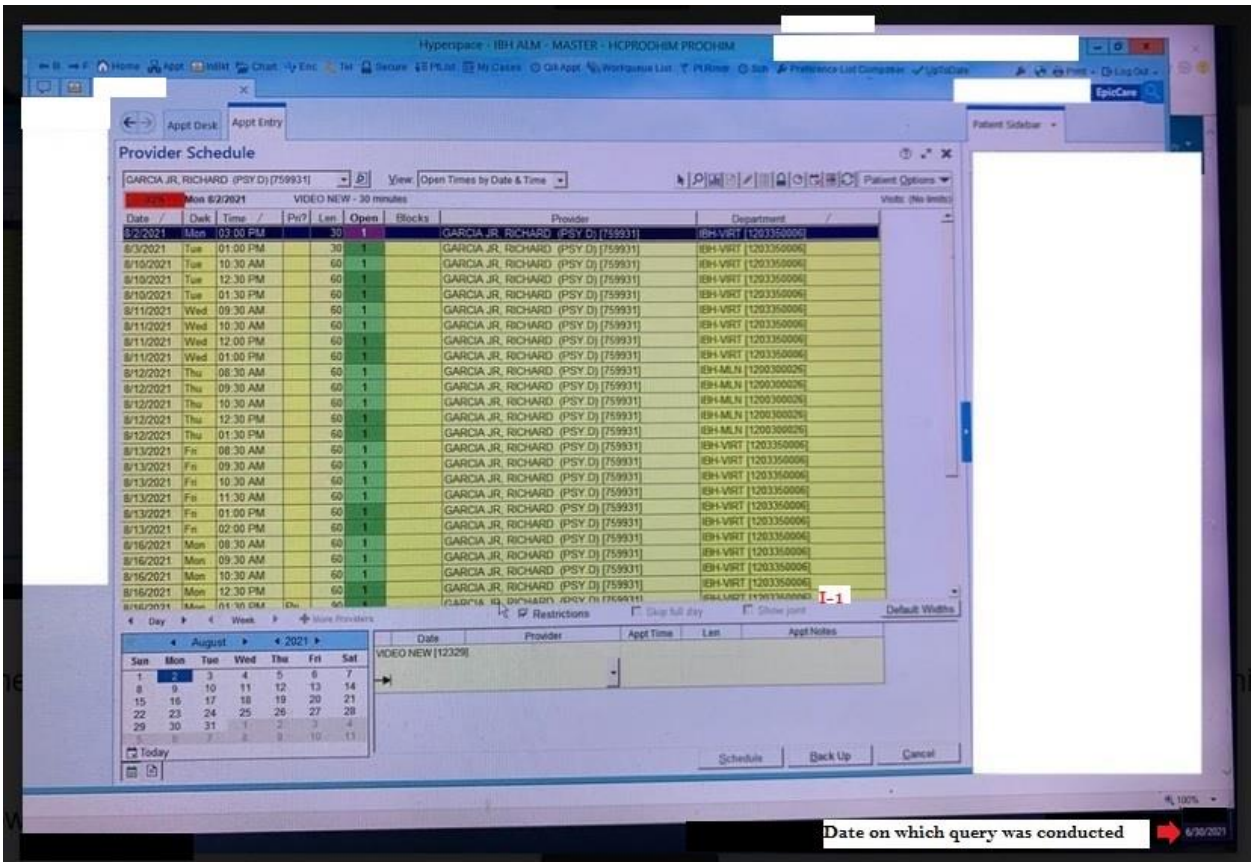
[14] The acronym "IBH-WOM" refers to Kaiser's clinic in Kapolei, which is staffed by a single non-physician behavioral health clinician.



Elapsed Wait Times for Five Soonest Child/Adolescent Intake Appointments on Oahu: June 30, 2021

Type of Appointment	**Length of Appt.**	**Date of Soonest Available Appt. Slots**	**Elapsed Wait Time** (Calendar Days)	**Elapsed Wait Time** (Business Days)	**Key for Image** (in red)
Intake (PRI)	90 min	8/17/21	49	34	I-1
Intake (PRI)	N/A	N/A	N/A	N/A	I-2
Intake (PRI)	N/A	N/A	N/A	N/A	I-3
Intake (PRI)	N/A	N/A	N/A	N/A	I-4
Intake (PRI)	N/A	N/A	N/A	N/A	I-5

Exhibit 8: **Child/Adolescent Intake Appointments on Maui.** The following is an appointment-availability grid from Epic produced in response to a query made on June 30, 2021 for the soonest intake appointments for child and adolescent enrollees on Maui. The elapsed wait time for the soonest available intake appointment is 33 business days (approximately 7 weeks), which is more than triple the maximum time frame established by the NCQA (10 business days).



Elapsed Wait Times for Five Soonest Child/Adolescent Intake Appointments on Maui: June 30, 2021

Type of Appointment	**Length of Appt.**	**Date of First Available Appt. Slot**	**Elapsed Wait Time** (Calendar Days)	**Elapsed Wait Time** (Business Days)	**Key for Image** (in red)
Intake (PRI)	90 min	8/16/21	48	33	I-1
Intake (PRI)	N/A	N/A	N/A	N/A	I-2
Intake (PRI)	N/A	N/A	N/A	N/A	I-3

C. Urgent Appointments: NCQA's accreditation standards (QI 4, Element A) establishes 48 hours as the outer limit by which enrollees must be seen for non-urgent behavioral health appointments. At Kaiser, clinicians report that enrollees may wait as many as ten days for an urgent appointment with a therapist or a Kaiser psychiatrist.

At the Call Center, some enrollees are flagged as requiring a faster response due to self-harm, suicidal ideation, a psychotic episode or an acute crisis. Triage clinicians prioritize these "red flag" patients (approximately three to five patients daily) and try to call these patients back within the same day, although this may sometimes expand to 1-3 days. After receiving a brief telephone triage assessment by Call Center clinicians, these "red flag" patients may wait up to a week for their first individual appointment with a treating clinician or they may be advised to go immediately to their local Emergency Department (ED) and be seen by an on-call psychiatrist, which likely imposes greater financial and other costs on enrollees as compared to receiving treatment in an outpatient clinic.

D. Individual Follow-Up Treatment Appointments: APA and AACAP publish clinical practice guidelines regarding the dosage, frequency, and duration of psychotherapy appointments for the treatment of multiple diagnoses. For example, these organizations' treatment recommendations are based on effectiveness studies with either weekly or biweekly therapy for the treatment of Post-Traumatic Stress Disorder (PTSD) in adults,[15] depression in adults and adolescents,[16] and obsessive-compulsive disorder in children.[17]

In a letter dated January 27, 2020, the APA discussed the professionally recognized standards of care for follow-up treatment appointments for Kaiser enrollees. The letter, attached as Exhibit 9, was delivered to the California Department of Managed Health Care, the state agency that licenses and regulates HMOs, including Kaiser, in California. The letter reads in part:

> APA is the leading national authority on psychological care. In case DMHC would benefit from our input regarding 'professionally recognized standards of practice' and 'good professional practice' with respect to access to care, APA's position is that follow-up therapy appointments at 4-8 weeks or longer intervals… fall far below what is appropriate for most patients. Psychotherapy efficacy and comparative effectiveness studies are typically based on once a week therapy (see e.g., APA's Clinical Practice Guidelines for the Treatment of Depression and for the Treatment of Posttraumatic Stress Disorder). (p. 2)

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[15] APA, "Clinical Practice Guideline for the Treatment of PTSD," 2017. Available at: https://www.apa.org/ptsd-guideline/ptsd.pdf Also, see Appendix B, available at: https://www.apa.org/ptsd-guideline/appendices.pdf

[16] APA, "Clinical Practice Guideline for the Treatment of Depression across Three Age Cohorts." Available at: https://www.apa.org/depression-guideline/adults

[17] The AACAP recommends at least weekly psychotherapy as the "clinical standard" for the treatment of OCD in children. "AACAP Official Action: Practice Parameter for the Assessment and Treatment of Children and Adolescents with Obsessive-Compulsive Disorder," Journal of the American Academy of Child and Adolescent Psychiatry, Vol. 51, No. 1, January 2012. Available at: https://www.jaacap.org/article/S0890-8567(11)00882-3/pdf

In addition to the standards of care established by the APA, numerous clinical studies over decades have demonstrated that more frequent therapy sessions improve the outcomes of adult, adolescent, and child patients with a variety of mental health diagnoses. According to studies, more frequent therapy tends to reduce patients' symptoms, decrease their suffering, and accelerate their recovery times. A 2019 study concludes that more frequent therapy also may benefit consumers and insurance companies by reducing healthcare costs and resolving patient waiting lists as a result of patients' shorter recovery times.[18] The following are summaries of five clinical studies:

● A 2015 study in the *Journal of Consulting and Clinical Psychology* found that "clinically significant gains were achieved faster for those attending weekly sessions" compared to fortnightly sessions and concluded that "session frequency appears to be an impactful component in delivering more efficient psychotherapy, and it is important to consider in individual treatment planning, institutional policy, and future research."[19]

● A 2019 study published in *BMC Psychiatry* investigated "whether there is an association between frequency of sessions in the first three months of treatment and speed of recovery" in patients with a depressive disorder, an anxiety disorder, or a personality disorder.[20] The researchers found that "patients improved or recovered faster if their treatment was provided in a higher frequency of sessions during the first three months as compared to a lower frequency of treatment sessions. After one year, 25% more patients had improved in the highest frequency group [more than 12 sessions in three months] than in the lowest frequency group [1 to 3 sessions in three months], and 20% more patients had recovered in the former group than in the latter." The researchers concluded that "the clinical implications of this finding seem obvious. A quick start of treatment and adequate frequency of sessions in the initial phase of treatment for patients with a depressive disorder, an anxiety disorder, or a personality disorder may not only decrease patients' symptoms and suffering faster, but it may also reduce the length of treatment and health care costs and can help to resolve waiting lists."

● A 2017 study in European Child & Adolescent Psychiatry on both parent and child or adolescent satisfaction with outpatient mental health services found that both patient and parent satisfaction was associated with increased frequency of sessions.[21]

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[18] Tiemens, B., Kloos, M., Spijker, J. et al. Lower versus higher frequency of sessions in starting outpatient mental health care and the risk of a chronic course; a naturalistic cohort study. BMC Psychiatry 19, 228 (2019). https://doi.org/10.1186/s12888-019-2214-4

[19] Erekson DM, Lambert MJ, Eggett DL. The relationship between session frequency and psychotherapy outcome in a naturalistic setting. J Consult Clin Psychol. 2015 Dec;83(6):1097-107. doi: 10.1037/a0039774. Epub 2015 Oct 5. PMID: 26436645. The relationship between session frequency and psychotherapy outcome in a naturalistic setting - PubMed (nih.gov)

[20] Tiemens, B., Kloos, M., Spijker, J. et al. Lower versus higher frequency of sessions in starting outpatient mental health care and the risk of a chronic course; a naturalistic cohort study. BMC Psychiatry 19, 228 (2019). https://doi.org/10.1186/s12888-019-2214-4

[21] Kapp, C., Perlini, T., Jeanneret, T. et al. Identifying the determinants of perceived quality in outpatient child and adolescent mental health services from the perspectives of parents and patients. Eur Child Adolesc Psychiatry 26, 1269–1277 (2017). https://doi.org/10.1007/s00787-017-0985-z

● A 2016 study of women with PTSD in the *Journal of Consulting and Clinical Psychology* found that "higher average days between sessions was associated with significantly smaller PTSD symptom reduction, with more frequent sessions yielding greater PTSD symptom reduction."[22] The authors concluded that "more frequent scheduling of sessions may maximize PTSD treatment outcomes."

● A 2016 study on the care of children diagnosed with bipolar disorder published in *Child Psychiatry & Human Development* found that "at a large tertiary care center recognized for services," children faced "infrequent, and at times, complete absence of psychotherapy services."[23] The researchers concluded that there is a need for service delivery improvement as their study "reflects that a large majority of children and adolescents diagnosed with bipolar disorder are prescribed antipsychotics and mood stabilizers, but the follow-up for this group is only once every few months. In addition, psychotherapy services for the majority of this population appear nonexistent."

Evidence: Kaiser's own internal records—the emails, charts, and appointment-availability grids discussed above—document the lengthy delays that Kaiser's enrollees experience in receiving follow-up treatment appointments for their MH/SUDs. These records are contained in Exhibits 2-8.

For example, Exhibit 4 contains an attachment sent by a Kaiser supervisor on September 10, 2021. The attachment—a data chart entitled "Kaiser Hawaii Behavioral Health Access"—displays data on the availability of follow-up appointments for both child and adult enrollees at Kaiser's outpatient MH/SUD facilities on Oahu, Maui and the Big Island for seven points in time spanning 12 weeks. Specifically, these data record the number of days until the next available follow-up appointments for each category of appointment on each island. The following table, prepared by NUHW, presents the average number of days for each appointment category during the 12-week time period.

[22] Gutner, C. A., Suvak, M. K., Sloan, D. M., & Resick, P. A. (2016). Does timing matter? Examining the impact of session timing on outcome. Journal of Consulting and Clinical Psychology, 84(12), 1108–1115. https://doi.org/10.1037/ccp0000120

[23] Vande Voort, J.L., Singh, A., Bernardi, J. et al. Treatments and Services Provided to Children Diagnosed with Bipolar Disorder. Child Psychiatry Hum Dev 47, 494–502 (2016). https://doi.org/10.1007/s10578-015-0582-7

Average Number of Days until Next Available Follow-Up Appointment with a Non-Physician Behavioral Health Therapist: June 17-September 9, 2021.

	Oahu	Maui	Big Island	Statewide
Adult Therapy	37.6	33.1	28.1	33.0
Child Therapy	32.1	38.9	32.6	34.5

Source: The figures are calculated from data presented in the Excel file emailed by the Kaiser supervisor on September 10, 2021. An image of the Excel file are available in Exhibit 4.

During the 12-week period, the statewide average wait for Kaiser's next available follow-up appointment with a non-physician therapist was 33.0 and 34.5 days, respectively, for adult and child/adolescent enrollees. These delays of approximately 6-7 weeks vastly exceed the treatment intervals recommended by the APA. They exceed the appointment delays described by the APA in its January 2020 letter as "fall[ing] far below what is appropriate for most patients."

The figures presented in Kaiser's access charts are corroborated by records from Kaiser's Epic appointment-scheduling system, which understate enrollees' treatment delays since enrollees can only obtain appointments from their treating clinician—not the clinician with the first available follow-up treatment appointment. Furthermore, Kaiser's own clinicians concur that Kaiser imposes excessive treatment delays on its enrollees with MH/SUDs. This additional evidence is discussed in the next section.

With respect to the availability of other categories of individual follow-up treatment appointments, NUHW also computed average waits for psychiatrist and chemical dependency appointments using the data contained in the access chart emailed by a Kaiser supervisor on September 10, 2021. As noted above, NUHW has concerns about the accuracy of the chemical dependency appointment data.

Average Number of Days until Next Available Follow-Up Appointment with a Psychiatrist: June 17-September 9, 2021.

	Oahu	Maui	Big Island	Statewide
Adult Psychiatry	23.7	49.1	23.4	32.1
Child Psychiatry	16.3	45.1	29.8	30.5

Source: The figures are calculated from data presented in the Excel file emailed by a Kaiser supervisor on September 10, 2021. An image of the Excel file is available in Exhibit 4. As far as the Big Island, Kaiser's chart indicates that there were no Child Follow-up appointments available after 7/15/21 because there was "no child psychiatrist" at the clinic. NUHW computed averages across the dates for which figures were available. Consequently, the average figures understate the wait times.

Average Number of Days until Next Available Follow-Up Chemical Dependency Appointment: June 24-September 9, 2021.

	Oahu	Maui	Big Island
Chemical Dependency Appt.	16.2	8.3	0

Source: The figures are calculated from data presented in the Excel file emailed by the Kaiser supervisor on September 10, 2021. An image of the Excel file is available in Exhibit 4.

E. Survey of Kaiser's Internal Clinicians: In order to investigate Kaiser's MH/SUD services, NUHW conducted a survey of Kaiser's internal clinicians in Hawaii during February and March of 2021. Eighty-five percent of the surveyed clinicians completed the electronic survey tool. By wide margins, the respondents indicated that Kaiser enrollees must endure extraordinary waits for multiple MH/SUD services in violation of professional recognized standards of care. A summary of the survey results is attached as Exhibit 10, which includes a description of survey methodology.

During the spring of 2021, NUHW shared these survey results with Kaiser's executives who are responsible for its behavioral health services. However, Kaiser has taken no apparent action to address the problems indicated by the survey results. Among the results are the following.

- 93% of respondents report that their clinic departments are understaffed with not enough staff available to provide appropriate and timely care to patients.

- 75% report that on a daily basis, they must schedule their patients' return appointments further into the future than is clinically appropriate.

- 100% of respondents report that weekly individual psychotherapy appointments are unavailable for patients who need it.

- 75% state that the wait time for their next available routine (non-cancellation) return appointment is 30 or more business days (six calendar weeks).

- 75% indicate that during the past 10 months, 75-100% of their new patients have waited longer than 30 days for an initial diagnostic appointment following their request for service.

- 50% of the respondents indicate that less than a quarter of their patients are receiving the appropriate level of care for their condition, with 69% reporting they are aware, during the past three months, of specific negative patient outcomes.

F. Kaiser's Network of External Providers. The preceding sections of this complaint describe the inadequacy of Kaiser's "internal" network of clinicians. Kaiser also contracts with "external" clinicians who practice privately in the community and treat not only Kaiser enrollees but also

non-Kaiser patients who pay cash or whose care is reimbursed by other commercial and public payers. These external therapists, whom Kaiser refers to as its "Affiliated Care Providers" (ACPs), are independent contractors.

NUHW evaluated the adequacy of Kaiser's external provider network by examining Kaiser's internal records. Specifically, Kaiser maintains a list of its external non-physician and physician behavioral health clinicians on Microsoft SharePoint, a web-based collaborative platform that integrates with Microsoft Office Microsoft. This list ("ACP List"), which is maintained in an Excel spreadsheet, contains data for external providers whom Kaiser has credentialed and with whom Kaiser is contracting to deliver care to its enrollees. The Excel spreadsheet, which has a naming format that follows a pattern of "ACPList8.31.21" contains a variety of information about each provider, including but not limited to each provider's name, contact information, gender, care specialties, care limitations, and whether or not the provider is currently accepting new patients.[24]

Like its internal network, Kaiser's network of external clinicians is inadequate. In fact, only 28% of Kaiser's 188 external therapists are either accepting Kaiser enrollees for treatment or are accepting them in a "restricted" manner,[25] according to Kaiser's ACP List dated August 31, 2021. Meanwhile, the supermajority (72%) of the 188 external therapists are either "inactive" or are not accepting Kaiser's enrollees for care, according to Kaiser's ACP List. The following table summarizes the data from Kaiser's ACP List.

Status of Kaiser's External MD and non-MD Licensed Behavioral Health Providers: August 31, 2021

Category	**Total No. of Providers on ACP List**	**Accepting new patients from Kaiser?**			
		Yes	**No**	**Restricted**	**Inactive**
Clinicians	188	9	130	44	5
MDs	29	15	8	1	5
Group Practices	3	2	1		
CSACs*	2	0	2		
TOTAL	222	26	141	45	10

Source: Kaiser, ACP List, August 31, 2021.
* Certified Substance Abuse Counselors.

[24] Given that this list contains confidential information about Kaiser's ACP providers including their cellphone numbers and email addresses, NUHW has not included a copy of the current list in this complaint. NUHW is available to discuss how to convey appropriate information to the Insurance Commissioner's office.
[25] Nine of Kaiser's 188 external therapists are accepting Kaiser enrollees, while an additional 44 therapists are accepting them in a "restricted" manner. 53/188 = 28.2%

In addition to the information noted in the table above, Kaiser's ACP List contains additional details about external clinicians' availability in columns of the Excel spreadsheet labeled "Accepting Comments," "Preferences," and "Call Center Comment." These details indicate that some therapists categorized as having availability to treat Kaiser's enrollees have substantial limitations, including wait lists, that sharply constrain their ability to treat Kaiser's enrollees. For example, of the nine external therapists who are currently accepting Kaiser enrollees (indicated by the "Yes" column), three do not deliver individual treatment appointments to patients with MH/SUDs (two provide only neuropsychological testing while the third conducts only "DBT Skills Training Groups," not individual therapy). Of the remaining six therapists, at least four have substantial limitations on their availability. A note associated with one clinician states: "Lives in FL, 6-hour time difference, early appt times only, nothing after 3pm, willing to accommodate on weekends." A comment associated with a second of the six clinicians states: "First appointment available ~ 5 Weeks." For a third of the six clinicians, a note states: "approx 1 ½ month wait. Please let patients know." A fourth of the six clinicians has a note that states: "1-2 month wait list."

Regarding the 44 therapists with the "restricted" designation, Kaiser assigns this designation if a therapist only accepts a limited number of referrals each week or month. These limits typically range from one to three patients per week or per month.[26] On top of these limits, some of the "restricted" clinicians have additional limitations that are documented in the ACP List. For example, a comment associated with one "restricted" therapist in the ACP list dated August 31 states: "Next appt available end of October." A note connected to a second states: "Nearing retirement."

The super-majority of Kaiser's external therapists (72%) are listed as being either "inactive" (5 therapists) or as not accepting Kaiser patients for care (130 therapists).[27] This very low rate of provider availability has been typical for at least the past three years, according to Kaiser's internal clinicians.

The inadequacy of Kaiser's network of external providers is especially acute with respect to therapists who provide care to child and adolescent enrollees. According to Kaiser's ACP List dated August 31, 2021, only two clinicians who are currently accepting Kaiser enrollees (i.e., those represented in "Yes" column) can treat child and adolescent patients (The two clinicians are listed as being available to treat both adult and child/adolescent populations). Both are unable to treat patients enrolled in Medicaid. One is the therapist mentioned above who is located in Florida and has limited hours of appointment availability. Among the 44 "restricted" ACP therapists, one specializes in treating children/adolescents while 21 can treat both adults and children/adolescents. Of these 22 clinicians, only eight accept patients enrolled in Medicaid.

[26] Although this measure of appointment availability (1-3 referrals per week OR per month) is imprecise, it is the standard employed by Kaiser.

[27] In addition to contracting with individual clinicians, Kaiser also contracts with group practices. As of August 31, 2021, Kaiser contracted with two group practices that were accepting Kaiser patients for treatment. However, one of the group practices (Sex Abuse Treatment Center in Honolulu) only treats adult victims of sex abuse while the second (Ke Ala Pono Honolulu Professionals Program in Honolulu) only treats adult patients with substance use disorders, according to Kaiser's internal records.

Status of Kaiser's External non-MD Licensed Behavioral Health Providers' Availability to Treat Child, Adolescent and Adult Patient Populations: August 31, 2021

Patient Populations	No. of Providers Able to Treat Each Population	Accepting New Patients from Kaiser?			
		Yes	**No**	**Restricted**	**Inactive**
Adults	92	7	60	22	3
Children/ Adolescents	8	0	6	1	1
Both	87	2	63	21	1
Not Indicated	1	0	1	0	0
TOTAL	188	9	130	44	5

Source: Kaiser, ACP List, August 31, 2021.

G. Summary: This section of NUHW's complaint has presented evidence of Kaiser's inadequate provider network and the resulting excessive delays experienced by enrollees in receiving at least four types of treatment and services for MH/SUDs: triage assessments, initial diagnostic evaluations, return treatment appointments, and urgent appointments. The section presented data on appointment delays affecting treatment delivered by both psychiatrists and non-physician behavioral health therapists. It is important to note the cumulative impact of these delays on enrollees. The first three services are steps in the sequence of service through which enrollees typically pass. When enrollees experience excessive waits at each successive stage, these cumulative delays add up to extraordinarily lengthy overall waits.

For example, an enrollee who cannot wait on hold for 30-60 minutes to obtain a triage assessment from the understaffed Call Center may wait one to four weeks for a Call Center clinician to phone them back. Next, the enrollee will likely wait an additional one to two months for an initial diagnostic evaluation appointment with a clinician. Next, the enrollee may wait another one to two months to obtain their first treatment appointment with a clinician. Consequently, some patients may wait two to six months before obtaining individual treatment for a MH/SUD diagnosis. Such waits severely violate every standard of care available.

V. Apparent Violations

We believe that Kaiser is violating virtually all of the provisions of federal and state law presented in Section II above ("Laws and Regulations"). Many of Kaiser's apparent violations

are documented in the preceding text. For some violations, additional details are provided in the following text.

Haw. Rev. Stat. § 431:26-103(c) (requires health carriers to provide enrollees with out-of-network care when a health carrier does not have a participating provider available or has an insufficient number of providers available): According to Kaiser's internal clinicians, they are unaware of any such system at Kaiser.

Haw. Rev. Stat. § 432E (Hawaii's Patients' Bill of Rights and Responsibilities Act including the requirement for "continuous review of quality of care, performance of providers, utilization of health services"). It is unclear what sort of analysis Kaiser performs of these issues. The documentation above indicates that Kaiser's managers and executives are aware of Kaiser's failures to deliver timely and appropriate care—even chronicling the delays in charts and describing them in emails as "the reality of the wait" and "how far out we are scheduling." According to clinicians, systematic care delays have affected Kaiser's behavioral health services for at least 10 years. During recent months, Kaiser's internal clinicians have twice alerted Kaiser's executives in a formal written manner of the severe problems affecting Kaiser enrollees' access to timely and appropriate behavioral health services. Despite their awareness of these problems, Kaiser executives' have failed to take any apparent remedial action.

Haw. Rev. Stat. § 432D-28 (requires HMOs to comply with federal laws such as the Mental Health Parity and Addiction Equity Act of 2008 and the Patient Protection and Affordable Care Act). With respect to mental health parity, Kaiser's systematic understaffing of its MH/SUD services appears to place treatment limitations on enrollees with MH/SUDs by effectively restricting their access to a substandard number of outpatient individual treatment appointments per year. Furthermore, Kaiser's treatment of its enrollees with MH/SUDs—including its systematic understaffing of MH/SUD services—appears to stand in sharp contrast to Kaiser's adequate funding and adequate staffing of medical and surgical services. For example, NUHW is unaware of excessive delays in enrollees' access to obstetrics, oncology, cardiology or other services.

VI. Request

We request that the Insurance Division urgently initiate an investigation into Kaiser Permanente's apparent violations of Hawaii's provider network adequacy rules, the Patients' Bill of Rights and Responsibilities Act, as well as other state and federal laws and regulations governing its provision of mental health services to Hawaii residents including those cited above.

We request that the Insurance Division employ its full statutory authority to investigate Kaiser's reported violations. We request further that the Insurance Division make its findings known to the general public and that it employ its full statutory authority to remedy any violations—including administrative fines, cease-and-desist orders, and injunctive relief—and to seek appropriate relief for Kaiser's enrollees if it determines that Kaiser has breached its responsibilities.

NUHW stands ready to assist the Insurance Commissioner's investigation. Please communicate with Fred Seavey at fseavey@nuhw.org regarding this complaint.

Sincerely,

Sal Rosselli, President

cc: Clare E. Connors, State of Hawaii Attorney General
Dr. Ellen Montz, Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight, CMS
Matthew Lynch, Executive Director, State Exchanges and Insurance Programs, CMS
Meiram Bendat, Psych-Appeal, Inc.
Hawaii Psychological Association
National Association of Social Workers-Hawaii Chapter
Hawai'i Mental Health Counselors Association, Hawaii Counseling Association
Hawaii Islands Association of Marriage & Family Therapists
Mental Health America of Hawaii
National Association on Mental Illness of Hawaii
The Kennedy Forum

EXHIBIT 1

August 13, 2021

To: Greg Christian, President, Hawaii Market, Kaiser Foundation Health Plan and Hospital;
John Yang, M.D., President and Medical Director, Hawaii Permanente Medical Group:
Julie Miller-Phipps, President, Southern California Kaiser Foundation Hospital & Health Plan;
Ramin Davidoff, M.D., Physician-in-Chief, Southern California Permanente Medical Group;
Sylvia Everroad, Interim Chief Administrative Officer, Southern California Permanente Medical Group

Cc: Jesse Rich, Maria Kaneshiro, Cyndee Uchima, Rhonda Tribble, Maribel Avila-Kunkel, Diane Lee, Errol Buntuyan

Dear Mr. Christian, Dr. Yang, Ms. Miller-Phipps, Dr. Davidoff and Ms. Everroad:

We are writing to inform you of the horrendous state of affairs at Kaiser Permanente in Hawai'i related to the provision of mental health and substance use disorder services to KP Health Plan members. Our local managers are aware of this but powerless to do anything about it. We hope that you will be able to provide the resources to begin to address the serious issues we face as clinicians at the front line, striving our best to provide our patients with the care they desperately need and deserve.

How bad is it? The patient experience frequently starts with a call to a centralized call center, where the patient is on hold for up to fifty minutes waiting for a call center triage clinician to speak with them. Once screened by the call center clinician, a behavioral health patient must then wait from eight to twelve weeks for an initial intake appointment, wherein a thorough assessment is done and a treatment plan is developed. After this, regardless of the severity of the symptoms, the next available appointment to begin treatment is another two to three months in the future. By the time a patient is seen, their condition has likely deteriorated, often requiring a higher level of care, which is also not readily or immediately available.

Services like Intensive Outpatient Programs (IOP) are not always readily available and patients who are suicidal or in crises or recently discharged from a psychiatric facility routinely have to wait two weeks or more to be seen by a therapist. Many of them don't make it to their appointments, but rather end up in an emergency room. Sadly, some even take their own lives. It is well known that recently discharged patients are at a high risk for suicide, especially when there are lapses in care. See: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5710249/

Due to the high demand for individual therapy and the limited resources available, KP is unable to offer types of group therapy that would benefit patients, such as anger management, postpartum depression, domestic violence. Ironically, in some instances, KP tries to push patients into group therapy that is neither clinically indicated nor evidenced-based, e.g., trauma patients assigned to a depression group.

Not being able to offer the individualized treatment patients actually need to get better, KP has implemented stopgap measures so it can at least claim it is offering patients something to ameliorate their symptoms. One of these measures is an e-visit program, where a computer, using an algorithm, with no intervention from any clinician, decides that almost all patients with depression or anxiety (other than those expressing suicidality) should be instructed to use a mindfulness app like *Calm* and/or enroll in health education class. These patients are discouraged from seeking an appointment until they have tried the app and/or the class and found them to be not helpful. As licensed mental health professionals, we consider it highly unethical to have a patient's "diagnosis" and treatment plan based solely on responses to an imperfect questionnaire, designed to measure the progress throughout the course of treatment of patients with depression.

Patients with substance use issues fare no better. While the national standard for treating substance use disorders is "no wrong door", Kaiser has an entry pathway to receive treatment and recovery services that requires a patient to go through multiple hoops just to get an appointment. A patient who is ready to address their substance use issue must first wait to secure an appointment with a primary care physician or intake appointment through Behavioral Health and then wait again for an appointment with the Chemical Dependency department. By the time an appointment is available, the patient lacks any support they may need to climb out of their personal rabbit hole and often fall backwards, ending up in the emergency department or simply losing the motivation they had when they first sought help.

At the root of these patient care issues is chronic and severe understaffing of mental health providers. Even before the pandemic, we were woefully short-staffed. With the tsunami of patients seeking care as a result of the multiple stressors brought on by the pandemic, we simply cannot keep up with the staff we have been budgeted for. The expanded use of virtual visits has presented technological and workflow challenges which add to the workload of clinicians, taking time away from treating patients. On top of that, far less patients cancel virtual visits than in-person visits. We used to be able to use this time to schedule patients who needed to be seen sooner than their scheduled appointments or to catch up on indirect patient care duties, like entering chart notes or responding to patient inquiries. Now when we do have that rare cancellation, a new patient is put into our schedule so quickly that we do not have the ability to use the time for an existing patient.

The increased demand and the decreased time to meet the demand has required all of us to work extraordinarily long hours, often more than 2 hours extra per day. The additional hours, coupled with the job dissatisfaction we feel because KP's system restrains us from offering consistent quality patient care, has led to burnout for an overwhelming majority of us. Many of our colleagues have left KP in the past year and many more of us are contemplating doing so. In fact, the results of a recent survey we participated in indicated "widespread dissatisfaction among its (KP's) clinician staff, with 59% reporting they have considered leaving Kaiser during the past six months."

Our managers have tried to replace those who have left but have not been successful. Even if all vacant positions were to be filled, we estimate we would still need twenty or thirty more therapists to even begin to meet the demand for mental health and substance use disorder services. KP needs to step up its recruitment efforts. However, KP faces a conundrum - staffing and resultant working conditions have been so bad for so long, and getting worse, that it is increasingly difficult to convince therapists to work for Kaiser. One just has to look to the Hawaii Psychologist Association's listserv to find comments like:

I would like to caution anyone who even thinks about working at Kaiser Permanente Behavioral Health Services. It is not a good place to work, especially for post-docs.

Kaiser needs to improve its reputation as an employer before it can even begin to establish a positive reputation in the community as a provider of mental health services.

In the past, KP Hawaii has relied heavily on "affiliated" providers to supplement its internal providers and even then, Kaiser patients were falling through the cracks. Since the pandemic, the number of affiliated providers accepting Kaiser patients has fallen to less than a dozen on Oahu and to zero on Maui. Even when a larger network was available, the quality of care received by patients was spotty. We all have horror stories of patients who were referred out who ended up back at Kaiser a month or more later without having received any evidence-based treatment or not being seen at all. Recently, for example, a teenaged female who was ultimately diagnosed with anorexia nervosa waited weeks for an appointment with an affiliated provider, who had no experience with eating disorders. The patient had to wait another two months before she was seen by a Kaiser therapist, by which time she had lost an additional 25 lbs. from the time the first call was made to Kaiser Behavioral Health, and now had significant medical issues. On top of this, there is little or no quality oversight of affiliated providers. In fact, just recently KP's Utilization Management Committee decided to amend its review process to allow for 52 visits by a patient to an affiliated provider before monitoring the quality of care. The previous inadequate standard had been twelve visits.

We know from our experience as Kaiser behavioral health providers that KP consistently relegates behavioral health patients to a lesser standard of care than medical patients. KP does not rely solely on an algorithm based on responses to a questionnaire to determine what type of chemotherapy, if any, a cancer patient needs or how long they can wait to get it. KP does not make cancer patients wait three months between chemotherapy sessions when they need it every two weeks. KP does not send medical patients to outside providers with virtually no quality oversight. KP does not send someone with a heart condition to a shaman. KP does not wait two weeks to set a fracture. But somehow KP finds it okay for mental health and substance use disorder patients to endure these types of things. This is not acceptable to us.

We have many ideas and suggestions on how to improve the quality of care for Kaiser behavioral health patients and would like to meet with you to discuss them. First and foremost, we need KP to commit to significantly increasing staffing levels. Furthermore, we need KP to demonstrate it values and respects its behavioral health workforce by removing its demands for

concessions and by agreeing to a fair first contract with us - a contract we can all be proud of and share with our colleagues in the community to help recruit and retain additional staff.

Please respond within 10 business days to Andrea Kumura at Andrea.A.Kumura@kp.org with your availability to meet and with any questions or comments you may have.

Sincerely,

Andrea Kumura, LCSW
Integrated Behavioral Health
Waipio Clinic

Daniel Meier
Rachel Kaya
Darah Wallsten
Julie Shoup
Jennifer Begonia
John Pyles
Christina Louie
Wendy Biss
Robert Edward Hsia
Melissa Ring
Allyson Savage
Justin Maeda
Miki Karukaya
Kenneth Kim
Lance Schumacher
Cassendra E. Caceres-Lico
Johann Hepner
Ayako Sakuragi
Jay Valdez
Celia Valenzuela
Tami Swonigan
Alfred Sison
Steve Saoit
Robert Locklear
Melissa Belanger
Colleen Nobles

Selected quotes from individuals:

I start every phone call at the triage center with "I'm so sorry for your long wait to talk to us today" and I end with "I'm really sorry we don't have a sooner appointment."

I am disheartened about not being able to provide weekly psychotherapy appointments to patients who are at risk of suicide. At this time I have several patients who had a recent suicide attempt and are still high risk but it's impossible to schedule regular appointments because my schedule is completely filled up.

The pts who could have benefitted from some immediate intervention, instead get stuck in their non-helpful behavior patterns, which escalate and become even worse clinical conditions.

We were already understaffed and our pts have had to wait an extraordinarily long time pre-COVID but it has reached unmanageable levels. High risk patients cannot receive adequate care and as a result, stay sicker for longer.

In order to accommodate patients who are high risk I book into PCS time on a daily basis. This is not sustainable but it is also not acceptable to ask a person with severe mental health symptoms to wait 10 weeks for an appointment.

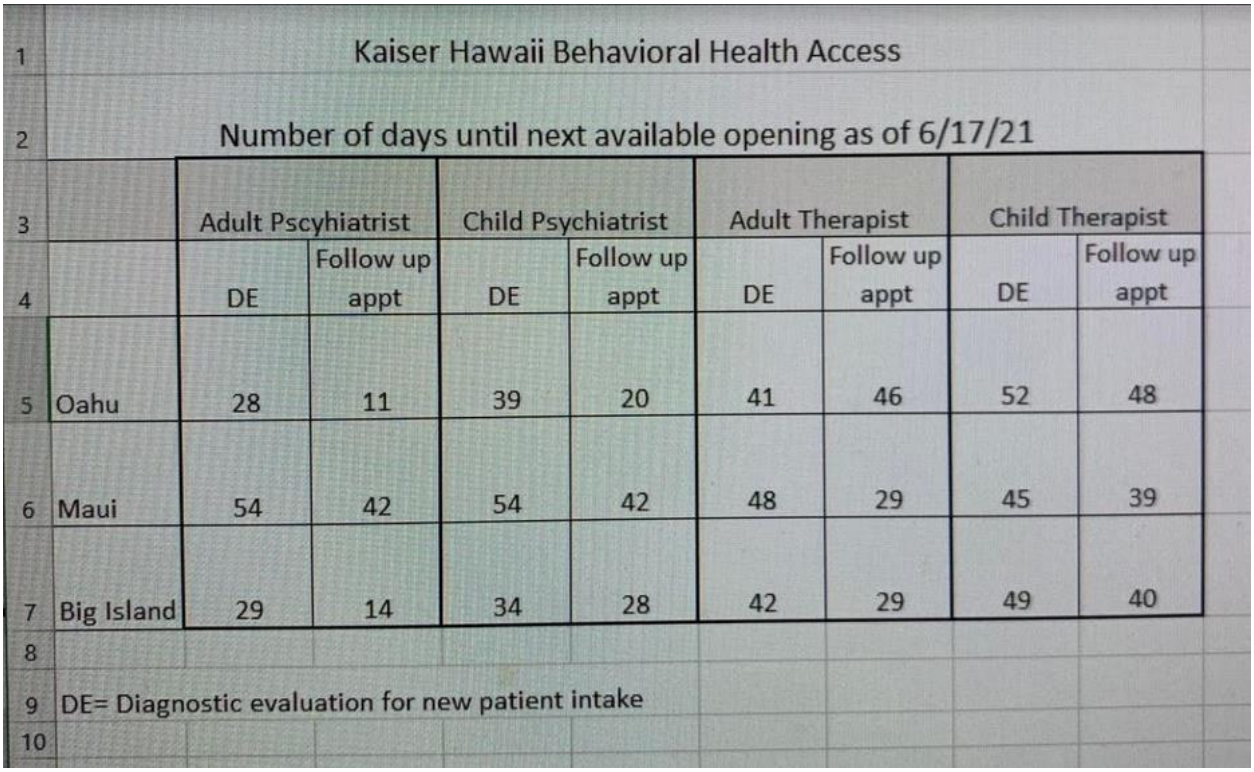
I am burnt out and daydream about leaving KP or this profession entirely. Most days, my only break is a 30 minute lunch time.

*There are horror stories from pts returning to KP for treatment, as they had affiliated care providers who knew nothing about ADHD (which should be basic knowledge for anyone who works with children), use non-evidence based treatments such as essential oils or TFT (*Thought Field Therapy*) or were rude and unprofessional. KP is so desperate for affiliated care providers that they will accept anyone as a provider and there is no oversight or quality control.*

Over the years many skilled therapists have left Kaiser IBH due to being unable to cope with the expectations. Kaiser Behavioral Health Hawaii is seen as an unattractive place to work - has a reputation for poor mental health care and overworking their therapists. The resulting high turnover rate makes it difficult to have a sense of "team".

In this small community, the "coconut wireless" system of unofficial communication is mighty. We are our patients' neighbors, family members, and classmates. When KP's official word is that our providers "retire," this community know that our providers leave and set up private practices

EXHIBIT 2



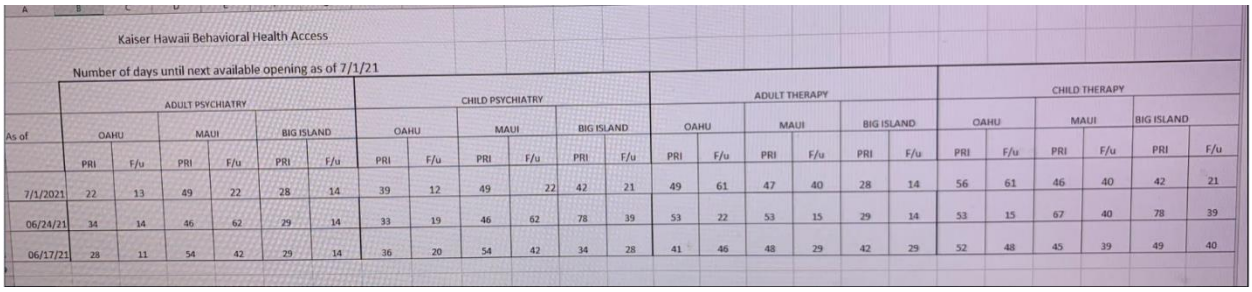
Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 6/17/21

	Adult Pscyhiatrist		Child Psychiatrist		Adult Therapist		Child Therapist	
	DE	Follow up appt	DE	Follow up appt	DE	Follow up appt	DE	Follow up appt
Oahu	28	11	39	20	41	46	52	48
Maui	54	42	54	42	48	29	45	39
Big Island	29	14	34	28	42	29	49	40

DE= Diagnostic evaluation for new patient intake

EXHIBIT 3

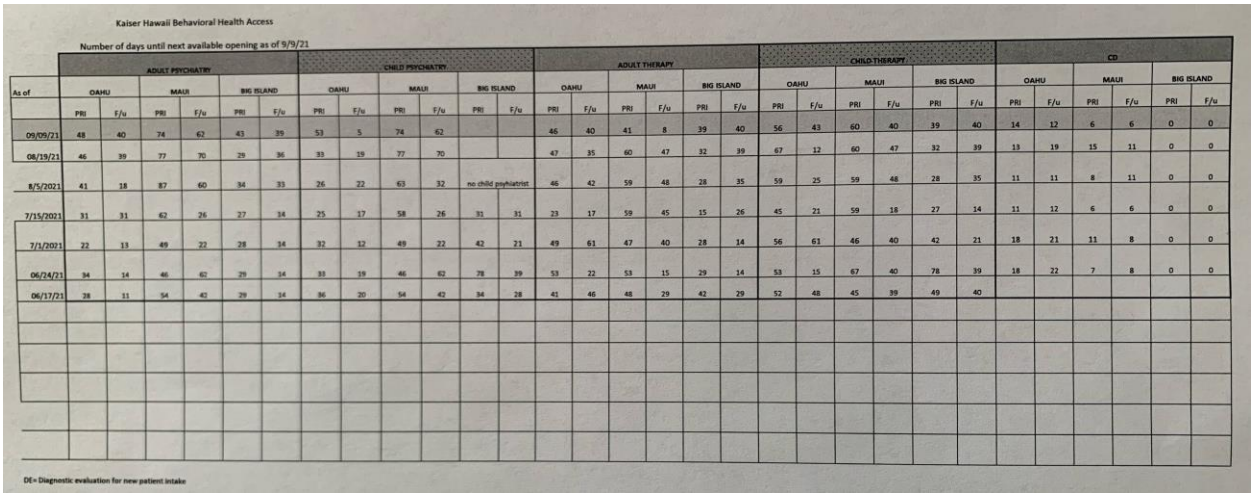


Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 7/1/21

As of	ADULT PSYCHIATRY						CHILD PSYCHIATRY						ADULT THERAPY						CHILD THERAPY					
	OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND	
	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u
7/1/2021	22	13	49	22	28	14	39	12	49	22	42	21	49	61	47	40	28	14	56	61	46	40	42	21
06/24/21	34	14	46	62	29	14	33	19	46	62	78	39	53	22	53	15	29	14	53	15	67	40	78	39
06/17/21	28	11	54	42	29	14	36	20	54	42	34	28	41	46	48	29	42	29	52	48	45	39	49	40

EXHIBIT 4



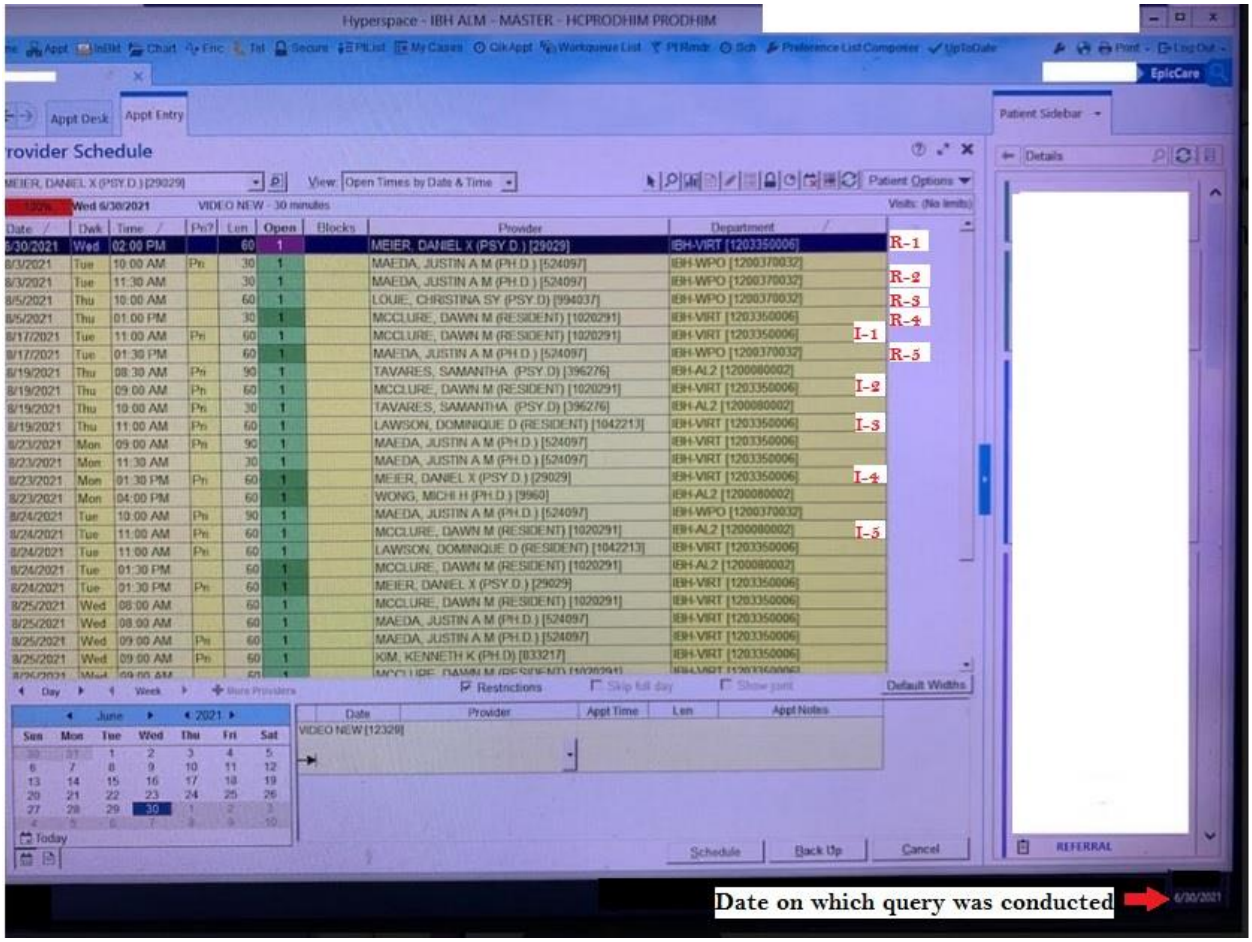
Kaiser Hawaii Behavioral Health Access

Number of days until next available opening as of 9/9/21

As of	ADULT PSYCHIATRY						CHILD PSYCHIATRY						ADULT THERAPY						CHILD THERAPY						CD					
	OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND		OAHU		MAUI		BIG ISLAND	
	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u	PRI	F/u
09/09/21	48	40	74	62	43	39	53	5	74	62			46	40	41	8	39	40	56	43	60	40	39	40	14	12	6	6	0	0
08/19/21	46	39	77	70	29	36	33	19	77	70			47	35	60	47	32	39	67	12	60	47	32	39	13	19	15	11	0	0
8/5/2021	41	18	87	60	34	33	26	22	63	32	no child psyhiatrist		46	42	59	48	28	35	59	25	59	48	28	35	11	11	8	11	0	0
7/15/2021	31	31	62	26	27	34	25	17	58	26	31	31	23	17	59	45	15	26	45	21	59	18	27	14	11	12	6	6	0	0
7/1/2021	22	13	49	22	28	34	32	12	49	22	42	21	49	61	47	40	28	14	56	61	46	40	42	21	18	21	11	8	0	0
06/24/21	34	14	46	62	29	34	33	19	46	62	78	39	53	22	53	15	29	14	53	15	67	40	78	39	18	22	7	8	0	0
06/17/21	28	11	54	42	29	34	36	20	54	42	34	28	41	46	48	29	42	29	52	48	45	39	49	40						

DE= Diagnostic evaluation for new patient intake

EXHIBIT 5


Hyperspace - IBH ALM - MASTER - HCPRODHIM PRODHIM
Appt Desk
Appt Entry
Provider Schedule
Patient Sidebar
Details
Patient Options
Wed 6/30/2021
VIDEO NEW - 30 minutes
Visits: (No limits)
Date | Dwk | Time | Pn? | Len | Open | Blocks | Provider | Department
6/30/2021 | Wed | 02:00 PM | | 60 | 1 | | MEIER, DANIEL X (PSY.D.) [29029] | IBH-VIRT [1203350006]
8/3/2021 | Tue | 10:00 AM | Pn | 30 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/3/2021 | Tue | 11:30 AM | | 30 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/5/2021 | Thu | 10:00 AM | | 60 | 1 | | LOUIE, CHRISTINA SY (PSY.D) [994037] | IBH-WPO [1200370032]
8/5/2021 | Thu | 01:00 PM | | 30 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/17/2021 | Tue | 11:00 AM | Pn | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/17/2021 | Tue | 01:30 PM | | 60 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/19/2021 | Thu | 08:30 AM | Pn | 90 | 1 | | TAVARES, SAMANTHA (PSY.D) [396276] | IBH-AL2 [1200080002]
8/19/2021 | Thu | 09:00 AM | Pn | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/19/2021 | Thu | 10:00 AM | Pn | 30 | 1 | | TAVARES, SAMANTHA (PSY.D) [396276] | IBH-AL2 [1200080002]
8/19/2021 | Thu | 11:00 AM | Pn | 60 | 1 | | LAWSON, DOMINIQUE D (RESIDENT) [1042213] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 09:00 AM | Pn | 90 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 11:30 AM | | 30 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 01:30 PM | Pn | 60 | 1 | | MEIER, DANIEL X (PSY.D.) [29029] | IBH-VIRT [1203350006]
8/23/2021 | Mon | 04:00 PM | | 60 | 1 | | WONG, MICHI H (PH.D.) [9960] | IBH-AL2 [1200080002]
8/24/2021 | Tue | 10:00 AM | Pn | 90 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-WPO [1200370032]
8/24/2021 | Tue | 11:00 AM | Pn | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-AL2 [1200080002]
8/24/2021 | Tue | 11:00 AM | Pn | 60 | 1 | | LAWSON, DOMINIQUE D (RESIDENT) [1042213] | IBH-VIRT [1203350006]
8/24/2021 | Tue | 01:30 PM | | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-AL2 [1200080002]
8/24/2021 | Tue | 01:30 PM | Pn | 60 | 1 | | MEIER, DANIEL X (PSY.D.) [29029] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 08:00 AM | | 60 | 1 | | MCCLURE, DAWN M (RESIDENT) [1020291] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 08:00 AM | | 60 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 09:00 AM | Pn | 60 | 1 | | MAEDA, JUSTIN A M (PH.D.) [524097] | IBH-VIRT [1203350006]
8/25/2021 | Wed | 09:00 AM | Pn | 60 | 1 | | KIM, KENNETH K (PH.D) [833217] | IBH-VIRT [1203350006]
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R-2
R-3
R-4
I-1
R-5
I-2
I-3
I-4
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Skip full day
Show joint
Default Widths
June 2021
Sun Mon Tue Wed Thu Fri Sat
Today
Date | Provider | Appt Time | Len | Appt Notes
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Back Up
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REFERRAL
Date on which query was conducted
6/30/2021

EXHIBIT 6

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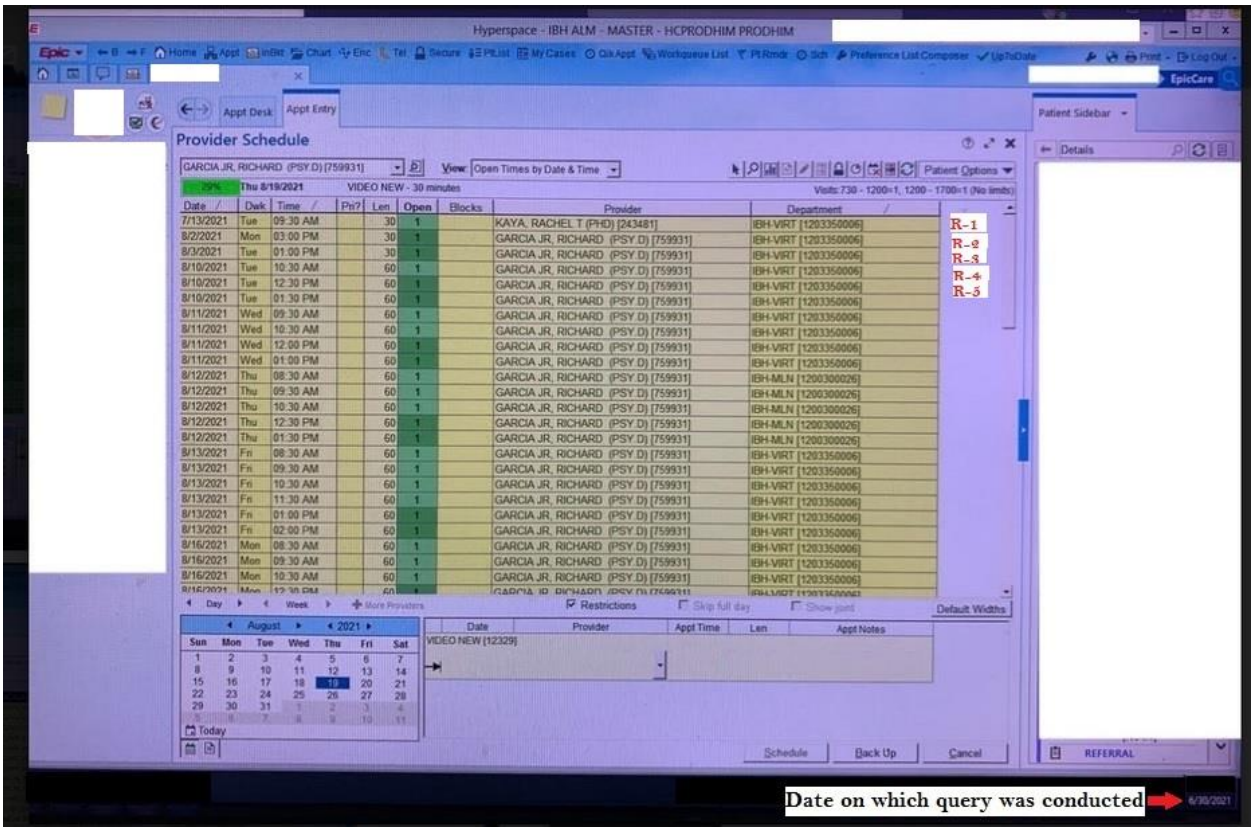


Maui Appointment-Availability Grid #2

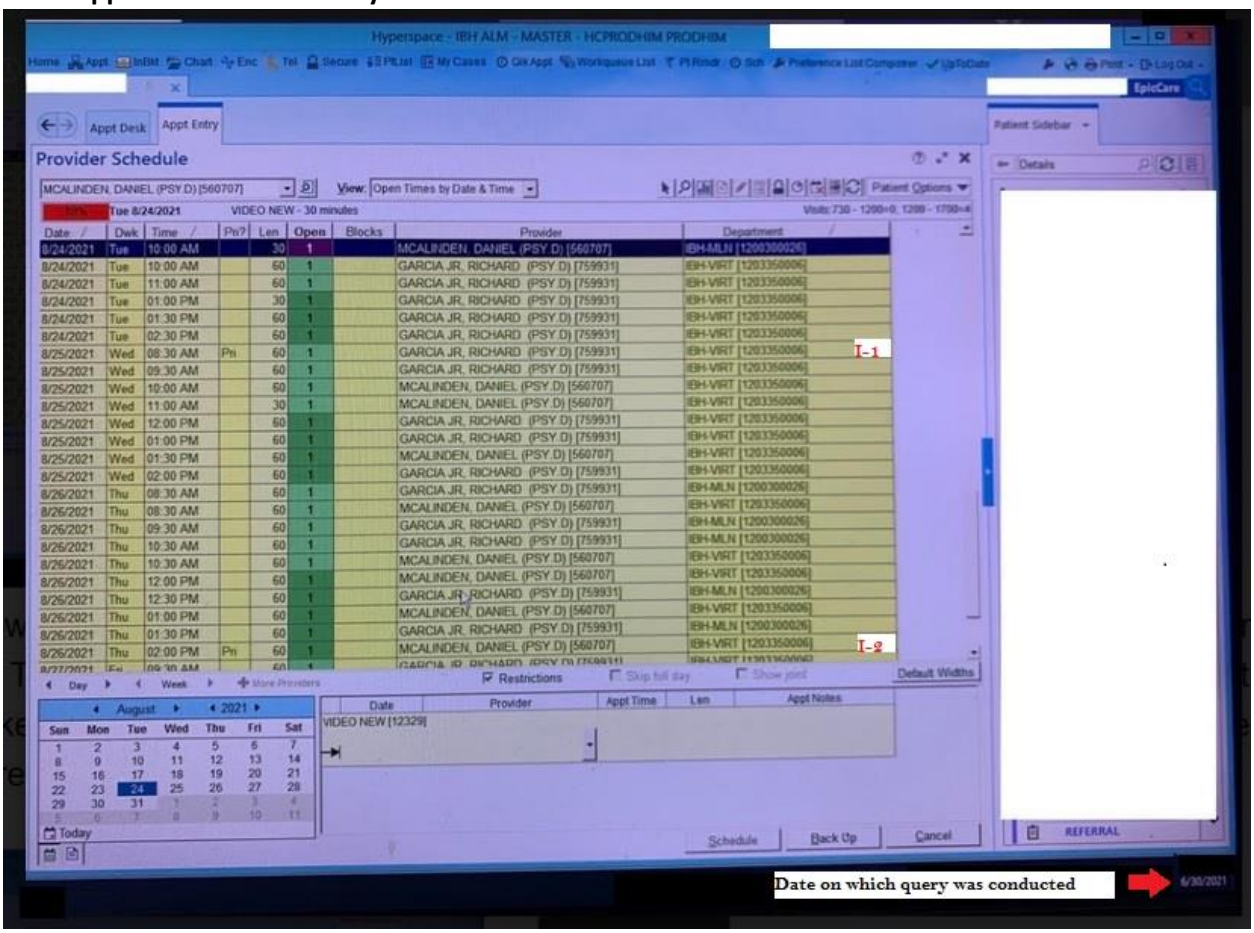
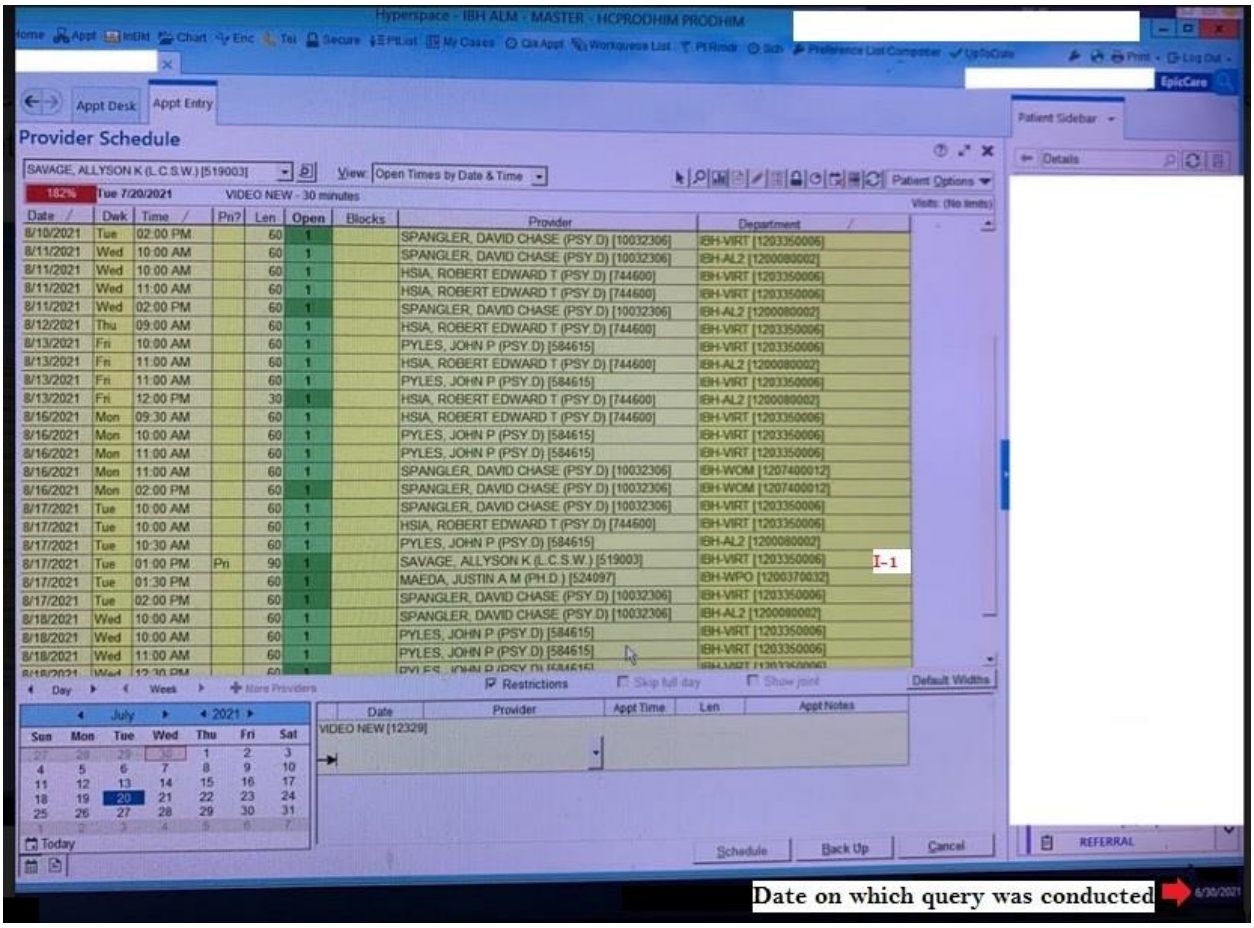


EXHIBIT 7


Hyperspace - IBH ALM - MASTER - HOPRODHIM PRODHIM
Appt Desk
Appt Entry
Provider Schedule
SAVAGE, ALLYSON K (L.C.S.W.) [519003]
View: Open Times by Date & Time
182%
Tue 7/20/2021
VIDEO NEW - 30 minutes
Patient Sidebar
Details
Patient Options
Date | Dwk | Time | Pri? | Len | Open | Blocks | Provider | Department
8/10/2021 Tue 02:00 PM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-VIRT [1203350006]
8/11/2021 Wed 10:00 AM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-AL2 [1200080002]
8/11/2021 Wed 10:00 AM 60 1 HSIA, ROBERT EDWARD T (PSY.D) [744600] IBH-VIRT [1203350006]
8/11/2021 Wed 11:00 AM 60 1 HSIA, ROBERT EDWARD T (PSY.D) [744600] IBH-VIRT [1203350006]
8/11/2021 Wed 02:00 PM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-AL2 [1200080002]
8/12/2021 Thu 09:00 AM 60 1 HSIA, ROBERT EDWARD T (PSY.D) [744600] IBH-VIRT [1203350006]
8/13/2021 Fri 10:00 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-VIRT [1203350006]
8/13/2021 Fri 11:00 AM 60 1 HSIA, ROBERT EDWARD T (PSY.D) [744600] IBH-AL2 [1200080002]
8/13/2021 Fri 11:00 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-VIRT [1203350006]
8/13/2021 Fri 12:00 PM 30 1 HSIA, ROBERT EDWARD T (PSY.D) [744600] IBH-AL2 [1200080002]
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8/16/2021 Mon 10:00 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-VIRT [1203350006]
8/16/2021 Mon 11:00 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-VIRT [1203350006]
8/16/2021 Mon 11:00 AM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-WOM [1207400012]
8/16/2021 Mon 02:00 PM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-WOM [1207400012]
8/17/2021 Tue 10:00 AM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-VIRT [1203350006]
8/17/2021 Tue 10:00 AM 60 1 HSIA, ROBERT EDWARD T (PSY.D) [744600] IBH-VIRT [1203350006]
8/17/2021 Tue 10:30 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-AL2 [1200080002]
8/17/2021 Tue 01:00 PM Pri 90 1 SAVAGE, ALLYSON K (L.C.S.W.) [519003] IBH-VIRT [1203350006]
8/17/2021 Tue 01:30 PM 60 1 MAEDA, JUSTIN A M (PH.D.) [524097] IBH-WPO [1200370032]
8/17/2021 Tue 02:00 PM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-VIRT [1203350006]
8/18/2021 Wed 10:00 AM 60 1 SPANGLER, DAVID CHASE (PSY.D) [10032306] IBH-AL2 [1200080002]
8/18/2021 Wed 10:00 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-VIRT [1203350006]
8/18/2021 Wed 11:00 AM 60 1 PYLES, JOHN P (PSY.D) [584615] IBH-VIRT [1203350006]
I-1
Restrictions
Skip full day
Show joint
Default Widths
Day
Week
More Providers
July 2021
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Today
Date
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Back Up
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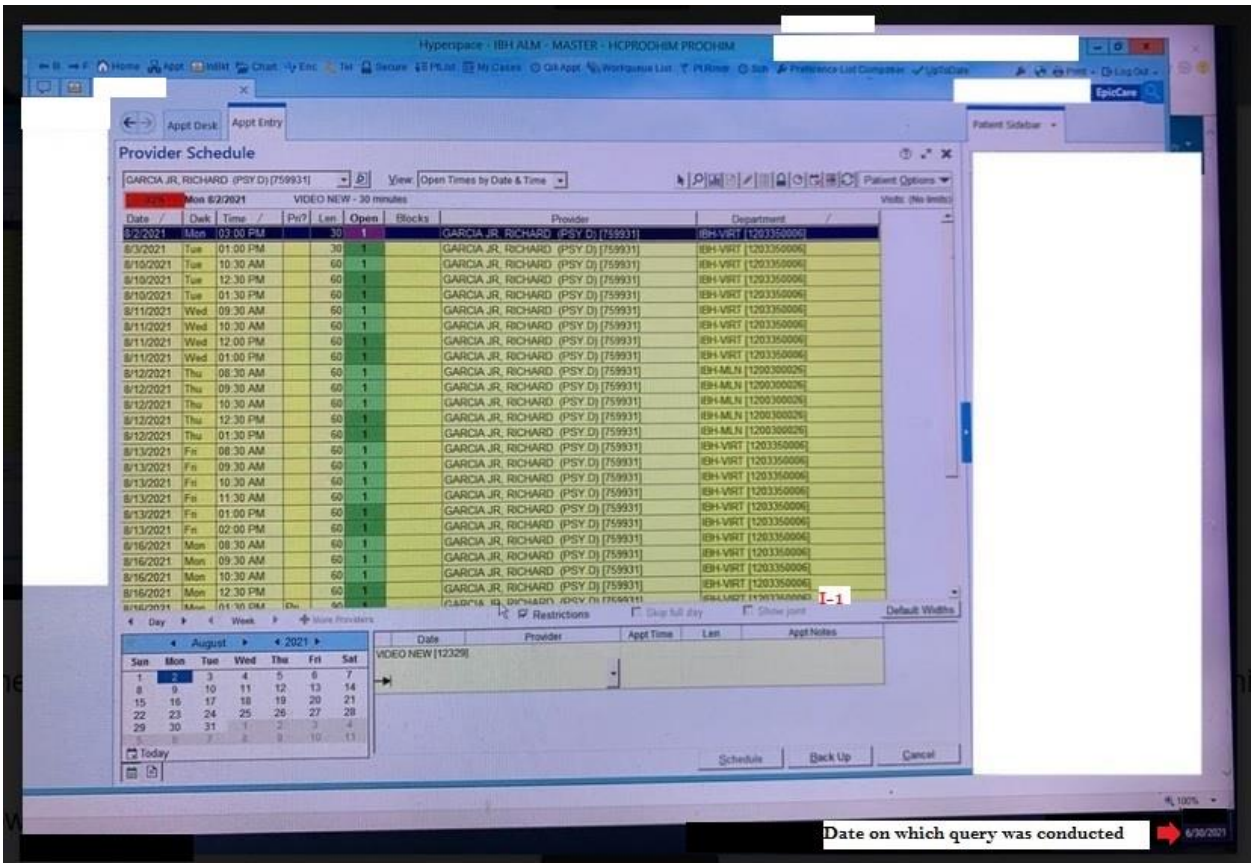
REFERRAL
Date on which query was conducted
6/30/2021

EXHIBIT 8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Appt Desk
Appt Entry
Provider Schedule
GARCIA JR, RICHARD (PSY.D) [759931]
View: Open Times by Date & Time
Mon 8/2/2021
VIDEO NEW - 30 minutes
Date
Dwk
Time
Pri?
Len
Open
Blocks
Provider
Department
August
2021
Sun Mon Tue Wed Thu Fri Sat
Today
Restrictions
Default Widths
Date
Provider
Appt Time
Len
Appt Notes
VIDEO NEW [12329]
Schedule
Back Up
Cancel
I-1
Date on which query was conducted

EXHIBIT 9

January 27, 2020

VIA EMAIL

Ms. Shelley Rouillard
Director, California Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814-2725

Re: Kaiser Access to Mental Health Care

Dear Director Rouillard:

The American Psychological Association (APA), American Psychological Association Services, Inc. (APA Services), and the California Psychological Association (CPA)[1] would like to offer evidence and expertise in connection with very serious allegations from our members about extreme wait times for follow-up psychotherapy appointments for Kaiser Permanente of California (Kaiser) subscribers. Our concern is not only that Kaiser's practices violate California law, but also that Kaiser patients risk being harmed by Kaiser falling far below professional standards of care.

We ask you to consider these serious allegations and to take action to correct the disturbing deficiencies in care, which we have been unable to remedy through informal talks with Kaiser. We plan to participate in the January 31st meeting scheduled by the Department of Managed Health Care (DMHC) and hope to have additional opportunities to contribute to your consideration of this matter.

[1] APA is the leading scientific and professional organization representing psychology in the United States, with more than 121,000 researchers, educators, clinicians, consultants and students as its members. APA Services is a legally separate companion organization to APA and supports advocacy and psychologists' economic and marketplace interests in ways that APA cannot. CPA is a 501(c)(6) non-profit professional association for licensed psychologists and others affiliated with the delivery of psychological services. CPA supports its members' professional interests, promotes and protects the science and practice of psychology, and advocates for the health and welfare of all Californians CPA represents the interests of approximately 17,000 psychologists licensed in California.

Summary of Core Allegation

In a letter to APA dated June 3, 2019 (attached) many members who work for Kaiser reported:

> Due to chronic understaffing at Kaiser's behavioral health services, our adult and child/adolescent patients—even those with complex and acute conditions such as Major Depressive Disorder-Chronic, Bipolar Disorder, Complex Post-Traumatic Stress Disorder, Eating Disorders—routinely wait 4-8 weeks between individual outpatient psychotherapy appointments with their non-physician licensed mental health clinician. At some Kaiser clinics, patients must wait as many as three to four months between appointments.

Our members believe that the company is so focused on meeting the specific time frames required under California law for *initial* appointments, e.g., 10 business days for non-urgent appointments with mental health care providers,[2] that it minimizes the importance of follow-up access. The latter is subject to less specific and non-quantitative regulatory standards – i.e. access to follow-up care must be provided consistent with "professionally recognized standards of practice" and "good professional practice."[3]

Our members also claim that Kaiser manipulates records and data on initial and follow-up care so that the company appears more compliant with applicable laws and regulations than it actually is. More disturbing are the allegations that the company intimidates or retaliates against psychologists who won't cooperate with its data manipulations, or who have raised follow-up access concerns internally and to outside entities like DMHC (including a psychologist who planned to be DMHC's witness in an administrative hearing against Kaiser).

Below is a brief overview of our relevant expertise that we would like to share with DMHC:

A. Clinical Expertise:

Follow-up Appointments: APA is the leading national authority on psychological care. In case DMHC would benefit from our input regarding "professionally recognized standards of practice" and "good professional practice" with respect to access to care, APA's position is that follow-up therapy appointments at 4-8 week or longer intervals, as alleged by our members, fall far below what is appropriate care for most patients. Psychotherapy efficacy and comparative effectiveness studies are typically based on once a week therapy (see, e.g., APA's Clinical Practice Guidelines for the Treatment of Depression and for the Treatment of Posttraumatic Stress Disorder).[4]

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[2] 28 CCR §1300.67.2.2(c)(5)(E)
[3] Health & Safety Code §1367(d); 28 CCR § 1300.70(b)(1)(A); 28 CCR §1300.67.2.2(c)(1)
[4] https://www.apa.org/depression-guideline/index,; https://www.apa.org/ptsd-guideline/index

Initial Assessments: While we have focused on our members' core allegation about access to follow-up care, we have also reviewed the National Union of Healthcare Workers' (NUHW) complaint to DMHC dated May 14, 2019 (attached) alleging that Kaiser "games" the requirement for initial assessments under 28 CCR §1300.67.2.2(c)(5)(E) by giving patients "short-cut" half-hour (or briefer) initial phone assessments.

Our position is that these short-cut assessments are inconsistent with professionally recognized standards of care for mental health evaluations. In practice, assessment interviews are generally done in person, last a minimum of 45 to 60 minutes, cover a wide range of psychosocial and health issues, and determine an initial diagnosis and treatment plan. According to the Centers for Medicare and Medicaid Services, a psychiatric diagnostic evaluation (CPT codes 90791-90792) includes the following: a complete medical and psychiatric history; a mental status examination; establishment of an initial diagnosis; evaluation of the patient's capacity to respond to treatment; and an initial treatment plan.[5] For a comprehensive guideline, please see the American Psychiatric Association Practice Guidelines for the Psychiatric Evaluation of Adults.[6] For a guideline on standards of care in the delivery of telepsychology services, please see the American Psychological Association Guidelines for the Practice of Telepsychology.[7]

B. Legal and Insurance Expertise:

APA Services staff have been involved in access to psychological care issues for two decades. We have never seen such an egregious case of delayed access for follow-up appointments.

We also have years of experience evaluating disparities in access to care under mental health parity laws. Kaiser's access to *medical* care seems to be very adequate, leaving the company with a dramatic disparity between good access to medical care and terrible access to mental health care. We can't see any good reason for this disparity that would save the company from a parity law violation. The only explanation that Kaiser offered us was to cite a State of California study indicating an 11% shortage of psychologists and other (non-psychiatrist) mental health providers, but the study actually referred to a projected shortage *a decade from now*.[8] We believe that Kaiser could hire more therapists readily if it admitted that this problem exists and chose to commit some of its ample resources to fixing it.[9]

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[5] https://downloads.cms.gov/medicare-coverage-database/lcd_attachments/31887_33/Outpatient_Psych_Fact_Sheet09.18.14.pdf
[6] https://psychiatryonline.org/doi/book/10.1176/appi.books.9780890426760
[7] https://www.apa.org/practice/guidelines/telepsychology
[8] https://futurehealthworkforce.org/wp-content/uploads/2019/03/MeetingDemandForHealthFinalReportCFHWC.pdf at 10
[9] See, e.g., https://californiahealthline.org/news/bruising-labor-battles-put-kaiser-permanentes-reputation-on-the-line/

Conclusion

Kaiser's lack of timely access to mental health care has been in the news lately, but APA Services has been investigating and evaluating our members' concerns, and consulting with CPA, for the past 6 months. APA Services initially approached Kaiser with our core concerns about access to follow-up care in an effort to resolve the issue informally and collaboratively. The company's adamant denial that it has a follow-up access problem (combined with the data manipulation and intimidation/retaliation concerns) made an informal resolution unworkable; hence we are reaching out to you.

We would like to discuss these serious allegations with DMHC (and the monitor that DMHC has assigned to Kaiser's compliance if appropriate), to share more detailed information and expertise, and to urge DMHC to take action to resolve these problems and ensure appropriate access to mental health care for Kaiser patients. We look forward to participating in the January 31st meeting and to further communication on this matter.

Thank you for your attention to our concerns.

Jared Skillings, Ph.D.
Chief of Professional Practice
American Psychological Association
American Psychological Association Services, Inc.

Alan Nessman
Senior Special Counsel
Legal and Regulatory Affairs/Practice Directorate
American Psychological Association
American Psychological Association Services, Inc.

Jo Linder-Crow, PhD
Chief Executive Officer l California Psychological Association

Attachments:

June 3, 2019 letter from Kaiser psychologists to APA (psychologists' names removed)

May 14, 2019 letter from NUHW to DMHC

EXHIBIT 10

NUHW
NATIONAL UNION OF HEALTHCARE WORKERS

March 19, 2021

Survey Results: Mental Health Therapists on the Increase in Demand for Outpatient Psychiatric Services at Kaiser Permanente Facilities in Hawaii

Survey Summary:

In February and March of 2021, the National Union of Healthcare Workers (NUHW) administered an electronic survey to NUHW members throughout Hawaii who are employed by Kaiser Permanente as therapists (Psychologists, LCSWs, LMFTs, LPCCs, among others). The survey focused on measuring the change in demand for mental health and social services during the pandemic as well as understanding the impact the pandemic is having on the delivery of behavioral health and social services, including workload issues for NUHW members. This summary encapsulates the survey responses provided, which 85% of NUHW's Kaiser Hawaii members completed.

Survey Highlights:

- 75% of the respondents state that the wait time for their next available routine (non-cancellation) return appointment is 30 or more business days (six calendar weeks).

- 100% of therapists report that weekly individual psychotherapy appointments are unavailable for patients who need it.

- 75% of the respondents indicate that during the past 10 months, 75-100% of their new patients have waited longer than 30 days for an initial diagnostic appointment following their request for service.

- 50% of the respondents indicate that less than a quarter of their patients are receiving the appropriate level of care for their condition, with 69% reporting they are aware, during the past three months, of specific negative patient outcomes.

- 75% of respondents report that on a daily basis, they must schedule their patients' return appointments further into the future than is clinically appropriate.

- 79% of therapists state that their clinic or worksite has eliminated or curtailed therapy groups that have been helpful to patients. In addition, of the group therapy and classes that still exist, 85% report that patients are being placed on waitlists due to the

inadequate availability of these services.

- 87% of the respondents state that, during 2020, their workload increased and of this total, 70% report that their workload increased significantly.

- 93% report that their clinic departments are understaffed with not enough staff available to provide appropriate and timely care to patients.

- 66% report a significant increase in the acuity level of patients during 2020. Additionally, 58% of therapists state that, on average, they spend more than 3 hours beyond their regular schedule to perform needed administrative tasks.

These findings indicate that Kaiser's capacity to deliver clinically appropriate care to its enrollees, already compromised before the pandemic, has deteriorated substantially even as enrollees' demand for mental health services has increased. Finally, the survey indicates widespread dissatisfaction among its clinician staff, with 59% reporting they have considered leaving Kaiser during the past six months.

Survey Notes:

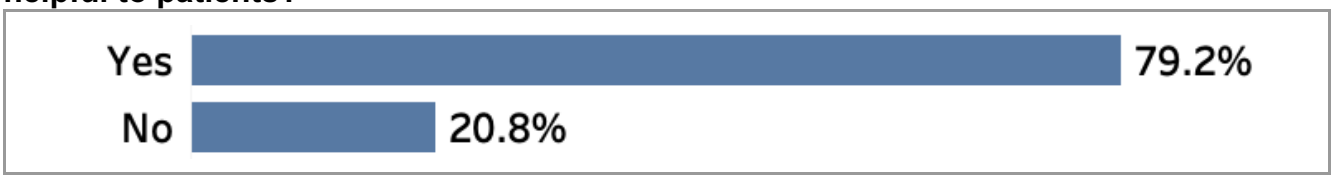
Instrument & Methodology: The survey was distributed electronically via the Qualtrics survey platform to each Kaiser therapist for whom NUHW has a valid personal email. Each therapist who received the survey obtained a unique link for completion which allowed for follow-up tracking on completions. Individual responses are confidential and responses are only reported in aggregate form.

The majority of the questions were presented in multiple choice form. Because of the integrated nature in which Kaiser's services are delivered, a small portion of survey questions differed depending on a therapist's department. In addition, a subset of questions were tailored specifically to therapists who provide services in Kaiser's Call Center Department.

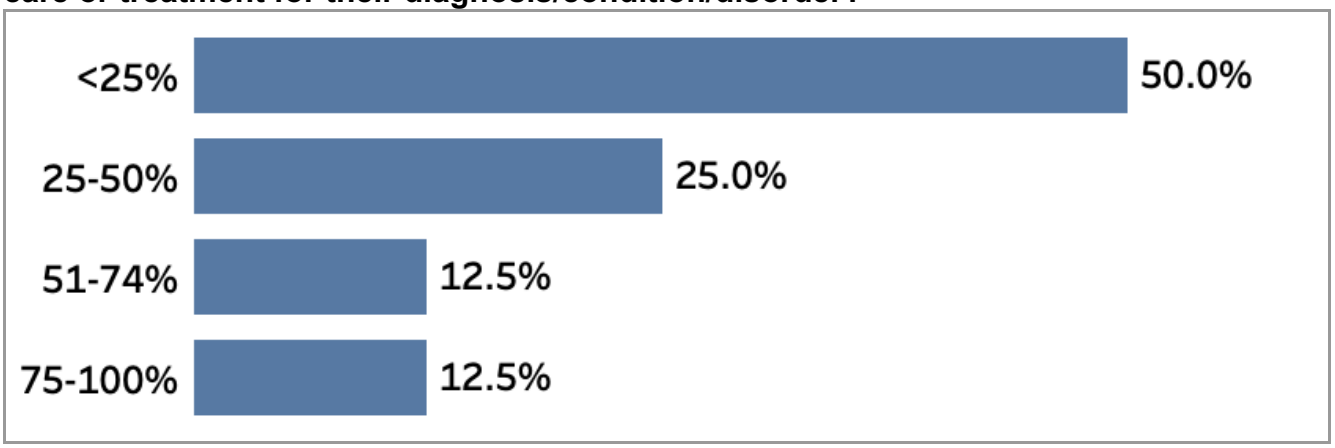
Survey Data: The survey was sent to 34 Kaiser clinicians. Responses were received from 29 mental health providers (85.2% response rate) practicing across Kaiser Permanente's various clinics in Hawaii.

# # #

Has your clinic or worksite eliminated or curtailed groups that in the past have been helpful to patients?



Approximately what percentage of your patients are receiving the appropriate level of care or treatment for their diagnosis/condition/disorder?



In the past 10 months, there are usually enough staff in my department to provide appropriate and timely care to patients.