

Prompt mental health intervention

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On Aug. 15, Kaiser's non-physician, mental-health patient care employees based in Northern California, who are members of National Union of Healthcare Workers (NUHW), kicked off an open-ended strike after purportedly reaching an impasse in its negotiations with Kaiser Permanente.

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Two of the most important tools Unions use to promote their members' interests are (1) collective bargaining and (2) withholding the services of the employees they represent, i.e. striking, if the collective bargaining process reaches an impasse. As such, it is unsurprising that on Aug. 15, Kaiser's non-physician, mental-health patient care employees based in Northern California, who are members of National Union of Healthcare Workers (NUHW), kicked off an open-ended strike after purportedly reaching an impasse in its negotiations with Kaiser Permanente. Deb Catsavas, Senior Vice President of Human Resources at Kaiser Permanente - Northern California, issued a statement that Kaiser Permanente has been

negotiating with the Union for more than a year over two key issues - (1) wage increases and (2) the Union's demand to increase the time therapists spend on tasks other than seeing patients such as documentation, planning, and other office activities.

According to reports, nearly 75% of Kaiser Permanente's employees are represented by Unions and covered by collective bargaining agreements. This latest strike by the NUHW has resulted in nearly 2,000 non-physician mental health care providers being unavailable to treat Kaiser Permanente patients across Northern California. However, a newly passed law will now significantly weaken the bargaining position of Kaiser in its collective bargaining negotiations with the NUHW. It will also impact Kaiser Permanente's ability to continue operating its mental health departments and clinics during the NUHW's strike.

On July 1, Senate Bill 221 went into effect and requires Kaiser Permanente to provide patients with mental health conditions and substance use disorder needs with timely access to mental health care. Specifically, patients with urgent mental health needs are to be seen within 48 hours and Kaiser must provide patients with non-urgent needs an appointment, generally within ten business days. This landmark piece of legislation was authored by State Sen. Scott Weiner and, not surprisingly, it was sponsored by the National Union of Healthcare Workers. The latter is now using the law as leverage to force Kaiser to agree to its collective bargaining demands.

In addition, on Aug. 18, the NUHW filed a lawsuit against Kaiser Permanente for canceling mental health related appointments and for allegedly suspending mental health services. The NUHW lawsuit is based upon Senate Bill 221.

On its face, this lawsuit is strategic. It is designed to force Kaiser to end the strike by agreeing to the Union's bargaining demands or incur the extraordinary expense of paying third party providers, if they were even available, to replace the 2,000 employees on strike in order to see Kaiser mental health patients during the strike. If the mental health services are not provided as mandated by the statute, Kaiser Permanente must pay monetary penalties under the statute.

While Kaiser Permanente is entitled to an administrative hearing before the State Director of Health Services, the Director does not appear to be empowered to take the circumstances of the labor dispute into account. Instead the Director will only determine if Kaiser: ...has knowingly committed, or has performed with a frequency that indicates a general business practice of (1) repeated failure to act promptly and reasonably to assure timely access to care or (2) repeated failure to act promptly and reasonably to require contracting providers to assure timely access that the plan is required to perform... See Health & Safety Code § 1367.03 (g)(2) 1888214

Senate Bill 221, under normal circumstances, is intended to ensure patients receive timely mental health care services and that California healthcare institutions provide mental health services on par with how non-mental health services are provided to the institution's patients. It is a regulatory shield to protect mental health patients and to ensure they receive timely care and medical appointments. In the circumstances involved here, Senate Bill 221 operates as a legislative weapon to upend the collective bargaining balance that is supposed to exist between Kaiser Permanente and the NUHW. The law, and pending lawsuit, in the context of a labor strike and the walk out of 2,000 healthcare workers puts Kaiser in an impossible position. If Senate Bill 221 is interpreted and applied in a manner consistent with the position being asserted by the NUHW in its lawsuit, no healthcare employer who employs a sizeable number of mental health care employees can continue to operate during a strike without running the risk of liability under the statute. The irony is, that liability under Senate Bill 221 is triggered because the striking employees are, as is their right, withholding their services and thus, are not available to timely provide the mental health services required by the statute. The statute provides the NUHW with the ultimate weapon in its collective bargaining relationship with Kaiser: "agree to our collective bargaining demands or we will go on strike and thereby cause you to be in violation of California law".

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