

# SB365: Autism Health Insurance Reform

Testimony in Support by

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# Volunteer Advocacy on Autism Insurance Appeals in 2011-2013

- As a volunteer, I have assisted more than 80 families in Oregon with insurance denials, coverage issues related to autism
  - I have written 22 External Review appeals on behalf of consumers in last 2 years
  - Approximately 7% of entire volume of External Review appeals in Oregon
- Of 19 External Review appeals related to Applied Behavior Analysis:
  - 16 overturned insurer denials that ABA was “experimental” or “not medically necessary”
  - 2 upheld insurer denial –
    - DCBS investigation determined that both IROs failed to comply with ORS / OAR for conduct of external reviews; insurer ended up paying for ABA in both cases
  - 1 out of scope for external review process (contract dispute)
    - Insurer is paying for ABA for this patient

# Typical IRO Comments on Medical Necessity of Applied Behavior Analysis

## ***IPRO, ER07057, 8/8/2007:***

- “ABA therapy is medically necessary for the treatment of autistic spectrum disorders. Denying ABA therapy for an autistic child is not consistent with national standards of care.”

## ***AMR, ER12095, 7/30/2012:***

- “ABA therapy is an evidence-based effective intervention for children who have autism spectrum disorder. This child has deficits in social skills and communication, as well as maladaptive externalizing behaviors, all of which are amenable to ABA therapy.”

## ***Permedion, ER11140, 1/13/2012:***

- “Of all the myriad interventions used in the treatment of autism, ABA is the best established as safe and effective in accordance with principles of evidence-based best practice; it comprises the current standard of care for this condition. Any young child, including this enrollee, who is diagnosed with Autistic Disorder (299.00), should be referred for ABA as a matter of course since this is the most effective treatment available at this time.”

## ***Permedion, ER12085, 7/6/2012:***

- “Kaiser’s statement that ‘there is no evidence that ABA is an effective treatment modality’ is not accurate.”

# Insurance Coverage of ABA Therapy in Oregon (1 of 5)

## *Kaiser Permanente*

- Began covering ABA therapy on 10/1/2012 as a form of outpatient mental health care – with no changes to contract or benefit structure
- No contractual age, \$, or visit limits on group plans
  - ABA services covered by Oregon, Federal Mental Health Parity
  - Younger patients are given immediate approval for 20 visits, pending review and development of a treatment plan by a BCBA
  - Older patients seeking ABA services are evaluated within Kaiser’s mental health department to determine medical necessity
- ABA services provided by unlicensed BCBAs and supervised line therapists

### **Kaiser rate filing to Oregon**

#### **Insurance Division – 1/28/2013:**

- Official cost estimate: \$1 per member per month

### **Impact of ABA Autism**

Base Medical	\$341.19
Cost of ABA Autism	\$1.00
# of Mem Impacted	7,396
% Premium Impact	0.3%

# Insurance Coverage of ABA Therapy in Oregon (2 of 5)

## ***Pacific Source***

- Covering ABA therapy on group plans “at the direction of the court” since McHenry v Pacific Source ruling by U.S. District Court in 2010
- Since 12/1/2012, Pacific Source has contracted with unlicensed BCBAs to provide ABA therapy, but doesn’t reimburse line therapists

## ***Providence***

- Lost two External Review appeals, overturning its’ denials of ABA on grounds that it was “Experimental / Investigational”
- Now asserts that all developmental disabilities are contractually excluded:
  - “Under Providence’s plan, services ‘related to developmental disabilities, developmental delays or learning disabilities’ are specifically excluded from coverage. Autism spectrum disorder is a ‘developmental disability’ and involves ‘developmental delay.’ Because ABA services are related to autism spectrum disorder, they are therefore not benefits covered under your child’s plan.”

# Insurance Coverage of ABA Therapy in Oregon (3 of 5)

## *United Health Care*

- Contract explicitly excludes coverage of “Intensive behavioral therapies such as applied behavioral analysis for Autism Spectrum Disorder” – regardless of medical necessity
- Oregon Insurance Division and Department of Justice have been reviewing this policy for compliance with ORS 743A.168, 743A.190
  - Insurance Division has encouraged an impacted consumer to “consider discussing your situation with legal counsel”

# Insurance Coverage of ABA Therapy in Oregon (4 of 5)

## ***Regence Blue Cross Blue Shield***

- Excludes ABA on grounds that it is “Investigational”
  - On 3/15/2011, Dr. Csaba Mera, Executive Medical Director of Regence, told autism legislation workgroup for SB555: “there is sufficient evidence that children between ages 3 and 11 are helped (by ABA) – we’re not arguing about that.... It works in younger children – it really does make a difference in their lives.”
  - On 3/30/2013, U.S. District Court in Michigan declared that Blue Cross Blue Shield’s “characterization and exclusion of ABA therapy as experimental or investigative... was, and is, arbitrary and capricious.”
- Regence Medical Policy Manual (Policy No. 18, effective March 1, 2013) states:
  - “ABA-providers may be - but are not required to be - licensed healthcare professionals”
  - Lists Board Certified Behavior Analyst (BCBA) and ABA Therapists (paraprofessionals) as providers for ABA therapy

# Insurance Coverage of ABA Therapy in Oregon (5 of 5)

## *Oregon Health Plan*

- Denies coverage of ABA; limits behavioral health service to 8 hours per month
  - “GUIDELINE NOTE 75, AUTISM SPECTRUM DISORDERS  
There is limited evidence of the effectiveness of treatment (e.g., Applied Behavioral Analysis) for Autism Spectrum Disorders (ASD). .... Treatment for associated behaviors, such as agitation, that do not meet the criteria for co-morbid mental health diagnoses should be limited in frequency to a maximum of 8 hours of behavioral health service per month, subject to utilization management review by the mental health organization (MHO) or other relevant payer.”
- K.G. et al v. Florida Agency for Health Care Administration, U.S. District Court, Florida, 3/26/2012:
  - “I find that applied behavior analysis is medically necessary and not experimental .... I find that ... the determination by AHCA that ABA is experimental was unreasonable in its process, was arbitrary and capricious and unreasonable in its conclusion.”
  - “the State of Florida is hereby ordered to provide, fund, and authorize Applied Behavioral Analysis treatment ... to all Medicaid-eligible persons under the age of 21”



# **SB365 will establish a clear, consistent, best-practice policy for coverage and treatment of autism in Oregon**

- Explicitly mandates coverage of applied behavior analysis (ABA) therapy as a treatment for autism
  - Establishes framework to confirm diagnosis of autism by knowledgeable experts (Developmental Pediatricians, Psychologists, etc.)
  - Provides for rapid approval of ABA for younger children with confirmed diagnosis, while allowing for older patients to receive ABA therapy when medically necessary
- Establishes cost-effective structure for provision of ABA therapy
  - Creates Behavior Analyst Board within Oregon Health Licensing Agency to license Behavior Analysts
  - Supervision by a licensed BCBA or other qualified, licensed health care professional
  - Intensive treatment by qualified, supervised state-regulated paraprofessionals
- Continues to require coverage of medically necessary mental health care and other medical care – already mandated by ORS 743A.168 and 743A.190
- Applies mandate fairly and consistently across all state-regulated plans
  - Commercial insurance, PEBB, OEBC, OHP, Healthy Kids