

March 15, 2013

Paul Terdal  
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Sen. Chip Shields, Chair  
Senate Committee On General Government, Consumer and Small Business Protection  
900 Court St. NE, Hearing Room B  
Salem, OR 97301

**Re: In SUPPORT of SB686, SB512, SB513, SB514**

Dear Chair Shields and Member of the Committee,

I am testifying today in SUPPORT of SB686, SB512, SB513, and SB514 as a volunteer advocate for consumers seeking to access their insurance benefits for treatment of autism.

### **Volunteer Advocacy:**

- Over the last two years, I have (as a volunteer) assisted more than 80 families with insurance appeals related to coverage of autism and other serious childhood disorders
  - I have written 22 appeals to External Review on behalf of consumers— about 7% of all such appeals filed in the State of Oregon (for all insurers and medical conditions)
  - A substantial majority of these appeals successfully overturned improper denials of medically necessary services for treatment of autism
- As a result of my efforts, dozens of patients with autism are now receiving coverage for medically necessary care, including Applied Behavior Analysis (ABA) therapy

### **Compliance Issues:**

In the course of my advocacy efforts, I have come across many cases where insurers appear to be out of compliance with state or federal regulations. Here are several examples:

#### ***Kaiser Mental Health Benefits on Grandfathered Individual Plans in 2011:***

- In 2011, Kaiser improperly cut mental health benefits on PPACA-grandfathered individual plans by as much as 98% (from unlimited to 6 days / visits per year)
- After I filed a consumer complaint, Kaiser wrote a letter of apology to the Insurance Division; corrected my own contract; and corrected all of its' contracts for affected consumers for 2012
- However, no effort was ever made to notify other consumers of the error in the 2011 contracts or provide information about how to get reimbursement for services that should have been covered. This may have affected 10,000 or more subscribers to these individual plans

#### ***Providence Developmental Disabilities Exclusion:***

- Providence has advised several consumers that its' plans "permanently exclude all coverage" for developmental disabilities and autism – despite insurance mandates explicitly requiring coverage for them (ORS 743A.190, and ORS 743A.168 for autism)

### ***Discretionary Clauses in Insurance Contracts:***

- Kaiser, United Health Care, and Pacific Source all include “discretionary clauses” in their contracts which grant the insurer the right to interpret the terms of its’ own contract
- DCBS has determined that such clauses are “prejudicial, unjust, unfair, and inequitable” and are grounds for disapproval of forms under ORS 742.005 (2), (3) and (4)

### ***United Health Care Improperly Limits Autism Coverage:***

- United Health Care specifically excludes coverage of autism-related feeding disorders – and imposes many other restrictions on treatment for autism – despite a mandate in ORS 743A.190 to cover medically necessary care for autism

### ***Oregon’s insurance code is virtually unenforceable for consumers:***

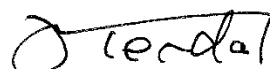
- There is no private right of action for violations of the Oregon Insurance Code
  - Any consumer litigation must be under Federal law (ERISA), or as Breach of Contract
  - Breach of Contract suits can’t recover attorney’s fees, and are based on the language of the contract itself – even if that contract is out of compliance with the Insurance Code
  - Legal fees in a complex case can easily exceed \$100,000 – making it impossible for the average consumer to afford justice
- A consumer’s only recourse for violations of the Insurance Code is to file a Consumer Complaint with the Insurance Division
  - The Insurance Division’s only legal mandate for complaints is to receive them, file them, and make an annual report – there is no mandate to investigate or resolve concerns
  - The Insurance Division does make administrative efforts to resolve complaints collaboratively with insurers, but actual enforcement actions are very rare and based on lengthy investigation of market trends rather than individual consumer complaints

### ***Oregon insurance consumers need a private right of action, and Unfair Trade Practices Act protection:***

In high-level meetings– and in written letters to consumers – the Insurance Division has actively encouraged consumers to pursue private litigation to defend their own rights, and has told us that no consumer should ever wait for the Insurance Division to act on an enforcement matter before seeking private legal counsel. The Insurance Division’s enforcement actions are based on lengthy investigations (often more than a year), driven by multiple violations of the same type by the same insurer – they are not intended to help individual consumers enforce their legal rights.

*Without a meaningful right to private action – and protection by the Unfair Trade Practices Act – the Insurance Division’s advice to consumers to enforce their own rights in court is impossible to follow.*

Sincerely,



Paul Terdal