State of California
Office of the Attorney General
Xavier Becerra
Attorney General

October 15, 2020

Kaiser Foundation Health Plan, Inc.
1 Kaiser Plaza
Oakland, CA 94612

RE: Californians' Access to Mental Healthcare

Dear Partner:

As the Attorney General, it is my job to protect the health and welfare of all Californians, including those suffering from mental illness. One out of every six Californians experience some type of mental illness.[1] In 2014, the Patient Protection and Affordable Care Act ("ACA") greatly expanded access to mental health treatment across the country. It did so by classifying certain mental health and substance use disorder services as "essential health benefits" for small group and individual plans and by prohibiting pre-existing condition bans. California's laws, such as the recently signed SB 855, complement the ACA and further expand coverage of mental health and substance use disorder conditions, not only for individual and small group plans but large group plans as well.

Despite such efforts, recent polling reflects that many Californians still have limited access to appropriate mental healthcare with two thirds of those surveyed reporting that they or a family member sought mental health services but were unable to get them.[2] This is likely why, as of December of 2019, the top health issue Californians want the state to address is ensuring access to mental health treatment.[3]

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[1] Wiener, *Breakdown: California's mental health system, explained* (April 30, 2019) Cal Matters. Available at https://calmatters.org/explainers/breakdown-californias-mental-health-system-explained/

[2] Hamel, et al., *The Health Care Priorities and Experiences of California Residents: Findings from the Kaiser Family Foundation/California Health Care Foundation California Health Policy Survey* (January 2019) Kaiser Family Foundation. Available at https://www.chcf.org/wp-content/uploads/2019/02/HealthCarePrioritiesExperiencesCaliforniaResidents.pdf

[3] Ben-Porath, et al, *Health Care Priorities and Experiences of California Residents: Findings from the California Health Policy Survey* (February 2020) California Health Care

The current COVID-19 pandemic only further amplifies the importance of access to and coverage of mental health treatment. The virus and measures taken to address it have exacerbated mental health conditions while also causing a reduction in access to services.[4] It is thus more important than ever that we continue to remove whatever impediments exist to necessary mental health care.

Both California and the federal government have recognized the importance of mental healthcare and sought to address potential barriers through parity laws. Mental health parity laws, including the California Mental Health Parity Act, the federal Mental Health Parity and Addiction Equity Act of 2008, and the ACA, which greatly expanded the 2008 law, generally require insurers to provide coverage for medically necessary treatment of mental disorders without limitations or conditions more restrictive than those for medical illnesses. Despite such parity laws, many Californians with insurance are exponentially more likely to go out of network for mental health treatment than they are for medical services.[5] My office and I are committed to investigating and ensuring compliance with these laws to protect the mental health and wellbeing of all California residents.

To further this goal, we are collecting information and documents to identify industry or individual practices that may impede access to mental healthcare. This includes, for example, reimbursement rates for mental health providers, clinical guidelines used to determine medical necessity, provider network information, claim and preauthorization data, and provider contracts and credentialing requirements. Please provide the information and documents listed in "Attachment A" to the Attorney General's office by November 16, 2020.

Foundation p. 4. Available at https://www.chcf.org/publication/mental-health-tops-californians-health-care-priorities-in-statewide-survey/

[4] Malapani, *COVID-19 and the Need for Action of Mental Health* (May 25, 2020) Columbia University Department of Psychiatry. Available at https://www.columbiapsychiatry.org/news/covid-19-and-need-action-mental-health

[5] Melek, Davenport, and Gray, *Addiction and Mental Health vs. Physical Health: Widening Disparities in Network Use and Provider Reimbursement* (November 19, 2019) Milliman Research Report, p. 38. Available at http://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf

Please contact Deputy Attorney General Martine D'Agostino at Martine.DAgostino@doj.ca.gov to coordinate. Thank you in advance for your cooperation.

Sincerely,

Attorney General

Attachment A

1. Provide aggregate data regarding the number of approvals and denials (partial or full) for all preauthorization requests made at any time between January 1, 2018 to the present. This request is limited to fully insured commercial business. Separate the information by the service, medication or equipment for which coverage is requested, procedure code(s) associated with the service, medication or item, and into groupings for either behavioral health or medical diagnosis. Also delineate the number of administrative denials versus those for lack of medical necessity. Please use the following charts as an example:

Preauthorization Requests for Behavioral Health Diagnoses

Service/Item for which Coverage Requested	Procedure Code(s)	No. Approved	No. Denied	Denial Basis	
				Admin.	Lack of Med. Nec.

Preauthorization Requests for Medical Diagnoses

Service/Item for which Coverage Requested	Procedure Code(s)	No. Approved	No. Denied	Denial Basis	
				Admin.	Lack of Med. Nec.

2. Provide aggregate data regarding the number of claims paid or denied for all made at any time between January 1, 2018 to the present. This request is limited to fully insured commercial business. Separate the information by the service, medication or equipment for which payment was requested, procedure code(s) associated with the service, medication or item, and into groupings for either behavioral health or medical diagnosis. Also delineate the number of administrative denials versus those for lack of medical necessity. Please use the following charts as an example:

Claims for Behavioral Health Diagnoses

Service/Item for which Payment Requested	Procedure Code(s)	No. Paid	No. Denied	Denial Basis	
				Admin.	Lack of Med. Nec.

Claims for Medical Diagnoses

Service/Item for which Payment Requested	Procedure Code(s)	No. Paid	No. Denied	Denial Basis	
				Admin.	Lack of Med. Nec.

3. List the average contracted reimbursement rates and the average rates actually paid for (1) office visits and (2) evaluations, under fully insured commercial plans or policies, with the following specialists between January 1, 2018 to the present:
    - Child and adolescent psychiatrists
    - Geriatric psychiatrists
    - Addiction psychiatrists
    - Forensic psychiatrists
    - General psychiatrists
    - Psychologists (Ph.d, PsyD, Ed.D)
    - Social workers
    - Substance abuse counselor (CADC)
    - Marriage and family therapists
    - Psychiatric nurse practitioners
    - Psychiatric nurses (PMHN)
    - Applied behavioral analysis provider
    - Primary care physicians
    - Occupational therapists
    - Physical therapists
    - Speech therapists
    - Respiratory therapists
    - Physician's assistants
    - Nurse practitioners
    - Geriatricians
    - Neurologists
    - Pain management physicians

4. Provide exemplars of each contract into which any healthcare practitioner has entered to become an in-network provider for fully insured commercial plans or policies that was created or in effect any time between January 1, 2018 and the present. This request does not include contracts with facilities but does include contracts with medical groups.

5. Provide templates used for contracts through which all different types of healthcare facilities have become an in-network provider for fully insured commercial plans or policies that was created or in effect any time between January 1, 2018 and the present.

6. Provide all contracts with any entities to which utilization management of mental health and substance abuse services and/or medication was delegated, such as to any mental

health service administrators, for fully insured commercial plans or policies and which were created or in effect at any time between January 1, 2018 and the present.

7. Provide a description of the credential requirements which each specialty type of mental health and/or substance abuse treatment practitioner must meet before they can contract to be an in-network provider for fully insured commercial plans or policies and which were created or in effect at any time between January 1, 2018 to the present.

8. Provide a description of the credential requirements which each specialty type of medical treatment practitioner must meet before they can contract to be an in-network provider for fully insured commercial plans or policies and which were created or in effect at any time between January 1, 2018 to the present.

9. Provide a description of all processes in place to assure accuracy of network provider information available to insureds or health plan members of fully insured commercial plans or policies, including accuracy of in-network status, provider contact information, and provider availability for new patients.

10. Provide all documents created at any time between January 1, 2018 and the present which reflect the results of any audit or investigation into the accuracy of network provider directory information.

11. Provide all policies governing what actions are taken when consumers in fully insured commercial plans or policies complain of inaccurate provider network information. This includes training materials, written procedures, and workflows.

12. Provide a description of all oversight and audit measures of any entity to which utilization management of mental health and substance abuse services and/or medication has been delegated for fully insured commercial plans or policies, such as any mental health service administrators.

13. Provide all policies relating to all oversight and audit measures of any entity to which utilization management of mental health and substance abuse services and/or medication has been delegated, such as any mental health service administrators.

14. Provide a description of all efforts currently taken to assure compliance with non-quantitative treatment limitation parity requirements.

15. Provide a description of all efforts currently taken to assure compliance with quantitative treatment limitation parity requirements.

16. Provide a list of all of the specialists or facilities with whom a letter of agreement or single case use agreement was entered for the provision of a mental healthcare or substance abuse service to a fully insured commercial plan or policy member at any time

between January 1, 2018 and the present, with corresponding description of the services each contracted to provide and the city in which they practice or operate.

17. Provide all utilization management clinical criteria for fully insured commercial plans and policies, including those used internally or by any entity to which any utilization management has been delegated, separated by those for medical versus those for mental health and substance abuse treatment. Provide both, current versions of these documents and any substantively different versions that will be in effect in 2021.

18. Provide a list of all medical services for which preauthorization is currently required by name and associated procedure code(s). This request is limited to fully insured commercial plans and policies. Please see the following example:

Name of Medical Service for which Preauthorization is required	Associated Procedure Code(s)

19. Provide a list of all mental health and substantive abuse services for which preauthorization is currently required by name and associated procedure code(s). This request is limited to fully insured commercial plans and policies. Please see the following example:

Name of Mental Health Service for which Preauthorization is required	Associated Procedure Code(s)

20. Provide a list of all medical services for which concurrent reviews are currently required by name and associated procedure code(s). This request is limited to fully insured commercial plans and policies. Please see the following example:

Name of Medical Service for which concurrent review is required	Associated Procedure Code(s)

21. Provide a list of all mental health and substantive abuse services for which concurrent reviews are currently required by name and associated procedure code(s). This request is limited to fully insured commercial plans and policies. Please see the following example:

Name of Mental Health Service for which Preauthorization is required	Associated Procedure Code(s)

22. Provide the number of denials of in-patient mental health treatment coverage through a concurrent review which occurred at any time between January 1, 2018 to the present, where the denied member or insured was subsequently admitted for in-patient mental health treatment within 30 days of the denial, 60 days of the denial, and 90 days of the denial. This request is limited to fully insured commercial health plans or policies.

23. Describe the practices or data trends that can result in a deviation from standard utilization review policies and practices applied in a fully insured commercial health plan or policy utilization review, regardless of whether the deviation from a standard policy is done by a health plan directly or by a delegate entity.

24. Provide the number of internal appeals made at any time between January 1, 2018 to the present, regarding a denial of coverage for a mental health or substance abuse treatment. This information should be separated by treatment for which coverage was denied, whether the initial denial was administrative or for lack of medical necessity, and reflect the amount that resulted in a full overturn versus a fully or partially upheld denial. This request is limited to fully insured commercial plans or policies. Please use the following charts as an example:

Denied Treatment	No. of Appeals Upheld	No. of Appeals Overturned

25. Provide the number of grievances made at any time between January 1, 2018 to the present, regarding an inability to access any mental health or substance abuse treatment. This information should be separated by the treatment which the member or policy holder is having trouble accessing and is limited to fully insured commercial plans or policies. Please use the following charts as an example:

Treatment at Issue	No. of Grievances

26. List the types of providers (including generalists, specialists, and facilities) with whom you contract for inclusion as an in-network provider for fully insured commercial plans and policies and provide the number for each type currently contracted as an in-network provider.