

BEFORE THE MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE ADMINISTRATION \*  
200 ST. PAUL PLACE, SUITE 2700 \*  
BALTIMORE, MARYLAND 21202 \*

vs. \*

KAISER FOUNDATION HEALTH PLAN OF \*  
THE MID-ATLANTIC STATES, INC. \*  
2101 EAST JEFFERSON STREET \*  
ROCKVILLE MD 20852 \*

CASE NO: MIA-2021-03-030

NAIC# 95639 \*

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CONSENT ORDER

This Consent Order is entered into by the Maryland Insurance Commissioner and KAISER FOUNDATION HEALTH PLAN OF THE MID-ATLANTIC STATES, INC. ("KFHP" or "Respondent") pursuant to §§ 2-108 and 2-204 of the Insurance Article, and § 19-730 of the Health-General Article, Maryland Code Annotated, to resolve the matter before the Maryland Insurance Administration ("Administration").

I. RELEVANT REGULATORY FRAMEWORK

1. Each health maintenance organization ("HMO") that uses provider panels for health benefit plans offered in the State must assure that its provider panels meet certain adequacy standards. On July 1 of each year each HMO is required to file a report with the Administration demonstrating the HMO's compliance with those standards.

2. Section 15-112 of the Insurance Article provides, in pertinent part:

(a) (1) In this section the following words have the meanings indicated.

\* \* \*

(5) (i) "Carrier" means:

\* \* \*

3. a health maintenance organization;

(b) (1) Subject to paragraph (3) of this subsection, a carrier that uses a provider panel shall:

- (i) if the carrier is an insurer, nonprofit health service plan, health maintenance organization, or dental plan organization, maintain standards in accordance with regulations adopted by the Commissioner for availability of health care providers to meet the health care needs of enrollees;

\* \* \*

(c) (1) This subsection applies to a carrier that:

- (i) is an insurer, a nonprofit health service plan, or a health maintenance organization; and
  - (ii) uses a provider panel for a health benefit plan offered by the carrier.
- (2) (i) On or before July 1, 2018, and annually thereafter, a carrier shall file with the Commissioner for review by the Commissioner an access plan that meets the requirements of subsection (b) of this section and any regulations adopted by the Commissioner under subsections (b) and (d) of this section.

3. The regulations referenced in § 15-112(c)(2)(i) of the Insurance Article are set forth in COMAR 31.10.44.

4. COMAR 31.10.44.02B(7) provides that the term "group model HMO" means a type of health maintenance organization that:

- (a) Contracts with one multispecialty group of physicians who are employed by and shareholders of the multispecialty group; and
- (b) Provides or arranges for the provision of physician and other health care services to patients at medical facilities operated by the HMO or employs its own physicians and other providers on a salaried basis in health maintenance organization buildings to provide care to enrollees of the health maintenance organization.

5. The network adequacy standards for a group model HMO include travel distance standards as set forth in COMAR 31.10.44.04B and appointment waiting time standards as set forth in COMAR 31.10.44.05 (collectively, the "Standards").

6. The access plan content and filing requirements are set forth in COMAR 31.10.44.03, which provides, in pertinent part:

.03 Filing of Access Plan.

C. Each annual access plan filed with the Commissioner shall include:

- (1) An executive summary in the form set forth in Regulation .09 of this chapter;
- (2) The information and process required by Insurance Article, §15-112(c)(4), Annotated Code of Maryland, and the methods used by the carrier to comply with the monitoring requirement under §15-112(c)(5);
- (3) Documentation justifying to the Commissioner how the access plan meets each network sufficiency standard set forth in Regulations .04—.06 of this chapter; and
- (4) A list of all changes made to the access plan filed the previous year.

7. COMAR 31.10.44.07 allows a carrier to apply for a temporary waiver from compliance with one or more of the Standards provided that certain criteria are met.

## II. FINDINGS

8. KFHP holds a Certificate of Authority to act as a HMO in the State and uses provider panels for health benefit plans offered in the State. KFHP is a group model HMO. As such, it is subject to § 15-112 of the Insurance Article and the network adequacy standards set forth in COMAR 31.10.44.04B and .05. In addition, KFHP is required to file a network adequacy plan in accordance with COMAR 31.10.44.03.

9. On June 28, 2019, KFHP submitted a Network Adequacy Plan (the “KFHP 2019 Access Plan”) to the Administration.

10. On December 31, 2019, the Administration sent a letter to KFHP requesting additional information and documentation necessary for the Administration to evaluate whether the KFHP 2019 Access Plan was in compliance with the Standards.

11. On February 27, 2020, KFHP submitted the additional information and documentation. The information included access maps and documentation to support the percentages of enrollees meeting the travel distance standards and justification to support KFHP's compliance with the appointment waiting time standards.

12. On December 30, 2020, the Administration reached out to KFHP to request more detailed documentation regarding compliance with the travel distance standards.

13. On January 15, 2021, KFHP submitted the documentation to the Administration.

**A. The Access Plan-Travel Distance Standards**

14. The data submitted by KFHP in connection with the KFHP 2019 Access Plan failed to demonstrate compliance with the Travel Distance Standards.

15. COMAR 31.10.44.04 provides, in pertinent part:

.04 Travel Distance Standards

B. Group Model HMO Plans Sufficiency Standards.

- (1) Each group model HMO's health benefit plan's provider panel shall have within the geographic area served by the group model HMO's network or networks, sufficient primary care physicians, specialty providers, behavioral health and substance use disorder providers, hospitals, and health care facilities to meet the maximum travel distance standards listed in the chart in §B(5) of this regulation for each type geographic area. 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.

- (2) When an enrollee elects to utilize a gynecologist, pediatrician, or certified registered nurse practitioner for primary care, a carrier may consider that utilization as a part of its meeting the primary care provider standards listed in §B(5) of this regulation.

\* \* \*

(5) Chart of Travel Distance Standards.

	Urban Area Maximum Distance (miles)	Suburban Area Maximum Distance (miles)	Rural Area Maximum Distance Miles
<b>Provider Type:</b>			

\* \* \*

Applied Behavioral Analyst	15	20	60
Endocrinology	20	40	90
Gynecology Only	15	30	60

\* \* \*

Ophthalmology	15	20	60
Podiatry	15	30	90
Rheumatology	15	40	90
All other licensed or certified providers under contract with a carrier not listed	20	40	90

\* \* \*

<b>Facility Type:</b>			
Acute Inpatient Hospitals	15	30	60

Critical Care Services- Intensive Care Units	15	30	120
Inpatient Psychiatric Facility	15	45	75
Outpatient Infusion/ Chemotherapy	15	30	60

\* \* \*

Surgical Services (Outpatient or Ambulatory Surgical Center)	10	30	60
Other Behavioral Health/Substance Abuse Facilities	15	30	60

16. The data self-reported by KFHP disclosed the following deficiencies based on distance of a provider to an enrollee's address:

- (a) Applied behavioral analyst providers met the required standard for 99.3% of urban enrollees, leaving 1,036 members outside the travel distance standard of fifteen miles. The standard was met for 98.2% of suburban enrollees, leaving 1,960 members outside the travel distance standard of twenty miles

Urban Zip Codes

- i. Zip code 21040 has 687 members outside the travel distance standard.

- ii. Zip code 21236 has 137 members outside the travel distance standard.
- iii. Zip code 21222 has 212 members outside the travel distance standard.

Suburban Zip Codes

- iv. Zip code 21017 has 193 members outside the travel distance standard.
- v. Zip code 21009 has 382 members outside the travel distance standard.
- vi. Zip code 21716 has 56 members outside the travel distance standard.
- vii. Zip code 20612 has 3 members outside the travel distance standard.
- viii. Zip code 20602 has 1,091 members outside the travel distance standard.
- ix. Zip code 21220 has 234 members outside the travel distance standard.
- x. Zip code 21221 has 1 member outside the travel distance standard.

- (b) Endocrinology providers met the required standard for 99.7% of urban enrollees, leaving 495 members outside the travel distance standard of twenty miles.

Urban Zip Codes

- i. Zip code 21402 has 7 members outside the travel distance standard.
  - ii. Zip code 21403 has 488 members outside the travel distance standard.
- (c) Gynecology only providers met the required standard for 99% of urban enrollees, leaving 702 members outside the travel distance standard of fifteen miles. The standard was met for 99.9% of suburban enrollees, leaving 45 members outside the travel distance standard of thirty miles.

Urban Zip Codes

- i. Zip Code 21040 has 178 members outside the travel distance standard.
- ii. Zip code 21403 has 350 members outside the travel distance standard.
- iii. Zip code 21402 has 5 members outside the travel distance standard.
- iv. Zip code 21052 has 6 members outside the travel distance standard.
- v. Zip code 21061 has 5 members outside the travel distance standard.
- vi. Zip code 21114 has 158 members outside the travel distance standard.

Suburban Zip Codes



- vii. Zip code 20612 has 1 member outside the travel distance standard.
  - viii. Zip code 20714 has 38 members outside the travel distance standard.
  - ix. Zip code 20714 has 6 members outside the travel distance standard.
- (d) Ophthalmology providers met the required standard for 99.9% for suburban enrollees, leaving 19 members outside the travel distance standard of twenty miles.

Suburban Zip Codes

- i. Zip code 20612 has 3 members outside the travel distance standard.
  - ii. Zip code 20714 has 16 members outside the travel distance standard.
- (e) Podiatry providers met the required standard for 99.9% of urban enrollees, leaving 52 members outside the travel distance standard of fifteen miles in one zip code, 21040.
- (f) Rheumatology providers met the required standard for 98.7% of urban enrollees, leaving 2,013 members outside the travel distance standard of fifteen miles.

Urban Zip Codes

- i. Zip code 21402 has 7 members outside the travel distance standard.

- ii. Zip code 21403 has 693 members outside the travel distance standard.
  - iii. Zip code 21114 has 626 members outside the travel distance standard.
  - iv. Zip code 21040 has 687 members outside the travel distance standard.
- (g) KFHP'S self-reported data included the following for licensed or certified providers under contract with KFHP not listed in the chart in COMAR 31.10.44.04B(5):
- i. Infectious diseases providers met the required standard for 99.9% of urban enrollees, leaving 92 members outside the travel distance standard of twenty miles in one zip code, 21403.
  - ii. Orthopedic surgery providers met the required standard for 99.9% of urban enrollees, leaving 85 members outside the travel distance standard of twenty miles in one zip code, 21403.
  - iii. The KFHP executive summary form reported that cardiovascular disease providers met the standard for 98% of suburban enrollees, however, zip code level data was not provided.
- (h) Acute inpatient hospital facilities met the required standard for 99.8% of urban enrollees, leaving 257 members outside the travel distance standard of fifteen miles in one zip code, 21040.
- (i) Critical Care Services-Intensive Care Unit facilities met the required standard for 99.8% of urban enrollees, leaving 257 members outside the travel distance standard of fifteen miles in one zip code, 21040.

- (j) Inpatient psychiatric facilities met the required standard for 99.4% of urban enrollees, leaving 957 members outside the travel distance standard of fifteen miles.

Urban Zip Codes

- i. Zip code 21402 has 7 members outside the travel distance standard.
  - ii. Zip code 21403 has 693 members outside the travel distance standard.
  - iii. Zip code 21040 has 257 members outside the travel distance standard.
- (k) Outpatient infusion/chemotherapy facilities meet the required standard for 99.8%% of urban enrollees, leaving 257 members outside the travel distance standard of fifteen miles in one zip code, 21040.
  - (l) Surgical services (outpatient or ambulatory surgical center) facility providers met the required standard for 99.9% of urban enrollees, leaving 10 members outside the travel distance standard of ten miles in one zip code, 21052.
  - (m) Other behavioral health/substance abuse facilities met the required standard for 99.5% of urban enrollees, leaving 687 members outside the travel distance standard of fifteen miles in one zip code, 21040.

**B. The Access Plan-Appointment Waiting Time Standards**

17. The data submitted by KFHP in connection with the KFHP 2019 Access Plan failed to demonstrate compliance with Appointment Waiting Time Standards.

18. COMAR 31.10.44.05 states, in pertinent part:

.05 Appointment Waiting Time Standards

A. Sufficiency Standards.

(1) Subject to the exceptions in §B of this regulation, each carrier's provider panel shall meet the waiting time standards listed in §C of this regulation for at least 95 percent of the enrollees covered under health benefit plans that use that provider panel.

(2) When it is clinically appropriate and an enrollee elects to utilize a telehealth appointment, a carrier may consider that utilization as a part of its meeting the standards listed in §C of this regulation.

\* \* \*

C. Chart of Waiting Time Standards

Waiting Time Standards	
Urgent care (including medical, behavioral health, and substance use disorder services)	72 hours
Routine Primary Care	15 Calendar Days
Preventive Visit/Well Visit	30 Calendar Days
Non-Urgent Specialty Care	30 Calendar Days
Non-urgent behavioral health/substance use disorder services	10 Calendar Days

19. The data self-reported by KFHP in connection with the KFHP 2019 Access Plan disclosed that non-urgent behavioral health/substance use disorder services met the

10 calendar day standard for 84.3% of enrollees, representing a deficiency of 10.7 percentage points.

20. KFHP has acknowledged the deficiency in its self-reported data regarding appointment waiting time standards for non-urgent behavioral health/substance use disorder services. KFHP advised that the appointment supply for non-urgent behavioral health and substance use disorder services is adequate and available for members willing to schedule within the 10-day period required by the regulations. KFHP stated that patient preference and their personal choice to seek non-urgent care at their convenience impacts the non-urgent behavioral health and substance use disorder services appointment waiting time results. KFHP advised that this is especially true with child and adolescent populations wherein parents tend to prefer to bring patients at a time that is convenient based on the child's school schedule.

### **III. CONCLUSIONS OF LAW**

21. The Administration concludes that KFHP violated § 15-112 of the Insurance Article and COMAR 31.10.44.03C by submitting an access plan that failed to comply with the required travel distance standards and appointment waiting time standards.

22. Section 19-729(a) of the Health-General Article states in pertinent part:

(a) A health maintenance organization may not:

(1) Violate any provision of this subtitle or any rule or regulation adopted under it[.]

23. Section 19-730 of the Health-General Article states in pertinent part:

- (a) If any person violates any provision of § 19-729 of this subtitle, the Administration may:
  - (1) Issue an administrative order that requires the health maintenance organization to:
    - (i) cease inappropriate conduct or practices by it or any of the personnel employed or associated with it;
  - \* \* \*
  - (2) In addition to suspending or revoking a certificate of authority:
    - (i) impose a penalty of not less than \$100, but not more than \$125,000 for each violation[.]

**ORDER**

**WHEREFORE**, for the reasons set forth above, it is **ORDERED** by the Commissioner and consented to by the Respondent:

A. That, pursuant to § 19-730 of the Health-General Article, based on consideration of COMAR 31.02.04.02, the Administration imposes an administrative penalty on KFHP of \$50,000 for the violations of § 15-112 of the Insurance Article and COMAR 31.10.44.03C identified here;

B. The obligation of KFHP to pay the aforesaid administrative penalty is hereby suspended pending the Administration's (i) review of the access plan submitted by KFHP in 2021; (ii) determination as to whether the 2021 access plan substantiates representations made by KFHP related to its intent to improve its compliance with the Standards; and (iii) based on such review and determination, decision on whether the administrative penalty should be paid, reduced, or rescinded.

## OTHER PROVISIONS

C. The executed Order and any administrative penalty shall be sent to the attention of: David Cooney, Associate Commissioner, Life and Health, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202.

D For the purposes of the Administration and for any subsequent administrative or civil proceedings concerning Respondent, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about the Respondent made under the Maryland Public Information Act, or properly made by governmental agencies, this Order will be kept and maintained in the regular course of business by the Administration. For the purposes of the business of the Administration, the records and publications of the Administration will reflect this Order.

E. The parties acknowledge that this Order resolves all matters relating to the factual assertions and agreements contained herein and are to be used solely for the purposes of this proceeding brought by or on behalf of the Administration. Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative action or civil action for violations not specifically identified in this Order, including, but not limited to, specific consumer complaints received by the Administration, nor shall anything herein be deemed a waiver of the right of the Respondent to contest other proceedings by the Administration. This Order shall not be construed to resolve or preclude any potential or pending civil, administrative, or criminal action or prosecution by any other person, entity or governmental authority, including but not limited to the Insurance Fraud Division of the Administration, regarding any conduct by the Respondent including the conduct that is the subject of this Order.

F. Respondent has had the opportunity to have this Order reviewed by legal counsel of its choosing, and is aware of the benefits gained and obligations incurred by the execution of the Order. Respondent waives any and all rights to any hearing or judicial review of this Order to which it would otherwise be entitled under the Insurance Article with respect to any of the determinations made or actions ordered by this Order.

G This Order contains the entire agreement between the parties relating to the administrative actions addressed herein. This Order supersedes any and all earlier agreements or negotiations, whether oral or written. All time frames set forth in this Order may be amended or modified only by subsequent written agreement of the parties.

H. This Order shall be effective upon signing by the Commissioner or his designee, and is a Final Order of the Commissioner under § 2-204 of the Insurance Article.

I. Failure to comply with the terms of this Order may subject Respondent to further legal and/or administrative action.

**Kathleen A. Birrane**  
**INSURANCE COMMISSIONER**

signature on original

By: \_\_\_\_\_  
David Cooney  
Associate Commissioner  
Life & Health

Date: 3/26/21



RESPONDENT'S CONSENT

RESPONDENT hereby CONSENTS to the representations made in, and to the terms of, the above Consent Order. On behalf of Respondent, the undersigned hereby affirms that he or she has taken all necessary steps to obtain the authority to bind Respondent to the obligations stated herein and does in fact have the authority to bind Respondent to the obligations stated herein.

Name: Linda Larch

Signature: 

Title: Vice President, Regional Compliance Officer

Date: March 23, 2021