

**STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF MANAGED HEALTH CARE**

Matter No.: 11-543

Licensee: KAISER FOUNDATION HEALTH PLAN, INC.
License No.: 933 0055

FILED
JUN 24 2013
DEPARTMENT OF MANAGED HEALTH CARE
BY *James D. Ferguson*
Filing Clerk

ORDER

**The Director of the
Department of Managed Health Care**

Brent Barnhart, the Director of the Department of Managed Health Care (the “Director”), by and through his designee, Carol L. Ventura, Acting Deputy Director and Chief Counsel of the Office of Enforcement, after investigation, effective this date does hereby ORDER:

PART A.

CEASE AND DESIST ORDER

1. **Kaiser Foundation Health Plan** (“the Plan”) is hereby ordered to Cease and Desist from violation of Health and Safety Code section 1374.72 in the following manner:
 - a. Allowing the use of information such as brochures or other material in any format which fails to provide accurate information to members or prospective members concerning coverage for the diagnosis and medically necessary treatment of severe mental illness of a person of any age, and of serious emotional disturbances of a child under the same terms and conditions applied to other medical conditions.
2. The Plan is hereby ordered to Cease and Desist from violation of California Code of Regulations, title 28, section 1300.67.2.2(c) and (d) in the following manner:
 - a. Having insufficient compliance monitoring policies and procedures that accurately measure the accessibility and availability of contracted providers, which

includes tracking and documenting network capacity and availability with respect to the standards set forth in California Code of Regulations, title 28, section 1300.67.2.2(c);

b. Having insufficient written quality assurance systems, policies, and procedures designed to ensure the Plan's provider network is sufficient to provide accessibility, availability, and continuity of covered health care services as set forth in California Code of Regulations, title 28, section 1300.67.2.2(d);

c. Failing to utilize a system that accurately reports waiting times for appointments.

3. The Plan is hereby ordered to Cease and Desist from violation of California Code of Regulations, title 28, section 1300.67(f)(8) in the following manner:

a. Allowing the use of information such as brochures or other material in any format which fails to provide accurate information to members or prospective members concerning coverage of services under the Evidence of Coverage or as provided for under the Knox-Keene Act.

PART B

STATUTORY AUTHORITY

I.

4. The Director is vested with the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975, as amended ("Knox-Keene Act"), codified at Health and Safety Code section 1340, et seq.

5. The Director has and may exercise all powers necessary or convenient for the administration and enforcement of, among other laws, the Knox-Keene Act. (Health & Saf. Code, § 1341.)

6. The Director may adopt, amend, and rescind any rules, forms, and orders that are necessary to carry out the provisions of the Knox-Keene Act. (Health & Saf. Code, § 1344.)

7. The Director may exercise all powers necessary to implement the Knox-Keene Act to promote the delivery and the quality of health and medical care to enrollees by ensuring

that they receive available and accessible health and medical services rendered in a manner providing continuity of care. (Health and Saf. Code, § 1342(g).)

8. The Director may issue an order directing a health care service plan or any representative thereof or any other person to cease and desist from engaging in any act or practice in violation of the provisions of the Knox-Keene Act, any rule adopted pursuant to the Knox-Keene Act, or any order issued by the Director pursuant to the Knox-Keene Act. (Health & Saf. Code, § 1391.)

9. Health care service plans are required to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbances of a child, under the same terms and conditions applied to other medical conditions. (Health & Saf. Code, §1374.72.)

10. California Code of Regulations, title 28, section 1300.67.2.2(c)(1) states that Plans shall provide or arrange for the provision of covered health care services in a timely manner appropriate for the nature of the enrollee's condition consistent with good professional practice and that Plans shall establish and maintain provider networks, policies, procedures and quality assurance monitoring systems and processes sufficient to ensure compliance with this clinical appropriateness standard.

11. California Code of Regulations, title 28, section 1300.67.2.2(c)(5) requires each plan to ensure that its contracted provider network has adequate capacity and availability of licensed health care providers to offer enrollees appointments that meet the following timeframes:

- Urgent care appointments for services by a Physician or non-physician provider that do not require prior authorization: within 48 hours of the request for appointment,
- Non-urgent appointments with specialist Physicians, such as psychiatrists: within fifteen business days of the request for appointment,

- Non-urgent appointments with a non-physician mental health care provider: within ten business days of the request for appointment.

12. California Code of Regulations, title 28, section 1300.67(f)(8) provides that the basic health care services required to be covered by the Plan include effective health education services, including information regarding the optimal use of health care services provided by the Plan or health care organization affiliated with the Plan.

FACTUAL BACKGROUND

II.

13. The Plan is now, and has been since November 4, 1977, a full service plan (File No. 933 0055) as defined by Health and Safety Code section 1345, subdivision (f), licensed pursuant to Health and Safety Code, section 1353. Its principal place of business is located at 2101 Webster Street, Oakland, CA 94612. The Plan is subject to the Knox-Keene Act and California Code of Regulations, title 28, promulgated pursuant to the Knox-Keene Act.

14. On January 6, 2012, the Department commenced a routine medical survey of the Plan which was completed and closed on July 25, 2012.

15. On March 6, 2013, the Department issued a report to the Plan entitled Final Report Routine Medical Survey of Kaiser Foundation Health Plan, Inc. Behavioral Health Services (“the Final Report”) detailing the results of the survey.

16. This Cease and Desist Order is not intended to nor does it limit the Department’s authority to take any and all additional appropriate action as provided under the authority of the Knox-Keene Act and title 28 of the California Code of Regulations to resolve the matters described in the Final Report.

17. With respect to deficiency numbers 1 through 4, the Department will be conducting a follow-up survey in the Fall of 2013 to assess whether the Plan has taken adequate action to correct the deficiencies discussed in the Final Report.

18. The findings in the Final Report, deficiency #1 through #4 state:

ACCESS AND AVAILABILITY OF SERVICES

#1 The Plan does not ensure that its quality assurance systems accurately track, measure, and monitor the accessibility and availability of contracted providers pursuant to the timely access standards. (Cal. Code Regs., tit., 28 § 1300.67.2.2, subds. (c)(1), (5); § 1300.67.2.2(d).)

#2 The Plan does not sufficiently monitor the capacity and availability of its provider network in order to ensure that enrollee appointments are offered within the regulatory timeframes. (Cal. Code Regs., tit., 28 § 1300.67.2.2, subds. (c)(1), (5); § 1300.67.2.2(d).)

QUALITY MANAGEMENT/ ACCESS AND AVAILABILITY OF SERVICES

#3 The Plan's Quality Assurance Program does not ensure that effective action is taken to improve care where deficiencies are identified in service elements, including accessibility, availability, and continuity of care. (Cal. Code Regs., tit., 28 § 1300.70, subds. (a)(1), (3); § 1300.70(b)(1)(D); § 1300.70(b)(2)(G)(3); § 1300.67.2.2, subds. (c)(1), (5); § 1300.67.2.2(d)(3).)

HEALTH EDUCATION SERVICES: MENTAL HEALTH PARITY

#4 The Plan does not provide accurate and understandable effective behavioral health education services, including information regarding the availability and optimal use of mental health care services provided by the Plan or health care organizations affiliated with the Plan. (Health & Saf. Code, § 1374.72; Cal. Code Regs., tit., 28 § 1300.67(f)(8); § 1300.80(b)(6)(B).)

19. As reflected in the Final Report, the Department's investigation revealed significant deficiencies regarding enrollee access to obtain appointments for behavioral health services. With respect to enrollee access to appointments, the Department found the following:

- The Plan does not ensure that its quality assurance systems accurately track, measure, and monitor the accessibility and availability of contracted providers pursuant to the timely access standards.
- The Plan does not sufficiently monitor the capacity and availability of its provider network in order to ensure that enrollee appointments are offered within the regulatory timeframes.

- The Plan's Quality Assurance Program does not ensure that effective action is taken to improve care where deficiencies are identified in service elements, including accessibility, availability, and continuity of care.

20. The Department also found the Plan does not provide accurate, understandable, and effective behavioral health education services, including information regarding the availability and optimal use of mental health care services provided by the Plan or health care organizations affiliated with the Plan. These materials make recommendations that act to minimize the use of certain health care services required to be covered by the Plan under the Mental Health Parity Act, which requires plans to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbances of a child, under the same terms and conditions applied to other medical conditions.

FINDINGS

III.

21. The Department finds the Plan does not ensure that its quality assurance systems accurately track, measure, and monitor the accessibility and availability of contracted providers pursuant to the timely access standards.

22. The Department has determined that inaccurate data leads to inaccurate reports, which hinders the Plan's ability to effectively identify access problems, and to take action to resolve those problems. Enrollees who suffer from excessive wait times at underreported medical centers and facilities may continue to experience delays of health care services, deterioration of the enrollees' conditions, and dissatisfaction with the Plan's service and care.

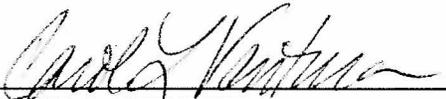
23. The Department finds the Plan does not provide accurate and understandable effective behavioral health education services, including information regarding the availability and optimal use of mental health care services provided by the Plan or health care organizations affiliated with the Plan.

24. The Department has determined that while the Plan has educational materials available at facilities, some of these materials inaccurately describe limitations in benefits that are not compliant with the law, and contain misleading or confusing statements. These materials make recommendations that would act to minimize the use of certain health care services required to be covered by the Plan under the Mental Health Parity Act.

25. The Department finds that the Plan's deficiencies are serious and may have put some of its members at risk of harm. Therefore, as set forth in this Order, the Department of Managed Health Care hereby directs the Plan to Cease and Desist from any further violations of the foregoing governing statutes and regulations in order to protect the interests of enrollees.

26. This Order shall be effective immediately and shall continue in full force and effect until further Order of the Director.

Dated: June 24, 2013
Sacramento, California


CAROL L. VENTURA
Acting Deputy Director Chief Counsel
Office of Enforcement
Department of Managed Health Care

