Gray Davis, Governor
State of California
Business, Transportation and Housing Agency

980 Ninth Street, Suite 500
Sacramento, CA 95814
916-323-0435 voice
916-323-0438 fax

May 30, 2003

Marlene S. Ma, Esq.
Counsel
Kaiser Foundation Health Plan, Inc.
One Kaiser Plaza, 21st Floor
Oakland, CA 94612

RE: In the Matter of the Complaint Filed Against Kaiser Foundation Health Plan, Inc. (Continuity of Care/Ready Referral to Providers) (Resolution of Grievances) Enforcement Matter No. 02-084

Dear Ms. Ma:

LETTER OF AGREEMENT

The Department of Managed Health Care (hereinafter "the Department") has concluded its investigation of Kaiser Foundation Health Plan, Inc., (hereinafter "Kaiser") in the above referenced matter. The facts are as follows:

During February 2000, the Enrollee was diagnosed with lung cancer. When the Enrollee began experiencing an unsteady gait, he underwent brain imaging that showed two metastases, one in right cerebellar hemisphere and one in the left frontal lobe. On May 1, 2001, the Enrollee was diagnosed with brain metastases by San Diego Kaiser neurosurgeon Dr. Mastrodimos. Kaiser records indicate that the tumors were 3 and 2.5 cm at that time. The Enrollee underwent whole brain radiation at Kaiser for 15 days ending on May 28, 2001. Post radiation imaging revealed two residual brain lesions that were reduced, but still present.

When diagnosed on May 1, 2001, Dr. Mastrodimos stated that he did not feel that the Enrollee was a candidate for surgery. The Enrollee was referred to Kaiser's Dr. Miller, a radio-surgeon (gamma knife) in Los Angeles, on August 11, 2001. On August 22, 2001, the Enrollee was seen by Dr. Miller who did not recommend surgery to one of the tumors

due to the risks involved, but did recommend resection of the other tumor. According to the Enrollee's daughter, Dr. Miller also noted that the Enrollee could be evaluated by Dr. Levy who performs gamma knife surgery in San Diego. On August 31, 2001, Dr. Mastrodimos responded to the Enrollee's request to see Dr. Levy for the possibility of gamma knife surgery. Dr. Mastrodimos stated that Dr. Miller did not think that gamma knife surgery was indicated and the Enrollee could appeal the denial. Dr. Mastrodimos also noted that there was no point in the Enrollee seeing Dr. Levy.

The Enrollee went out-of-plan to the San Diego Gamma Knife Center to be evaluated. On September 4, 2001, the Gamma Knife Center found the Enrollee to be a candidate for radio-surgery (gamma knife surgery). The Enrollee was told by the Gamma Knife Center that it was a contracted facility of Kaiser for that procedure.

The Enrollee attempted to obtain authorization from Kaiser for an out-of-plan referral for gamma knife surgery. According to the Enrollee's daughter, the Oncology department at Kaiser assured the Enrollee that a referral would be sent to the Gamma Knife Center on September 7, 2001. However, the Gamma Knife Center never received a referral from Kaiser concerning the Enrollee. The Enrollee was evaluated by Dr. Mastrodimos on September 11, 2001, who told the Enrollee that he could be evaluated by Dr. Levy, the Kaiser doctor who performs gamma knife surgery, but, due to Dr. Levy's absence, he could not be seen until October. Kaiser records note that Dr. Mastrodimos offered resection of one of the two tumors.

The Enrollee proceeded with the out-of-plan treatment even though the referral had not been received by the out-of-plan facility and paid out-of-pocket for the expense of the procedure. The procedure was performed on September 19, 2001, at the San Diego Gamma Knife Center at Scripps Memorial Hospital in La Jolla, a contracted facility for this procedure. Dr. Ott performed the surgery.

On October 21, 2001, the Enrollee emailed a complaint to Kaiser requesting reimbursement for the gamma knife procedure. On October 23, 2001, Kaiser sent the Enrollee a letter, referring to an incorrect "concern," but stating that the "concern" was being forwarded to the appropriate department within Kaiser for evaluation. On October 26, 2001, Kaiser sent the Enrollee a letter requesting a release of records so that it could obtain medical records to process the Enrollee's request for reimbursement. On November 21, 2001, the Enrollee sent Kaiser receipts for the gamma knife procedure.

On January 25, 2002, Kaiser states that its San Diego medical review committee denied the Enrollee's request for reimbursement because it determined that appropriate care was available within plan and the out-of-plan treatment was unauthorized. While the Department has received a copy of a document showing review by the medical center review committee on January 23, 2002, that document does not note the outcome of the review. Kaiser has informed the Department that it cannot find the documents to support its denial and the Enrollee's daughter claims a denial letter was never received. On March 10, 2002, the Enrollee submitted a complaint to the Department. Following the intervention of the Department, Kaiser then sent the Enrollee's request for reimbursement to the regional member relations committee for review. On April 10, 2002, Kaiser approved the request for reimbursement for the out-of-plan treatment because of an "implied referral." On July 9, 2002, Kaiser sent the Enrollee's daughter a check for reimbursement of expenses.

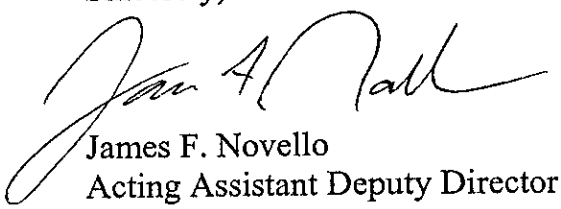
These facts give rise to two violations of the Knox-Keene Act:

Health and Safety Code section 1367, subdivision (d), requires all health care service plans to "furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice." Following an unauthorized out-of-plan consultation at the San Diego Gamma Knife Center on September 4, 2001, the Enrollee attempted to obtain authorization from Kaiser for an out-of-plan referral for gamma knife surgery. On September 7, 2001, the Oncology department at Kaiser assured the enrollee that a referral would be sent to the Gamma Knife Center. However, the Gamma Knife Center never received the referral. Dr. Mastrodimos evaluated the Enrollee on September 11, 2001, and agreed Dr. Levy could evaluate the Enrollee, but the Enrollee could not be seen until October due to Dr. Levy's absence. Although Kaiser was willing to refer the Enrollee to the appropriate local Kaiser specialist in gamma knife surgery, Kaiser failed to timely execute this referral.

Health and Safety Code section 1368.01, subdivision (a), requires all health care service plans to resolve their grievances within 30 days. On October 21, 2001, the Enrollee emailed a complaint to Kaiser requesting reimbursement for the gamma knife procedure. It was not until April 10, 2002, that Kaiser approved the request for reimbursement for the out-of-plan treatment because of an "implied referral." Even assuming, *arguendo*, that Kaiser denied the request on January 25, 2002, that denial was three months after the initial request for reimbursement.

Based on the above facts, the Department finds that Kaiser has violated Health and Safety Code sections 1367, subdivision (d), and 1368.01, subdivision (a). Pursuant to Health and Safety Code section 1386, subsections (a) and (b) (6), the Department assesses an administrative penalty against Kaiser in the amount of $50,000.00. Kaiser has agreed to pay the penalty.

Sincerely,



James F. Novello
Acting Assistant Deputy Director

JFN/scl

Accepted by Kaiser Foundation Health Plan, Inc.

Dated: 6 · 13 · 2003

MARLENE S. MA
Counsel
Kaiser Foundation Health Plan, Inc.