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June 28, 2024

Cathleen Rempt
Compliance Consultant IV
Kaiser Permanente Insurance Company
99 S. Oakland Ave 2nd Floor
Pasadena CA 91101

Re: Kaiser Permanente Insurance Company (KPIC)
2023 Network Adequacy Access Plan

Dear Ms. Rempt:

The Maryland Insurance Administration (“Administration”) has completed its review of the Kaiser Permanente Insurance Company 2023 Network Adequacy Access Plan (the “KPIC 2023 Access Plan”) filed on September 29, 2023, supplemented with additional information and documentation on October 6, 2023, December 1, 2023, January 31, 2024, April 26, 2024, and June 25, 2024. This filing was made pursuant to § 15-112(c)(2)(i) of the Insurance Article and COMAR 31.10.44.

The Administration’s review of the KPIC 2023 Access Plan has found that the access standards in COMAR 31.10.44.04 were not met for the following, based on the data self-reported by KPIC. All other access standards in COMAR 31.10.44.04 were met.

Travel Distance Standards

In addition to the specific provider and facility types listed in the chart in COMAR 31.10.44.04A(5), KPIC reported separate travel distance metrics for 87 additional provider types, which, in previous reporting years, had been reported together under the categories “All Other licensed or certified providers under contract with a carrier not listed” and “All other licensed or certified facilities under contract with a carrier not listed.” Due to the wide variation of “All other...” provider types reported by different carriers, the Administration has provided additional guidance to carriers for the 2024 access plans to ensure greater uniformity in reporting across carriers. For the following provider types and geographic regions, KPIC reported that less than

100% of enrollees had access to a participating provider with a practicing location within the applicable maximum travel distance standard:

Provider/Facility	Geographic Region	Percent of Enrollees within Standard
Addiction Medicine	Urban	91.8%
	Suburban	98.7%
Gynecology, OB/GYN, Nurse-Midwifery/Certified Midwifery	Urban	99.9%
Pediatrics - Routine/Primary Care	Urban	99.9%
Psychiatry-Adolescent and Child, Outpatient	Urban	99.3%
Psychiatry-Geriatric, Outpatient	Urban	88.5%
	Suburban	96.7%
Psychology	Urban	99.7%
Acute Inpatient Hospitals	Urban	99.9%
Ambulatory Infusion Therapy Centers	Urban	71.3%
	Suburban	98.6%
	Rural	98.4%
Critical Care Services - Intensive Care Units	Urban	99.9%
Inpatient Psychiatric Facilities	Urban	98.8%
Opioid Treatment Services	Urban	43.7%
	Suburban	58.7%
	Rural	94.6%
Outpatient Mental Health Clinics	Urban	16.6%
	Suburban	42.8%
	Rural	73.7%
Outpatient Substance Use Disorder Facility	Urban	0%
	Suburban	0%
	Rural	23.9%
Residential Crisis Services	Urban	31.9%
	Suburban	55%
	Rural	90.6%
Substance Use Disorder Residential Treatment Facility	Urban	39.1%
	Suburban	70.8%

Additionally, of the 87 additional provider types that were listed together in previous years under “All Others...” categories, KPIC reported a deficiency for 40 of them in at least one zip code.

Travel Distance Waivers and Other Mitigating Factors

KPIC provided the information required by COMAR 31.10.44.09A for each unmet travel distance standard described above. The Administration has considered the information provided by KPIC and has found good cause to grant a waiver of the applicable travel distance standard

for the KPIC 2023 Access Plan for the following provider and facility types: Gynecology OB/GYN, Nurse-Midwifery/Certified Midwifery; Pediatric – Routine / Primary Care; Psychology, Acute Inpatient Hospitals; Ambulatory Infusion Centers; Critical Care Services / Intensive Care Units; and Inpatient Psychiatric Facilities.

The Administration determined that KPIC provided sufficient information with respect to the provider and facility types listed above to demonstrate that providers necessary to meet the travel distance standards were not available to contract with the carrier, were not available in sufficient numbers, had not yet accepted a contract, or had declined a contract. The information provided by KPIC included:

- Descriptions of efforts to locate any additional practicing providers within the required distance standard for each deficient service type and zip code using external sources such as the state and federal databases, analytics services, and online searches;
- Descriptions of ongoing recruitment attempts and continued efforts to contract with specific providers and facilities who, if contracted, could close the coverage gap in particular zip codes in fourteen of the deficient provider types reported above;
- Declarations that the efforts to locate additional providers revealed that KPIC is already contracted with the nearest practicing provider in specific zip codes in eight of the deficient provider types reported above, and that there are no other providers currently available within standard.

The waiver of the travel distance standard for the provider types listed above applies only to the access plan filing submitted in 2023.

For the remaining provider and facility types where KPIC reported a deficiency, the Administration determined that the carrier failed to provide sufficient information to demonstrate that the conditions necessary for the granting of a waiver as described in COMAR 31.10.44.09B were satisfied. However, the Administration notes that these other deficiencies are related to new travel distance standards that were effective for the first time in 2023 under the revised network adequacy regulations, and that KPIC defined these provider types more narrowly than any other carrier, and, in some cases, the excessively narrow definition made it impossible to meet the standard. In Bulletin 23-8, issued on May 5, 2023, the Administration advised carriers that when reviewing the 2023 network access plan filings and evaluating compliance with the new standards, the Administration would take into consideration the fact that the reports were required to be filed shortly after the effective date of the revised regulations in determining deficiencies and the regulatory response to such deficiencies. Consequently, despite the low compliance percentages, the Administration has determined in its exercise of enforcement discretion not to impose a penalty for the travel distance deficiencies for Addiction Medicine; Psychiatry-Adolescent and Child, Outpatient; Psychiatry-Geriatric, Outpatient; Opioid Treatment Services; Outpatient Mental Health Clinics; Outpatient Substance Use Disorder Facility; Residential Crisis Services; Substance Use Disorder Residential Treatment Facility; and the 40

additional “All other...” provider types referenced above where KPIC reported a deficiency in at least one zip code for the KPIC 2023 Access Plan, having considered that KPIC provided a detailed description of the steps it will take to address the deficiencies and achieve compliance for the 2024 access plan filings and demonstrated that all reasonable good faith efforts to comply with the standards were undertaken following adoption of the final regulations. This included a description of KPIC’s efforts to identify available facilities to recruit, as evidenced by statements of attempts to identify, contact, and negotiate with relevant facility types in specific zip codes for these service types for which new travel distance standards were introduced in the 2023 revision of COMAR 31.10.44. Furthermore, KPIC provided a description of a manual process utilized in 2023 to ensure that enrollees are not financially disadvantaged by an existing travel distance deficiency. Under the process, KPIC reviews all out-of-network claims to determine if the claim is related to a provider type and geographic region where there is a network gap. If so, the claim would be reprocessed at the member in-network benefit level and the member held harmless from balance billing.

Essential Community Provider Standards

The data self-reported by KPIC in its 2023 access plan showed that the essential community provider (ECP) inclusion standard of 30% for each category of Mental Health and Substance Use Disorder services in suburban and rural geographic areas was not met. KPIC met or exceeded the 30% inclusion standard for medical services in each urban, suburban, and rural area and for mental health and substance use disorder services in urban areas.

ECP Service Type	Standard	Suburban Compliance Percentage	Rural Compliance Percentage
Mental Health Services	30%	0%	0%
Substance Use Disorder Services	30%	0%	0%

KPIC provided the information required by COMAR 31.10.44.09A for each unmet ECP inclusion standard described above. The Administration has considered the information provided by KPIC, and has determined that the carrier failed to provide sufficient information to demonstrate that the conditions necessary for the granting of a waiver as described in COMAR 31.10.44.09B were satisfied. However, KPIC provided information demonstrating that the failure to meet the ECP inclusion standard for 2023, after KPIC consistently reported exceeding the ECP standard in prior reporting years, was due to the regulatory changes to the definitions and methodologies for calculating the revised standard under the new network adequacy regulations. The extreme drop in the reported compliance percentages was not caused by a loss of previously contracted ECPs as supporting documentation showed an increase in numbers as compared to the 2022 filing year.

As noted above, the Administration advised carriers in Bulletin 23-8 that the Administration would take into consideration the fact that the reports were required to be filed shortly after the effective date of the revised regulations in determining deficiencies and the regulatory response to such deficiencies. Consequently, the Administration has determined in its exercise of enforcement discretion, not to impose a penalty for the ECP inclusion standard for the KPIC 2023 Access Plans. Based on the information provided by KPIC, the Administration determined there was insufficient time between the finalization of the revised regulations and the due date of the 2023 access plan filings for KPIC to identify, recruit, credential, and contract with a sufficient number of ECPs necessary to meet the inclusion standard under the revised methodology. KPIC provided a description of the steps it will take to address the deficiencies and achieve compliance for the 2024 access plan filings and demonstrated that reasonable good faith efforts to comply with the standards were undertaken following adoption of the final regulations. This included descriptions of unsuccessful efforts by KPIC to contact and recruit additional providers, including the dates and the reasons each was unsuccessful, to support KPIC’s contention that many ECPs were non-responsive, or did not contract with insurance companies.

While the Administration determined that a penalty for failure to meet the ECP inclusion standard was not warranted for 2023, the Administration expects KPIC’s 2024 access plan to demonstrate significant improvement in compliance with the standard. The Administration has provided additional guidance to all carriers for the 2024 filing year to standardize the regional classifications and to standardize the inclusion criteria of available ECPs. KPIC must demonstrate that it has made specific efforts to expand the number of ECPs in its networks and has reviewed its methodology to ensure that all viable ECPs listed in the guidance are included in its recruitment strategy.

Appointment Waiting Time Standards

The data self-reported by KPIC disclosed that the percentage of available in-person appointments meeting the regulatory standard in the following service types was less than 90%:

Appointment / Service Type	Standard	% of Standard Met
Urgent care for medical services	72 hours	76.13%
Inpatient urgent care for mental health services	72 hours	83.33%
Outpatient urgent care for mental health services	72 hours	81.25%
Routine primary care	15 calendar days	89.18%
Non-urgent mental health care	10 calendar days	87.33%
Non-urgent substance use disorder care	10 calendar days	88.41%

For the other appointment waiting time categories of Inpatient Urgent Care for Substance Use

Disorder Services, Outpatient Urgent Care for Substance Use Disorder Services, Preventative Visit Care/Well Visit and Non-urgent Specialty Care, KPIC reports meeting the required 90% standard based on provider survey results.

KPIC states that it collects appointment waiting time on an ongoing basis in a variety of ways. This does not, however, include surveys of the next available appointment, as required by COMAR 31.10.44.06B(1). In the Appointment Waiting Time Methodology template, KPIC's description of its process indicated that an alternative approach to the methodology required by the revised network adequacy regulations was used for the 2023 access plan.

KPIC provided the information required by COMAR 31.10.44.09A for each unmet appointment waiting time standard described above. The Administration has considered the information provided by KPIC and has determined that the carrier failed to provide sufficient information to demonstrate that the conditions necessary for the granting of a waiver as described in COMAR 31.10.44.09B were satisfied. However, KPIC provided information demonstrating that the failure to meet the applicable waiting time standards was due to the regulatory changes in the methodology for measuring appointment waiting time, and insufficient time to address previously unidentified deficiencies for new categories of appointments. In accordance with Bulletin 23-8, the Administration has determined in its exercise of enforcement discretion, not to impose a penalty for the appointment waiting time deficiencies for 2023 for the following reasons:

- KPIC provided a description of the steps it will take to address the deficiencies and achieve compliance for the 2024 access plan filings and demonstrated that reasonable good faith efforts to comply with the standards were undertaken following adoption of the final regulations.
- The information submitted by KPIC in accordance with COMAR 31.10.44.09A, while not sufficient to justify a waiver of the standards, did indicate that an insufficient number of providers willing to contract with KPIC contributed partly to the failure to meet the standards, and KPIC included a description of its efforts to locate additional in-person medical, mental health, and substance use disorder providers and facilities using internal sources, such as out-of-network claims data, and external sources such as Maryland's Active Providers Directory and online searches, and included listings of identified recruitment targets and the status of negotiations with additional providers.
- As previously mentioned, KPIC provided a description of a manual process utilized in 2023 to review all out-of-network claims to determine if network adequacy was a factor. If so, the claim would be reprocessed at the member in-network benefit level and the member held harmless from balance billing.

While the Administration determined that a penalty for failure to meet the appointment waiting time standards was not warranted for 2023, the Administration expects KPIC's 2024 access plan to demonstrate that KPIC has adopted the required methodology described in COMAR

31.10.44.06B(1), and has achieved significant improvement in compliance with the regulatory standards.

This determination letter is limited to review of the KPIC 2023 Access Plan and is independent of the Administration's review of any other Network Adequacy Access Plans and submissions in connection thereof that are filed by KPIC. The enforcement discretion exercised for 2023 does not extend to access plan filings submitted for 2024, and the Administration expects to see significant improvement in compliance levels for the 2024 plans.

KPIC has the right to request a hearing on this determination letter in accordance with § 2-210 of the Insurance Article. A request for a hearing must be made in writing and received by the Administration within thirty (30) days of the date of this letter. The rules for requesting a hearing are set forth in COMAR 31.02.01.

Very truly yours,

Pam O'Brien

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Mental Health Parity and Network Adequacy
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