



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

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

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.



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Senior Special Counsel
Legal and Regulatory Affairs/Practice Directorate
American Psychological Association
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Jo Linder-Crow, PhD
Chief Executive Officer | California Psychological Association

Attachments:

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

May 14, 2019 letter from NUHW to DMHC