THE AMERICAN PROSPECT
IDEAS, POLITICS & POWER

Union Strikes California Hospital Giant Over Violations of Mental Health Laws

The National Union of Healthcare Workers says that Kaiser Permanente is not giving timely patient care. They want Gov. Gavin Newsom to enforce the law.

by David Dayen

August 24, 2022

Rich Pedroncelli/AP Photo

Kaiser Permanente mental health workers and supporters march outside a Kaiser facility in Sacramento, California, August 15, 2022.

More than 2,000 mental health therapists and clinicians affiliated with the National Union of Healthcare Workers (NUHW) are engaged in an unusual open-ended strike of HMO giant Kaiser Permanente facilities in Northern California. Rather than fighting for pay and benefits—the union agreed to the terms offered by Kaiser on that score—the fight is over access to mental health services for patients.

Specifically, NUHW argues that Kaiser is violating multiple state mental health parity laws, requiring the same access for patients with mental health issues as for physical health and surgical procedures. The most recently enacted law, Senate Bill 221, requires patients with urgent needs to be seen within 48 hours and patients with non-urgent needs to get an appointment within ten business days, unless the clinician affirmatively states that a longer wait will not harm the patients. The law went into effect on July 1.

That and several other parity laws are being violated, Kaiser therapists say, due to rampant understaffing and heavy turnover, which has led to a lack of clinicians available to treat. This is why union members voted 93 percent in favor of an open-ended strike, which started last week. NUHW members have been working on an expired contract for close to a year. Kaiser has not communicated with the union since the strike began.
More from David Dayen

Kaiser has a reported $54 billion in reserves and earned over $8 billion in profit last year.
"Kaiser has chosen to understaff clinics," said Sara Sorokin, a licensed therapist with a triage team at Kaiser in Fairfield, California. "It doesn't allow therapists to practice their trade in an ethical way. They could solve this problem in a moment by devoting some of their huge profits to properly staffing clinics with psychotherapists, but they refuse to."

The fight could draw in California Gov. Gavin Newsom, who has boosted his national profile and inched toward a presidential bid in recent months. Newsom's Department of Managed Health Care (DMHC) has jurisdiction over HMOs like Kaiser, and plenty of authority to force compliance with a suite of mental health parity laws. NUHW officials say that DMHC fines have been too small, despite over a decade of documented failures to provide timely care.

"From our point of view [Newsom] does need to get more personally involved," said Sal Rosselli, president of NUHW. "The state has the power to put a corporation into receivership if it's not obeying the law. Absent Kaiser resolving this, every day is a crisis."
The governor's office did not respond to a request for comment.

KAISER BEHAVIORAL CARE CLINICIANS voted to join NUHW 12 years ago, and were complaining about inadequate patient treatment even then. In November 2011, the union released a report, "Care Delayed, Care Denied," outlining Kaiser's failings as one of the largest providers in California of mental health services, whose scope included anything from autism and schizophrenia to depression, anxiety, and suicidal ideation. A wealth of documentation showed that Kaiser wasn't complying with patient access and mental health parity laws.

The basic problem is one of understaffing, as the remaining clinicians cannot find enough time in the day to serve patients.

"Clinicians report that patients frequently endure waits of four weeks or longer for return appointments," the report states. NUHW also found that Kaiser was falsifying patient records to show timely appointments that did not exist, and engaged in other patterns of substandard care. At that time, DMHC opened an investigation that culminated in 2013 with a report that agreed with NUHW on illegal delays for patient visits. But the agency only fined Kaiser $4 million and issued a "cease and desist" order to not violate the law again. In 2013, Kaiser posted $2.7 billion in profits, so the fine came out to 0.15 percent of Kaiser's total earnings on the year, or about half a day of profits.

DMHC also cited Kaiser in follow-up surveys in 2015 and 2017 for deficient patient care, and in 2017 Kaiser agreed to a settlement with three years of outside monitoring of its mental health services. But the state did not impose additional fines at that time. Currently, DMHC is engaged in a special investigation of Kaiser's mental health record.

Under state law, DMHC has a multitude of options to force health plans to comply with the law that go beyond monetary penalties and cease and desist orders, including filing court injunctions and court orders to impose receivership, monitorship, or conservatorship on the business.
It took NUHW five years to win their first contract, in 2015. "In that final settlement, the president of Northern California and now the CEO of the corporation said, 'We can never go through this again, we have to work together,'" Rosselli said. "Despite us trying, there have been multiple strikes and threats of strikes" since then.

The basic problem is one of understaffing, as the remaining clinicians cannot find enough time in the day to serve patients. Ken Rogers, a clinical psychologist in Elk Grove, California, in the Sacramento suburbs, and a shop steward for his facility, said that when he first got to Kaiser 18 years ago, it was a place for career therapists. "You had people [who'd been] there 15-20 years; it was a little intimidating when I started," he said. "It's been transformed into a place where people aren't staying. There are some people who get hired and announce they are leaving and I never met them, and I'm the shop steward."

Rogers explained that Kaiser didn't hire enough clinicians for several years, but now the problem is retention. One problem is that Kaiser doesn't make time for indirect patient care—things like phone calls and emails and charting. “They’re just as essential as seeing people face-to-face,” Rogers said. The union is asking for at least 30 minutes per day to cover these indirect services. But Kaiser has stressed in-person visits, which leaves the facilities short-staffed. “Kaiser would never tell one of their surgeons that the only time to talk to patients is on the operating table,” Rosselli said.

All this has created poor working conditions and a strain on hours; Rogers said he would often see people after hours, with more new patients popping up every week. Caseloads have grown to over 100 per clinician, which is not conducive to timely care. Turnover is subsequently high, growing at twice the rate in the past two years as it did in 2019. When workers decide to leave, it causes a vicious cycle, with the turnover making staffing even shorter.

“Therapists can’t morally and ethically stay in this job,” Sorokin said. “It’s like watching a catastrophe in front of your eyes.”

The long delays for patient care violate at least four state and federal laws, according to a union analysis. The California Mental Health Parity Act (enacted in 1999) and the U.S. Mental Health Parity and Addiction Equity Act (2008) both require health plans to offer mental health coverage at the same level of benefit as medical or surgical services. The Affordable Care Act strengthened these parity laws on the federal level. In 2020, Senate Bill 855 built on the state Mental Health Parity Act, and then SB 221 last year codified the timely access rule for urgent appointments in two days and non-urgent appointments in ten. “Kaiser is just flagrantly violating that law,” Sorokin said.

The timely access laws can be waived if it is determined that will not harm the patient, but clinicians tell the *Prospect* that it would be dangerous to engage in widespread waivers. “I believed harm was going to come to them,” Rogers explained. These patients “weren’t in crisis. They weren’t going to commit suicide. But there’s harm when you don’t follow up with patients.”

The long delays for patient care violate at least four state and federal laws, according to a union analysis.

SB 221 gave health plans a year to comply with the timely access law. In April, a Kaiser representative assured lawmakers at a state assembly hearing that the company “expect[ed] to be in full compliance with SB221 by the July 1 timeframe.” But just a few months later, DMHC director Mary Watanabe told a state Senate committee that there were “systemic” problems at Kaiser.

NUHW had engaged in short-term strikes over the past few years. A threatened open-ended strike in 2019 was called off. But the situation became too dire, according to clinicians.
“In seven previous strikes I always had to make the sale” to union members, said Rogers, the shop steward. “I didn’t organize this strike. The members came to me and said we need to go out.” Initially, the open-ended strike was set for January, but leadership said they would rather try bargaining with Kaiser, as part of contract negotiations that began last September. By summer, with no improvement on staffing and patient access, the leadership couldn’t say no to their members any longer.

The strike began on August 15. Fifty NUHW members in Hawaii, who are bargaining for an initial contract, plan to join the strike next week. The grievances in the strike are entirely about staffing issues; the union agreed to the pay and benefit components. Kaiser has now retracted that offer because of the strike, Rosselli said, calling it “supreme arrogance.”
“There is something going on in this organization that I have never seen in the 18 years being here,” Rogers said. “It’s a popular uprising from the membership, saying, ‘Go out, or I’m going to leave.’”

In a statement posted on its website, Kaiser said that it is “committed to bargaining in good faith to reach fair and equitable agreements that are good for our mental health professionals and our patients.”

But Kaiser is required specifically under the timely access law to continue to serve patients even during the walkout. If Kaiser cannot make appointments, patients are supposed to be able to get them at other clinics, with Kaiser solely paying the cost. DMHC has said it is “monitoring access” at Kaiser, and advised patients to contact either Kaiser or the agency’s help center.

JUST THREE DAYS AFTER the strike began, Gov. Newsom appeared in Fresno to tout a $4.7 billion investment in universal screening and support for children’s mental health. It was a somewhat incongruous event, with the governor highlighting an investment in mental health when workers at one of the largest mental health providers in the state were walking out because that provider was refusing to give adequate care.

The governor does have a history with Kaiser, which as a large health care provider is inevitably a major donor in the state. In 2021, Newsom brushed asiderevelations that Kaiser was one of several corporate donors that gave $800,000 to his wife Jennifer Siebel Newsom’s nonprofit, while lobbying the government. “There’s no correlation, period, full stop,” Newsom said.

In 2020, Kaiser made $34.5 million in charitable donations on Newsom’s behalf through various funds, part of close to $100 million in such donations since 2019. The 2020 funds included $25 million for a state homelessness fund, a key Newsom priority.

This year, the Newsom administration offered Kaiser a no-bid contract for Medi-Cal services in a secret deal only made public by the media. Critics said it would allow Kaiser to choose healthier enrollees to maximize profit. The Newsom administration agreed to get the contract ratified by the legislature, and NUHW and other advocates sought an amendment that would require DMHC to certify that Kaiser was in compliance with mental health parity laws as a condition of the deal. According to the union, Newsom officials along with Kaiser lobbied against the amendment and maneuvered the bill around committees where the amendment might have been heard. It was not included in the final bill.

Newsom signed the bill authorizing the Kaiser deal on June 30. On July 1, the timely access law came into effect.

More recently, Newsom has sought to bulletproof his public image as talk of a presidential run grows. This week, Newsom vetoed a safe-injection bill that would have created supervised sites in three cities. While the goal of the bill is harm reduction, Newsom warned of "a world of unintended consequences." It's hard to square that with his past support for safe-injection sites, other than fear of having to explain assisting drug addicts in a national election.
But support for both unions and basic health care, including behavioral health, would be bedrock issues in any Democratic presidential primaries—where sweetheart deals with giant health providers would be frowned upon.

Rosselli noted that the union has had a good relationship with Newsom, citing DMHC's stronger remarks on mental health access. The administration "must move aggressively to send government people in to monitor the situation, and levy much bigger fines," Rosselli said.
Current fines are only $500 per incident; a bill now in the legislature would raise that to $25,000.
Asked what she would tell the governor about the crisis, Sorokin said, "I would just tell him that we need you to do whatever it is that you have in your power as our governor, to acknowledge and address this and enforce the law. Because without you doing that, the laws are meaningless."