Kaiser settles lawsuit alleging 'patient-dumping'

By Tara Bannow | December 20, 2018

Kaiser Foundation Health Plan has settled a 2014 lawsuit alleging it illegally shifted severely mentally ill patients hospitalized in Kaiser facilities from its commercial plans to public payers like Medicaid.

The lawsuit claims Oakland, Calif.-based Kaiser engaged in a practice of "patient dumping" by erroneously telling the conservators of severally mentally ill patients hospitalized in Kaiser facilities that they could only continue treatment if they disenrolled from Kaiser's health plans and sought care from public payers.

"Kaiser's unlawful practices serve to shift the cost of treatment for mental illness away from Kaiser and onto public taxpayers, enabling the company to 'socialize' its losses while retaining its revenue—which includes years of premium payments," by families who sued the system, according to the complaint.

Once the patients were uninsured, the lawsuit said Kaiser then transfered them to non-Kaiser facilities, where their psychiatric care was covered under Supplemental Security Income, Medi-Cal, Medicare or the county. The complaint alleges Kaiser did this with hundreds if not thousands of patients.

In response to the settlement, John Nelson, Kaiser Permanente's vice president of communications, said in a statement that Kaiser has never forced anyone to cancel their coverage. In rare cases, he said Kaiser members entered locked mental health facilities that preferred coverage under Medi-Cal—California's Medicaid program—to private insurance.

"In some of these cases, cancellation of Kaiser Permanente coverage was required to enter the facility," he said. "However, this was not Kaiser Permanente's requirement, and we cover many members' care at such facilities. Any decision to cancel coverage was made by a court-appointed conservator. Kaiser Permanente has consistently disputed the claims in this lawsuit, and we continue to do so."

The lawsuit was filed by Douglas Kerr on behalf of his then-21-year-old son, Matthew Szitkar-Kerr, who has schizophrenia and bipolar disorder. Szitkar-Kerr was hospitalized at a Kaiser facility in January 2014 and the following month his father was named his conservator. California law provides for one-year conservatorships for individuals with mental disorders who are disabled and require psychiatric treatment in locked facilities. They can be reviewed every year.

At the time, Szitkar-Kerr was a dependent under a Kaiser health plan that covered the treatment of severe mental illness, the lawsuit alleges. But the complaint states that once the conservatorship was issued in February, a Kaiser representative called Kerr and advised him that "it was time" to terminate his son's status as a dependent in order for his care to continue in a residential program at a county facility known as "La Casa." Szitkar-Kerr's mother, whose policy listed Szitkar-Kerr as a dependent, complied and had her son removed from the policy. After that, Szitkar-Kerr's care was funded by Medi-Cal and the Los Angeles County Department of Mental Health, according to the complaint.

Kerr's complaint says Kaiser refused to pay for his son's care, "despite its contractual and statutory obligations to do so."

"As a result of Kaiser's denial of coverage and its compulsory disenrollment policy, Kaiser no longer bears any financial responsibly for Matthew Szitkar-Kerr's services; instead, his expenses—in their entirety—have been unlawfully transferred to the public taxpayer," the complaint alleges.

The lawsuit said Kaiser's conduct violates the California Mental Health Parity Act, the state's Unruh Civil Rights Act, California Welfare & Institutions Code section 5012 and the covenant of good faith and fair dealing.

As part of the settlement, Kaiser, which denies the allegations, will issue notices to mental health physicians, therapists, social workers, discharge planners and case managers regarding coverage of locked residential psychiatric facilities and how Kaiser members in "LPS conservatorships" should be transferred to these facilities.

Those who are members of the class covered by the lawsuit who canceled their coverage may qualify for re-enrollment in a Kaiser health plan, according to a settlement document.

As part of the settlement, Kaiser will have to pay lawyers representing the class up to $1.2 million and $10,000 for the two plaintiffs.

Earlier this month, 4,000 Kaiser Permanente mental health clinicians and other healthcare professionals across more than 100 California hospitals and clinics held a five-day strike. The strike was organized by the National Union of Healthcare Workers, which is in contract negotiations with the health system. The union says Kaiser has rejected its proposals to boost staffing and shorten wait times and has offered lower raises relative to its coalition of unions. State regulators fined Kaiser $4 million in 2013 over delayed access to mental healthcare, a problem that persisted in 2015.

On Thursday, the union issued a press release that said the settlement validates the point of the strike: that Kaiser illegally denies patients mental healthcare.

"This case underscores why 4,000 mental health clinicians represented by the National Union of Healthcare Workers went on strike last week," NUHW President Sal Rosselli said in a statement. "They know the tricks Kaiser executives play to pad the bottom line and deny care, and they're determined to stop it."

Nelson's statement said that the facts in the lawsuit are entirely different from the union's claims, and said Kaiser is the highest-paying employer for mental health workers in California.

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