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September 19, 2023

Ms. Malika Evans  
Senior Director of Member Service and Medical Records  
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.  
2101 East Jefferson Street  
Rockville, MD 20852

Re: Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.  
2022 Network Adequacy Access Plan Filing

Dear Ms. Evans:

The Maryland Insurance Administration (“Administration”) has completed its review of the Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. 2022 Network Adequacy Access Plan (the “KFHP 2022 Access Plan”) filed on July 1, 2022, supplemented with additional information and documentation on March 15, 2023 and May 26, 2023. This filing was made pursuant to § 15-112(c)(2)(i) of the Insurance Article and COMAR 31.10.44<sup>1</sup>.

The Administration’s review of the KFHP 2022 Access Plan has found that the access standards in COMAR 31.10.44.04 and .05 were not met for the following, based on the data self-reported by KFHP. All other access standards in COMAR 31.10.44 were met.

#### Travel Distance Standards

1. In suburban areas, Applied Behavioral Analyst providers must be within 20 miles of enrollees. Applied Behavioral Analyst providers met the required standard for 99.8% of suburban enrollees, leaving 220 enrollees outside the travel distance standard in zip code 20732.

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<sup>1</sup> COMAR 31.10.44 was revised, effective May 15, 2023. The 2022 Network Adequacy Access Plans were filed and reviewed for compliance under the version of COMAR 31.10.44 that was effective prior to May 15, 2023. All references to COMAR 31.10.44 in this letter apply to the pre-May 15, 2023 version.

2. In urban areas, Gynecology Only providers must be within 15 miles of enrollees; in suburban areas, Gynecology Only providers must be within 30 miles of enrollees. Gynecology Only providers met the required standard for 98.7% of urban enrollees, leaving 801 enrollees outside the travel distance standard in six zip codes. The standard was met for 96.4% of suburban enrollees, leaving 1,722 enrollees outside the travel distance standard in four zip codes.

Urban zip codes:

- a. Zip code 21040 has 316 enrollees outside the standard.
- b. Zip code 21061 has 4 enrollees outside the standard.
- c. Zip code 21114 has 1 enrollee outside the standard.
- d. Zip code 21222 has 180 enrollees outside the standard.
- e. Zip code 21402 has 1 enrollee outside the standard.
- f. Zip code 21403 has 299 enrollees outside the standard.

Suburban zip codes:

- a. Zip code 20732 has 4 enrollees outside the standard.
- b. Zip code 21702 has 772 enrollees outside the standard.
- c. Zip code 21703 has 835 enrollees outside the standard.
- d. Zip code 21716 has 111 enrollees outside the standard.

3. In suburban areas, Ophthalmology providers must be within 20 miles of enrollees. Ophthalmology providers met the required standard for 99.7% of suburban enrollees, leaving 285 enrollees outside the travel distance standard in two zip codes:

Suburban zip codes:

- a. Zip code 20714 has 24 enrollees outside the standard.
- b. Zip code 20732 has 261 enrollees outside the standard.

4. In urban areas, Physiatry, Rehabilitative Medicine providers must be within 15 miles of enrollees. Physiatry, Rehabilitative Medicine providers met the required standard for 99.9% of urban enrollees, leaving 22 enrollees outside the travel distance standard in zip code 21403.
5. In urban areas, Plastic Surgery providers must be within 15 miles of enrollees. Plastic Surgery providers met the required standard for 99.8% of urban enrollees, leaving 238 enrollees outside the travel distance standard in zip code 21403.

With respect to access to Gynecology Only providers, KFHP contends that All Mid Atlantic Permanente Medical Group general obstetrics and gynecology providers serve both pregnant and non-pregnant enrollees and have obstetrical and gynecologic enrollees on their panels. By including these providers, all enrollees had access to gynecologic care in the impacted zip codes.

The Administration noted in its December 12, 2022 determination letter for the 2021 KFHP access plan that “in accordance with COMAR 31.10.44.04B(1), *‘The distances listed in §B(5) of this regulation shall be measured from the enrollee’s place of residence or place of employment from which the enrollee gains eligibility for participation in the group model HMO’s health benefit plan.’* Since Post Office boxes are unlikely to identify the physical location of an enrollee’s residence or place of employment, the Administration expects KFHP to demonstrate an effort to find a physical rather than post office address for enrollees in future access plan filings.”

The Administration has determined, based on the explanation KFHP provided in the 2022 filing, that KFHP demonstrated sufficient efforts to determine actual place of residence or employment for enrollees providing a post office box for an address. When a post office box is provided, KFHP uses proprietary vendor software that allows it to approximate enrollee residence/place of employment using a methodology that the Administration has concluded is reasonable.

#### Appointment Waiting Time Standards

The data self-reported by KFHP indicates that the required standard of 30 calendar days for non-urgent specialty care was met for 94.2% of enrollees, representing a deficiency of .8 percentage points. The required standard of 10 calendar days for non-urgent behavioral health/substance use disorder services was met for 94.4% of enrollees, representing a deficiency of .6 percentage points.

For the other appointment waiting time categories of urgent care, routine primary care, and preventive visit / well visit, KFHP reports meeting the required 95% standard based on provider survey results.

#### Travel Distance Waiver Requests

The criteria that must be met in order to qualify for a waiver of a standard are set forth in COMAR 31.10.44.07. The Administration “may find good cause to grant the network adequacy waiver request if the carrier demonstrates that the physicians, other providers, or health care facilities necessary for an adequate network: (1) Are not available to contract with the carrier; (2) Are not available in sufficient numbers; (3) Have refused to contract with the carrier; or (4) Are unable to reach agreement with the carrier.”

The Administration has considered KFHP’s requests for waivers for the travel distance standard for Applied Behavioral Analyst, Gynecology Only, Psychiatry / Rehabilitative Medicine, Plastic Surgery, and Ophthalmology providers. The waiver requests were made on July 1, 2022 with additional information to support the requests filed on March 15, 2023 and May 26, 2023.

Please be advised that the Administration has found good cause to grant the requests for 1 year because additional providers are not available in sufficient numbers, as evidenced by the following information which was presented by KFHP:

- Descriptions of efforts to locate any additional providers in zip codes 20732 and 21702 using both internal reporting and external resources, including CMS, online searches, and the public directories of other carriers, accompanied by an explanation that the new deficiencies in these zip codes resulted from the 2022 zip code reclassifications required by the Administration shortly before the due date of the access plan filings, which provided minimal time to recruit new providers to address the deficiencies<sup>2</sup>;
- Confirmation of coverage by general obstetrics and gynecology providers within travel distance standards where there are deficiencies in Gynecology Only providers;
- Descriptions of ongoing negotiation and continued efforts to contract with providers previously identified for Psychiatry / Rehabilitative Medicine, Plastic Surgery, and Ophthalmology, who, if contracted, would resolve the deficiencies for enrollees outside the travel distance standard.

#### Appointment Waiting Time Waiver Request

The criteria that must be met in order to qualify for a waiver of a standard are set forth in COMAR 31.10.44.07. The Administration “may find good cause to grant the network adequacy waiver request if the carrier demonstrates that the physicians, other providers, or health care facilities necessary for an adequate network: (1) Are not available to contract with the carrier; (2) Are not available in sufficient numbers; (3) Have refused to contract with the carrier; or (4) Are unable to reach agreement with the carrier.”

The Administration has considered KFHP’s requests for waivers for the appointment waiting time standard for non-urgent specialty care and non-urgent behavioral health/substance use disorder services. The waiver requests were made on July 1, 2022 with additional information to support the requests filed on March 15, 2023 and May 26, 2023.

The KFHP 2022 Access Plan contains insufficient substantiation to justify granting a waiver for the deficient appointment waiting time standards because the information submitted by KFHP failed to demonstrate that the criteria in COMAR 31.10.44.07B(1)-(4) were satisfied. However, while the Administration did not find good cause to grant these waiver requests, the Administration has determined that it will exercise enforcement discretion and not impose a penalty for these appointment waiting time deficiencies, having considered the lack of seriousness of the deficiencies (which are less than one percentage point from meeting the

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<sup>2</sup> As explained in MIA Bulletin 22-05, some of the zip code classifications carriers are required to use to determine rural, suburban, and urban zip codes for the purposes of calculating the travel distance standards were revised in 2022 based on updated information provided by the Maryland State Department of Planning and the U.S. Census Bureau. Zip codes 20732 and 21702 were reclassified from “rural” to “suburban,” resulting in more stringent travel distance standards. The bulletin was issued on May 12, 2022, and the access plan filings were due on July 1, 2022.

required standards), and having considered the following information KFHP provided about its efforts to improve the network and avoid a future failure to meet the standards:

- Demonstrations by the carrier of significant expansions in the number of providers added to the network since April 1, 2021 to meet the increasing demand for non-urgent specialty care and behavioral health/substance use disorder services;
- A summary of an analysis KFHP performed of wait time survey results to determine the provider specialties and geographic areas where waiting times are longer in order to determine where to focus future recruitment efforts;
- A description of the KFHP 24/7 Clinical Contact Center where enrollee symptoms are screened to determine urgency and enrollees are assisted in getting timely appointments.

The Administration has determined, in its exercise of enforcement discretion, not to impose a penalty in connection with its review of the KFHP 2022 Network Adequacy Access Plans, which, after considering the waiver requests granted by the Administration, contain only deficiencies that are marginal in nature.

This determination letter is limited to review of the KFHP 2022 Access Plan, and is independent of the Administration's review of any other Network Adequacy Access Plans and submissions in connection thereof which are filed by KFHP.

KFHP 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,



David Cooney  
Associate Commissioner  
Life and Health