



Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency

Department of Managed Health Care
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June 9, 2010

Marlene Ma
Senior Counsel
Legal & Government Relations Department
Kaiser Foundation Health Plan, Inc.
One Kaiser Plaza, 21-L
Oakland, CA 94612

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DMHC

RE: ENFORCEMENT MATTER NUMBER 08-331

LETTER OF AGREEMENT

Dear Ms. Ma:

The Office of Enforcement of the Department of Managed Health Care (the Department) has concluded its investigation of the actions of Kaiser Foundation Health Plan (Kaiser or the Plan) and the Southern California Permanente Medical Group (SCPMG) regarding compliance with Health and Safety Code sections 1367(d), 1367(e)(1), 1374.72 and California Code of Regulations, title 28, sections 1300.67.2(f), 1300.67.1(c), (d) and (e), and 1300.74.72(f). The Department has concluded that there is sufficient evidence to proceed with an Accusation asserting that violations of the Knox-Keene Health Care Service Plan Act of 1975, as amended, (the Knox-Keene Act) have occurred and that an administrative penalty of \$75,000 is warranted in this matter. Therefore, the Department finds as follows:

SCREENING AND DIAGNOSIS OF THE MEMBER'S AUTISM

The Member's father first expressed concerns about his son's developmental delays during a March 6, 2007, office visit with his Southern California Permanente Medical Group (SCPMG) pediatrician. At the time, the Member was 13-months old – an age at which experts agree that autism screening and evaluation are appropriate and can result in an early diagnosis. Therefore, the type of concerns raised by the Member's father should have been red flags prompting an autism evaluation due to the critical nature and effectiveness of early intervention.

On October 2, 2007, the Member had another appointment with his pediatrician – at this time, he was 21 months old. During the appointment, his father repeated his concerns that the Member was exhibiting developmental delays and noted that his language and interaction skills had not improved. Instead of referring the Member for a formal autism evaluation, the pediatrician referred him for an evaluation with speech and occupational therapists (SPOT Evaluation) on October 23, 2007, even though SCPMG's speech and occupational therapists do not diagnose autism.

The speech and occupational therapists both noted significant developmental delays and referred the Member to SCPMG's KID Clinic – an interdisciplinary team of specialists that conducts formal autism assessments and prepares a treatment plan, if a child is diagnosed with autism. SCPMG's speech and occupational therapists referred the Member to the KID Clinic in October 2007, and he was referred to the KID Clinic again in December 9, 2007 after receiving a "primary encounter diagnosis" of autism from an SCPMG pediatric neurologist. However, at the time, all providers were unaware that the KID Clinic was not scheduling autism evaluations due to the unexpected leave of one of SCPMG's neurologists. Several appointments with the KID Clinic were cancelled by Kaiser without explanation and the Member was unable to schedule an appointment until February 13, 2008, four months after he was first referred for a formal evaluation. During this time Kaiser and SCPMG made no effort to refer the Member to any other provider capable of performing a formal autism evaluation and developing a treatment plan, despite the father's repeated requests for referrals to in-plan and out-of-network specialists.

Almost 11 months after his father first expressed concerns about developmental delays, and four months after Kaiser's speech and occupational therapists referred the Member to the KID Clinic for a formal autism assessment, the KID Clinic team diagnosed him with autism. Therefore, Kaiser and SCPMG's conduct resulted in an unreasonable delay for a formal autism evaluation in violation of Health and Safety Code, sections 1367(d), 1367(e)(1), 1374.72, and California Code of Regulations, title 28, section 1300.74.72(f).

**KAISER'S OVERSIGHT OF COMMUNICATION BETWEEN PROVIDERS TO
INSURE READY REFERRALS TO SPECIALISTS AND CONTINUITY OF CARE**

Kaiser and providers at SCPMG failed to insure ready referrals and continuity of care which hindered the Member's ability to obtain a timely autism evaluation because there was no monitoring or communication between the providers and the Plan regarding the unavailability of evaluations with the KID Clinic. This is evidenced by the fact that the Member was referred to the KID Clinic on October 23, 2007 and again on December 9, 2007 but appointments were either unavailable or cancelled by Kaiser without explanation. However, it was not until December 31, 2007, that any SCPMG providers involved in the Member's care were aware that all regularly scheduled diagnostic KID clinics were cancelled because one of the team members was on an unexpected leave of absence. During this time period, the Member was unable to obtain a referral to alternative providers who were capable of evaluating, diagnosing, and preparing a treatment plan for the Member.

Thus, the Department finds that Kaiser violated title 28, California Code of Regulations, title 28, section 1300.67.1 because it failed to ensure that the Member received continuity of care from SCPMG providers. Kaiser also violated California Code of Regulations, title 28, section 1300.67.1, subdivisions (c), (d) and (e) because SCPMG providers and Kaiser administrators failed to share information about the unavailability of appointments with the KID Clinic and Kaiser failed to ensure that services were timely provided or to monitor the follow up of the Member's care. All of this conduct prevented the Member from obtaining a timely autism evaluation and treatment plan in violation of Health and Safety Code, section 1367(d),(e)(1) and California Code of Regulations, title 28, section 1300.67.1 and 1300.74.72(f).

THE INDEPENDENT MEDICAL REVIEW PROCESS

As indicated above, the Member was evaluated by the KID Clinic on February 13, 2008, and a treatment plan was prepared. The following day, the Member's father filed a grievance with Kaiser asserting that the treatment plan prepared by the KID Clinic was deficient. On March 6, 2008, Kaiser denied the grievance on medical necessity grounds. The case was referred to IMR on March 11, 2008, to evaluate whether the frequency and duration of services recommended in Kaiser's treatment plan were appropriate.

On April 21, 2008, 13 months after the Member's father first expressed concerns about the Member's developmental delays, CHDR issued its IMR ruling and overturned Kaiser's denial. When the treatment plan was prepared by the KID Clinic in February, 2008, the father finally had the information he needed to file a grievance that would qualify for the IMR process. Therefore, the delay in diagnosing the Member and developing a treatment plan resulted in an unreasonable delay of the IMR process in violation of California Code of Regulations, title 28, section 1300.74.30(h).

Marlene Ma
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Based on the facts set forth above, the Department finds that Kaiser and SCPMG unreasonably delayed the Member's autism diagnosis in violation of the sections set forth above. Although Kaiser disputes the Department's findings and admits no wrongdoing, it has agreed to settle this matter by way of this Letter of Agreement. The Department has determined that an administrative penalty of \$75,000 is warranted in this matter and the Plan has agreed to pay the penalty. This Letter of Agreement is entered into solely for the purpose of settling regulatory matters. Thus, Kaiser and the Department agree that execution of this Letter of Agreement and payment of the penalty is intended to be a final resolution of all issues, accusations and claims the Department has against Kaiser and SCPMG with respect to this Member.

Sincerely,

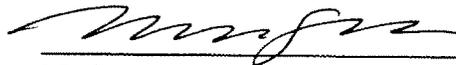


Patricia Sturdevant
Assistant Chief Counsel
Office of Enforcement

LC:slb

Accepted by KAISER FOUNDATION HEALTH PLAN, INC.

Dated: 6/9/2010



Marlene Ma
Senior Counsel
Legal & Government Relations Department
Kaiser Foundation Health Plan, Inc.