

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. INS-17-0142

KAISER FOUNDATION HEALTH PLAN
of the NORTHWEST,

ORDER TO CEASE AND DESIST,
FINAL ORDER ASSESSING CIVIL
PENALTY AND CONSENT TO
ENTRY OF ORDER

Respondent.

THIS IS A FINAL ORDER

The Director of the Department of Consumer and Business Services for the State of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 (“Insurance Code”), has conducted an investigation into the insurance related activities of Kaiser Foundation Health Plan of the Northwest (“Respondent”).

Respondent submits to the Director’s jurisdiction and agrees to waive its rights to notice and an administrative hearing that arise under ORS 183.415, and wishes to resolve this matter by consenting to entry of this Final Order.

Now therefore, as evidenced by the signatures subscribed in this Order, Respondent hereby consents to entry of this Order upon the Director’s Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Director FINDS that:

1. Respondent has been licensed by the Director, by and through the Division of Financial Regulation, previously known as the Insurance Division (collectively the “Division”), as a health care service contractor since December 30, 1981 with its principle

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Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
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1 place of business at 500 NE Multnomah Street Suite 100, Portland, Oregon, 97232-2099.
2 Respondent's National Association of Insurance Commissioners Number is 95540.

3 *IRO Requests*

4 2. From January 1, 2010 through December 31, 2015, Respondent received 224
5 requests for independent review ("IRO Requests") of an adverse benefit determination. On
6 75 occasions, Respondent did not notify the Division within 2 business days of receiving
7 the IRO Request.

8 3. On October 12, 2016, Respondent explained to the Division that the delayed
9 notifications were the result of a misunderstanding about the timeline for providing
10 notification to the Division after receiving an IRO Request.¹

11 4. On June 23, 2017, the Division sent a letter via email to Respondent with
12 clarification and guidance (the "Division's Guidance") regarding the timeline for providing
13 notification to the Division after receiving an IRO Request. The Division's Guidance
14 instructed Respondent "...to end the practice of requiring a Release of Information (ROI)
15 letter prior to notifying the [Division] of a member's request for an external review."

16 5. Between July 1, 2017 and December 31, 2019, Respondent received 153 IRO
17 Requests of an adverse benefit determination.

18 6. Notwithstanding the Division's Guidance, in 27 different cases, Respondent
19 failed to give the Director notice of the IRO Request not later than the second business day
20 after Respondent received the IRO Request.

21 *Failure to Process Claims*

22 7. From July 1, 2016 through December 31, 2016, Respondent received 4,979
23 pieces of mail ("Envelopes") from 3,002 Oregon providers. The Mail was received at
24 Respondent's address at 500 NE Multnomah Street, Portland, OR 97232.

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26 ¹ Respondent explained that its practice was to provide notification to the Division only after receiving an
executed release of protected health information from the member.



1 violation or threatened violation.

2 *IRO Requests*

3 14. Pursuant to ORS 743B.252(1), Respondent is required to have an external
4 review program that allows enrollees to obtain review by an independent review
5 organization of a dispute relating to an adverse benefit determination by the insurer on one
6 or more of the following: (a) whether a course or plan of treatment is medically necessary,
7 (b) whether a course or plan of treatment is experimental or investigational, (c) whether a
8 course or plan of treatment that an enrollee is undergoing is an active course of treatment
9 for purposes of continuity of care under ORS 743B.225, or (d) whether a course or plan of
10 treatment is delivered in an appropriate health care setting and with the appropriate level
11 of care.

12 15. Pursuant to Oregon Administrative Rule (“OAR”) 836-053-1340(1), an insurer
13 shall give the Director notice of an enrollee’s request for independent review by delivering
14 a copy of the request to the Director not later than the second business day of the insurer
15 after the insurer receives the request for the independent review.

16 16. Respondent violated OAR 836-053-1340(1) on 27 different occasions as
17 described in Paragraph 6 above by failing to deliver a copy of the request for independent
18 review to the Director not later than the second business day after Respondent received the
19 request for the independent review.

20 *Failure to Process Claims*

21 17. Pursuant to OAR 836-080-0080(2), for purposes of ORS 743B.450⁴ and
22 743B.452,⁵ an insurer is considered to have received a claim when the claim is received by
23 the insurer itself or when the claim is received by a representative of the insurer that
24 performs claims handling on the sole behalf of the insurer, whichever receipt date is earlier.

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26 ⁴ ORS 743.911 was renumbered to ORS 743B.450 in 2015.

⁵ ORS 743.913 was renumbered to ORS 743B.452 in 2015.





1 18. Respondent received each Claim described in Paragraph 7 and Paragraph 8
2 when the Envelop was received at Respondent's address at 500 NE Multnomah Street,
3 Portland, OR 97232.

4 19. Pursuant to ORS 743B.450(1), when a claim under a health benefit plan is
5 submitted to an insurer by a provider on behalf of an enrollee, the insurer shall pay a clean
6 claim or deny the claim not later than 30 days after the date on which the insurer receives
7 the claim. If an insurer requires additional information before payment of a claim, not later
8 than 30 days after the date on which the insurer receives the claim, the insurer shall notify
9 the enrollee and the provider in writing and give the enrollee and the provider an
10 explanation of the additional information needed to process the claim. The insurer shall
11 pay a clean claim or deny the claim not later than 30 days after the date on which the insurer
12 receives the additional information.

13 20. Respondent violated ORS 743B.450(1) on 7,795 occasions as described in
14 Paragraph 9 above by, not later than 30 days after the date on which Respondent received
15 the Claim, failing to either pay the Claim, deny the Claim, or notify the enrollee and
16 provider in writing and giving the enrollee and provider an explanation of the additional
17 information needed to process the Claim.

18 21. Pursuant to ORS 746.230(1)(d), no insurer or other person shall commit the
19 unfair claim settlement practice of refusing to pay claims without conducting a reasonable
20 investigation based on all available information.

21 22. Respondent violated ORS 746.230(1)(d) on 7,795 occasions as described in
22 Paragraph 9 above by refusing to pay the Claims without conducting a reasonable
23 investigation based on all available information.

24 23. Pursuant to OAR 836-080-0215, an insurer's claim files shall contain the
25 information pertaining to each claim in sufficient detail that pertinent events and their dates
26 can be reconstructed.

1 24. Respondent violated OAR 836-080-0215 on 7,795 occasions as described in
2 Paragraph 9 and Paragraph 10 above by failing to maintain Claim files containing the
3 information pertaining to each Claim in sufficient detail that pertinent events and their dates
4 can be reconstructed.

5 Delay Notification Letters

6 25. Pursuant to OAR 836-080-0235(4), if an insurer needs more time to determine
7 whether the claim of a first party claimant should be accepted or denied, it shall so notify
8 the claimant⁶ not later than the 30th day after receipt of the proofs of loss, giving the reason
9 more time is needed. Forty-five days from the date of such initial notification and every
10 45 days thereafter while the investigation remains incomplete, the insurer shall notify the
11 claimant in writing of the reason additional time is needed for investigation.

12 26. Respondent violated OAR 836-080-0235(4) on each of the 51,278 occasions
13 described in Paragraph 11 above by failing to notify the enrollee not later than the 30th day
14 after receipt of the proofs of loss that more time was needed to determine whether the claim
15 should be accepted or denied. Respondent further violated OAR 836-080-0235(4) on each
16 of the 47,015 occasions as described in Paragraph 12 by failing to notify the enrollee 45
17 days after the initial notification of the reason additional time was needed for investigation
18 while the investigation remains incomplete.

19 Civil Penalties

20 27. Pursuant to ORS 731.988(1), the Director may assess CIVIL PENALTIES in
21 an amount not to exceed \$10,000 per violation against a person who violates any provision
22 of the Insurance Code or any lawful rule of the Director.

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26 ⁶ Claimant includes any first party claimant (enrollees) and any third party claimant (providers) under OAR 836-080-0210.

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1 ORDERS

2 The Director issues the following ORDERS:

3 28. As authorized by ORS 731.252(1), the Director ORDERS Respondent to
4 CEASE AND DESIST from violating OAR 836-053-1340(1), ORS 743B.450(1), ORS
5 746.230(1)(d), OAR 836-080-0215, and OAR 836-080-0235(4).

6 29. Based upon the foregoing and in accordance with ORS 731.988(1), the Director
7 ORDERS Respondent pay a CIVIL PENALTY of \$135,000 as follows:

8 A. A CIVIL PENALTY of \$25,000 for 27 violations of OAR 836-053-1340(1) as
9 described in Paragraph 16 above.

10 B. A CIVIL PENALTY of \$25,000 for 7,795 violations of ORS 743B.450(1) as
11 described in Paragraph 20 above.

12 C. A CIVIL PENALTY of \$25,000 for 7,795 violations of ORS 746.230(1)(d) as
13 described in Paragraph 22 above.

14 D. A CIVIL PENALTY of \$10,000 for 7,795 violations of OAR 836-080-0215 as
15 described in Paragraph 24 above.

16 E. A CIVIL PENALTY of \$50,000 for 98,293 violations of OAR 836-080-
17 0235(4) as described in Paragraph 26 above.

18 30. The \$135,000 CIVIL PENALTY assessed above is due and payable at the time
19 this Order is returned to the Division.

20 SO ORDERED this 30th day of June, 2020.

21 ANDREW R. STOLFI, Director
22 Department of Consumer and Business Services

23
24 /s/ Dorothy Bean
25 Dorothy Bean, Chief of Enforcement
26 Division of Financial Regulation

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