



California Association of Marriage and Family Therapists



August 15, 2022

Mary Watanabe
Director
Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725

Dear Director Watanabe,

As organizations that strongly supported both Senate Bill 855 and Senate Bill 221, we write to you about the necessity of the Department of Managed Health Care taking action to ensure Kaiser Permanente members who need mental health and substance use disorder (MH/SUD) care have access to services during the National Union of Healthcare Workers strike which began today.

Access to MH/SUD treatment has never been so critical. California is in the middle of a mental health and addiction crisis that has been fueled for more than two years by the COVID-19 pandemic. Fatal overdoses remain at all-time highs, with the CDC estimating that more than 11,800 Californians died during the 12 months ending in February 2022.¹ Other data shows that the percentage of nonelderly Californians experiencing serious psychological distress increased

¹ CDC, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

from 9.0% in 2016 to 14.5% in 2020.² California has strong laws in place to help ensure access to care, and it is essential that the Department take aggressive action to ensure they are followed.

Section 1367.03 of the California Health and Safety Code states that a health care service plan such as Kaiser Permanente “shall ensure that its contracted provider network has the capacity and availability of licensed health care providers to offer enrollees appointments” within:

- 48 hours of the request for appointment for urgent care appointments that do not require prior authorization;
- 96 hours of the request for appointment for urgent care appointments that require prior authorization;
- 15 business days of the request for appointment for nonurgent appointments with specialist physicians (e.g., psychiatrists); and
- 10 business days of the request for appointment with a nonphysician MH/SUD provider.

During any strike by Kaiser Permanente therapists, it will likely be impossible for Kaiser to meet these appointment timeframes within its provider network. While this is lamentable, the rights of Kaiser Permanente members under California law are in no way conditioned on labor relations within the company. Indeed, whenever Kaiser cannot meet these in-network appointment timeframes – whether during a strike or during the normal course of business – Section 1374.72 of the Health and Safety Code mandates that Kaiser “shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services” and to limit enrollee costs to what they would have paid in-network.

Given these clear requirements, the Department’s prior findings against Kaiser for violations of timely access requirements³ and the non-routine MH/SUD investigation that the Department announced in May⁴, we call upon the Department to take action to ensure that Kaiser is arranging out-of-network coverage for its enrollees during the likely interruption of services. This is particularly important because Kaiser members ordinarily lack any out-of-network benefit.

To protect enrollees’ rights, we also call upon the Department to verify claims under Section 1367.03(a)(5)(H) that a health care provider, acting within the scope of their practice and

² Nirmita Panchal, Greg Young, Cynthia Cox, Jared Ortaliza, Glorlando Ramirez, and Rachel Garfield, “A Snapshot of Mental Health and Access to Care Among Nonelderly Adults in California,” *Kaiser Family Foundation*, March 17, 2022, <https://www.kff.org/coronavirus-covid-19/issue-brief/a-snapshot-of-mental-health-and-access-to-care-among-nonelderly-adults-in-california/#:~:text=As%20shown%20in%20Figure%201,2019%20to%202020%20in%20California>.

³ “After \$4 million fine in 2013, Kaiser Permanente cited again for mental health access problems: A routine survey found a lack of timeliness was in violation of state law and Kaiser may face additional fine,” *Healthcare Finance*, June 5, 2017, <https://www.healthcarefinancenews.com/news/after-4-million-fine-2013-kaiser-cited-again-mental-health-access-problems>.

⁴ “Kaiser faces CA probe amid rise in mental health complaints,” *Sacramento Bee*, May 23, 2022, <https://www.sacbee.com/news/local/health-and-medicine/article261612882.html>.

consistent with professionally recognized standards of practice, has determined that longer wait times will not have a detrimental impact on the health of the enrollee. Our organizations further urge the Department to investigate recent claims that Kaiser's internal systems have been structured in such a way to automatically include in enrollees' records that the clinician has determined that a longer wait time will not have a detrimental impact on the enrollee's health – even if the clinician has made no such determination. If true, we believe such a system would put the safety of patients at risk and be inconsistent with Section 1367.03.

We thank you for your attention to this matter. Californians in health care service plans such as Kaiser depend on robust oversight by the Department to make their rights a reality.

Sincerely,

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