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## [kp-ibhs] SB 221 is in effect!

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To: Tara Draper <tdraper@nuhw.org>

Fri, Jul 1, 2022 at 4:02  
PM

Hi Tara,

This is a momentous day. All health insurers, including Kaiser, are now required to provide individual follow-up therapy appointments within 10 business days, unless the treating clinician determines that a longer wait “will not have a detrimental impact on the health of the enrollee.”

At this point, it’s clear that Kaiser intends to test the resolve of state authorities to compel it to fully comply with the law. Fortunately, we have a lot of tools at our disposal to document when Kaiser is violating the law and help patients advocate for their rights.

### IMMEDIATE ACTIONS WE’RE TAKING TO COMPEL KAISER’S COMPLIANCE

- We’ve launched a **public education campaign** that will include paid internet ads informing Californians of their rights to receive timely behavioral health care appointments under SB 221.
  - As part of our campaign, we held a **press conference** via Zoom on Thursday that generated a **very strong article in the Sacramento Bee** as well as coverage from several television and radio stations across the state.
- We’re continuing to provide testimony from clinicians and patients to the Department of Managed Health Care, the state agency that regulates Kaiser, just as we had been doing before the **agency announced a new investigation into Kaiser’s mental health services**.
- We’re supporting a new bill, SB 858, that would significantly increase the fines imposed on health plans for persistently and systematically violating state law. As the bill’s author, State Sen. Scott Wiener, said earlier this week during an Assembly hearing on the bill, “Having much higher fines... will make it less likely for health plans to say ‘we’re not going to provide more mental health care, we’re just going to pay the fines.’”

### KEY THINGS TO UNDERSTAND ABOUT SB 221

- It is the clinician’s prerogative to determine that a wait longer than 10 business days for an individual psychotherapy appointment will NOT be detrimental to their patient’s health. This should be a clinical determination not based on appointment availability or pressure from management.
- Examples of “detrimental” treatment delays include — but are not limited to — delays that could:
  - Increase patients’ distress/symptoms.
  - Negatively impact the therapeutic alliance.
  - Increase the likelihood of a patient dropping out of treatment.

- Cause any other factor that could undermine a patient's response to treatment.
- In the absence of a clinician's documentation in the chart note, the presumption is that a treatment delay would be detrimental. However, documenting when patients can't be seen quickly enough remains critical, because:
  - Kaiser has claimed that since appointments are booked by clinicians, any delays are blessed by them.
  - By documenting delayed access to treatment appointments in the patient's chart, a clinician is providing critical evidence for the patient to advocate for themselves and win a complaint to receive the care they need.

## **DOCUMENTING TREATMENT DELAYS VIA OUR DOCUMENTATION PROJECT**

Complaints filed by patients carry more weight with state agencies like the Department of Managed Health Care than complaints filed by unions. The agency initiated its new investigation of Kaiser's behavioral health services after receiving a 20 percent increase in complaints from Kaiser members last year.

Empowering patients to file complaints when they can't be seen as soon as legally required under SB 221 will be critical to making sure that the law is enforced — and that's exactly what our Documentation Project is set up to do.

More than 600 clinicians have taken our training on how to document when patients can't get therapy appointments within the new legally-required time frame and how to give patients the tools to file complaints to get the care they need.

- Updated instructions and a list of frequently asked questions are now available at <https://nuhw.org/kp-documentation/> (Passcode is truthproject!). We will be making a few additional updates to the website shortly.
- An updated training video will be posted online and emailed to everyone after the holiday weekend.
- If you have a question about documenting delayed access, email [sb221@nuhw.org](mailto:sb221@nuhw.org) and an organizer will respond promptly.

We worked so hard to get this law on the books. Congratulations to all of the clinicians, patients, legislators, advocates, and allies who helped win this important achievement. Now it's time for us to force Kaiser to comply with the new law, and that includes adding the necessary staff and improving working conditions so patients can receive the care they need and deserve.

In Unity,

Sal Rosselli, President  
 Sophia Mendoza, Secretary-Treasurer  
 Greg Tegenkamp, Kaiser Division Director  
 National Union of Healthcare Workers

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