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KATHLEEN A. BIRrane
Commissioner

TAMMY R. J. LONGAN
Acting Deputy Commissioner

DAVID COONEY
Associate Commissioner
Life and Health

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2170 Fax: 410-468-2204
Email: david.cooney@maryland.gov
410-468-2000 1-800-492-6116
TTY: 1-800-735-2258
www.insurance.maryland.gov

March 9, 2023

Ian W. Henderson, JD
Kaiser Permanente Insurance Company
Senior Regulatory Consultant
KPIC Regulatory Strategy and Contracts
2101 East Jefferson Street
Rockville, MD 20852

Re: MIA v. Kaiser Permanente Insurance Company
Case No.: MIA-2021-04-027
2019 Network Adequacy Access Plan Filing

Dear Mr. Henderson:

The Maryland Insurance Administration (“Administration”) and Kaiser Permanente Insurance Company (“KPIC”) entered into a Consent Order on April 27, 2021 (the “Consent Order”) to resolve matters related to the KPIC 2019 Network Adequacy access plan.

In the Consent Order, the Administration concluded that KPIC violated § 15-112 of the Insurance Article and COMAR 31.10.44.03C by filing an access plan that:

- failed to comply with certain required travel distance standards and appointment waiting time standards;
- failed to measure and report the percentage of enrollees for which KPIC met the appointment waiting time standard for preventive visit/well visit services in both the access plan and the executive summary; and
- failed to demonstrate that at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas are included in the network.

The Administration imposed an administrative penalty on KPIC of \$100,000 for the violations, but suspended the penalty pending the Administration’s (i) review of the access plan submitted by KPIC in 2021; (ii) determination as to whether the 2021 access plan and additional mitigation efforts substantiate representations made by KPIC related to its intent to adjust record keeping

methodologies and to improve its compliance with the travel distance and appointment waiting time standards; and (iii) based on such review and determination, decision on whether the administrative penalty should be paid, reduced, or rescinded.

The Administration has completed its review of the KPIC 2021 access plan filed on July 1, 2021, supplemented with additional information and documentation on March 11, 2022, April 29, 2022, and June 16, 2022. This filing was made pursuant to § 15-112(c)(2)(i) of the Insurance Article and COMAR 31.10.44, and the Administration and KPIC entered into a Consent Order on March 9, 2023 (the “2021 Access Plan Consent Order”) to resolve matters related to the KPIC 2021 access plan.

The data self-reported by KPIC in the 2021 access plan demonstrated significant improvement for all 2019 non-compliant categories of appointment waiting time standards. The reported percentages met increased for urgent care (including medical, behavioral health, and substance use disorder services) from 42% to 74.38%, for routine primary care from 33% to 80.89%, for non-urgent specialty care from 36% to 89.47%, and for non-urgent behavioral health/substance use disorder services from 28% to 80.48%. In 2019, KPIC failed to report the percentage of enrollees for which KPIC met the appointment waiting time standard for the preventive/well visit category. In 2021, KPIC reported the percentage of enrollees for which KPIC met the appointment waiting time standard for preventive visit/well visit services in both the access plan and the executive summary as 89.26%.

KPIC filed a waiver request for the deficiencies in the appointment waiting time standards, but good cause does not exist to grant the waiver request as it failed to demonstrate that the providers and facilities necessary to improve waiting time results (1) were not available to contract with the carrier; (2) were not available in sufficient numbers; (3) refused to contract with the carrier; or (4) were unable to reach agreement with the carrier (COMAR 31.10.44.07B). KPIC failed to provide sufficient evidence to demonstrate that KPIC engaged in adequate provider recruitment efforts to address the extent of the deficiencies in the waiting time standards.

The data self-reported by KPIC in the 2021 access plan showed general improvement in compliance with travel distance standards as compared to 2019 using the same methodology to identify enrollees that was used in the Consent Order. On June 24, 2022, KPIC voluntarily disclosed that it found an error in the way enrollees were identified in the 2019 through 2022 access plan filings. KPIC submitted corrected data for filing years 2019 through 2022 and the updated data reflected less of a trend in improvement since 2019. However, this change reflected an improvement in record keeping methodologies.

Additionally, for the non-compliant travel distance standards reported in all KPIC Access Plans filed since 2018, KPIC provided documentation to the Administration that it has voluntarily instituted a remediation plan that will apply to all claims for services received between 2018 and 2021. In implementing this plan, KPIC will assume that members who received care from an out-of-network provider would have opted for an in-network provider if KPIC’s network had met the travel distance standard. To make such members whole, the member’s out-of-pocket

costs for the out-of-network care will not be allowed to exceed the cost for the same service if it had been received on an in-network basis. This process will determine the member's appropriate in-network liability and any amounts that exceed that liability will be paid at 100% of billed charges for covered services. The remediation plan described in this paragraph is reflected in the 2021 Access Plan Consent Order.

The KPIC 2021 access plan demonstrated to the satisfaction of the Administration that KPIC has complied with the terms of the 2019 Consent Order in addressing the deficiencies reported in the KPIC 2019 access plan. The Administration has determined that the KPIC 2021 access plan substantiates representations made by KPIC related to its intent to:

- adjust its record keeping methodologies;
- improve its compliance with the travel distance and appointment waiting time standards;
- adjust its record keeping methodologies to measure and report the percentage of enrollees for which KPIC met the appointment waiting time standard for preventive visit/well visit services in both the access plan and the executive summary;
- demonstrate that at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas are included in the network; and
- demonstrate mitigation efforts for enrollees impacted by travel distance deficiencies.

The \$100,000 penalty, therefore, is hereby rescinded in its entirety, in accordance with the terms of the Consent Order.

This determination letter is limited to the KPIC 2019 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 KPIC.

Very truly yours,



David Cooney
Associate Commissioner
Life and Health