



OUR PATIENTS. OUR UNION. OUR VOICE.

OAKLAND
155 Grand Avenue
Suite 100
Oakland CA 94612
phone: 800-287-5021
fax: 510-663-1625

LOS ANGELES
400 North Brand
Suite 400
Glendale CA 91203
phone: 818-240-1900
fax: 818-240-8336

August 07, 2023

received: 8/7/2023 @ 8:46 p.m.

The Honorable Michael Humphreys
Acting Commissioner of Insurance
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

RE: Application to Acquire Control of Geisinger Health Plan, Geisinger Quality Options, Inc., and Geisinger Indemnity Insurance Company; Notice 2023-13

Dear Commissioner Humphreys:

On behalf of more than 225,000 members across the country, including more than 20,000 registered nurses employed by Kaiser Permanente (Kaiser), National Nurses United is writing to express our opposition to the proposed acquisition of the Geisinger Health operations by the Kaiser subsidiary, Risant Health, Inc. Crucial to our objection is that Risant Health is ultimately controlled by Kaiser and has been created to act as a profit center for the California-based healthcare giant, as is evidenced by Exhibit J.

We request, at this time, the Department of Insurance (the Department) deny approval for Risant Health, Inc. to acquire control of Geisinger Health Plan, Geisinger Quality Options, Inc., and Geisinger Indemnity Insurance Company because the following conditions from 40 P.S. § 991.1402 are present:

(f)(1)(ii) The effect of the merger, consolidation or other acquisition of control would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein.

The Pennsylvania hospital markets served by Geisinger are already highly concentrated. In a Herfindahl-Hirschman analysis we conducted, three of the five metropolitan areas served (as defined by Health Referral Regions) by Geisinger (Scranton, Danville, and Harrisburg) scored between 3220 and 3998. In the other two, Wilkes-Barre and Reading, HHI scores were 5730 and 5599, respectively. Geisinger is the dominant operator in three of these markets, responsible for more than 73% of all hospital discharges in Wilkes-Barre, 57% of discharges in Danville, and 48% of discharges in Scranton.

The integration of Geisinger's health plans with market-dominating hospitals already puts competing health plans at considerable disadvantage and this transaction exacerbates the already uncompetitive situation by adding substantial investment from a national healthcare system and insurer with plans to further dominate the market. This is, in fact, Kaiser's stated vision. As described on Page 18 of Kaiser's latest Combined Financial Statements, "Risant Health will also assure funding, inclusive of Geisinger internally generated and Risant Health funds, of no less

than \$100 million through December 31, 2028, to support the expansion of Geisinger’s health plan and care delivery services into contiguous communities in Pennsylvania...”

The Federal Trade Commission recently released draft merger guidelines that provide some instruction here. Guideline 9 states: *When a merger is part of a series of multiple acquisitions, the agencies may examine the whole series.* The Department would be well served holding off any approval of this transaction without the opportunity to evaluate a more complete picture of Kaiser’s intentions in the region and across the country. Kaiser management has stated they intend to spend as much as \$5 billion to acquire “five or six” additional health systems.

<https://www.fiercehealthcare.com/providers/kaiser-permanente-discloses-timeline-financial-commitments-its-vbc-megadeal-geisinger>

(f)(1)(v): The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger, consolidation or other acquisition of control.

Kaiser is the nation’s largest nonprofit healthcare operator—and one of the largest in the industry, reporting \$95 billion in revenue in 2022. Kaiser’s track record is instructive for how Kaiser can be expected to operate in new markets. In markets where Kaiser holds a virtual monopoly over patient care delivery to its members (like California), the experience of those members is enlightening. Just a handful of recent examples are listed here.

False Claims

The US government “intervened” in six complaints—lawsuits filed under the qui tam, or whistleblower, provisions of the False Claims Act—alleging that members of the Kaiser Permanente consortium violated the False Claims Act by submitting inaccurate diagnosis codes for its Medicare Advantage Plan enrollees to get higher reimbursements.

<https://www.justice.gov/opa/pr/government-intervenes-false-claims-act-lawsuits-against-kaiser-permanente-affiliates>

Timely Access to Care

In 2013, The California Department of Managed Healthcare (DHMC) issued a \$4 million fine for failure to provide mental health services to its members

- o <https://wpsso.dmhc.ca.gov/enfactions/docs/1974/1678129902574.pdf>
- o <https://www.fiercehealthcare.com/payer/kaiser-fined-4m-for-failing-to-provide-mental-health-access>

This is in addition to multiple high-profile lawsuits and settlements or complaints alleging harm to patients by delay or denial of care to Kaiser members including a patient who lost a limb after being denied care, and the death of a patient from COVID-19 who allegedly was previously denied a COVID vaccine.



**California
Nurses
Association**



**National
Nurses
United**

OUR PATIENTS. OUR UNION. OUR VOICE.

OAKLAND
155 Grand Avenue
Suite 100
Oakland CA 94612
phone: 800-287-5021
fax: 510-663-1625

LOS ANGELES
400 North Brand
Suite 400
Glendale CA 91203
phone: 818-240-1900
fax: 818-240-8336

- o <https://www.dailynews.com/2015/03/26/san-fernando-valley-woman-wins-28-million-against-kaiser-permanente/>
- o <https://abc7.com/nerissa-regnier-covid-19-vaccine-refusal-wrongful-death-lawsuit-kaiser-permanente/11512090/>

Patient Confidentiality

This year, DMHC Fined Kaiser Permanente \$450,000 for Violating Enrollee Confidentiality when it mailed confidential patient information of more than 300,000 patients to outdated addresses.

<https://www.dmhc.ca.gov/AbouttheDMHC/Newsroom/June15,2023.aspx>

Discrimination claims

Kaiser settled two class action lawsuits alleging racial discrimination for total of \$18.9 million. A state court in California also recently cleared the way for a lawsuit brought by mentally ill patients to proceed.

<https://www.fiercehealthcare.com/hospitals/kaiser-permanente-reaches-11-5m-settlement-employees-over-racial-discrimination-suit>

<https://www.sfchronicle.com/politics/article/kaiser-mental-health-lawsuit-18107652.php>

(f)(1)(vi): The merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.

The combination of competency, experience, and integrity factors outlined above with the potential for market manipulation also discussed leads to a strong presumption of harm to the insurance buying public absent guarantees to the contrary. For these reasons, therefore, we strongly encourage the department of insurance to deny the transaction.

Sincerely,

John Stead-Mendez
California and Nevada Collective Bargaining Director
California Nurses Association/National Nurses United