

Testimony of Lisa A. McHenry

HB 3160 and 2525

Tuesday, March 19, 2013

Thank you, Mr. Chair and members of the committee for giving my testimony your consideration today.

My name is Lisa McHenry. My husband, Jon, and I have owned and operated our small business in the Portland Metro Area since 1992. We reside in Happy Valley, District 024, represented by Rod Monroe. We have a group health plan through PacificSource Health Plans, and offer 100% funded insurance benefits to all of our employees. We have four children, and in 2006, one of our children, Joseph, was diagnosed with autism.

Despite what the insurance companies have stated regarding HB 3160 and HB 2525, holding insurance companies to the same standard as every other provider of goods and/or services in Oregon, under the Unfair Trade Practices Act will not create more litigation. Rather this will keep insurance companies accountable for their actions, and create a mechanism to protect consumers in Oregon. Insurance companies like PacificSource, do not appear to be concerned with legal action. Over the course of the last seven years, PacificSource has spent nearly \$1,000,000 in legal fees in denying insurance benefits to my family.

Following our son's diagnosis in 2006, we spent weeks researching autism, and discovered that although there is no known cure for autism, there is a treatment that involves a therapy called "Applied Behavior Analysis," or ABA. The efficacy of ABA is supported by decades of research and studies and is a treatment endorsed by the Surgeon General, the National Research Council, and the AAP. So, in January of 2007, our son began his intensive ABA treatment program. We started billing our insurance company, PacificSource Health Plans, for Joseph's therapy, which was the genesis of what has turned into six years of a constant, struggle to access the benefits we pay for through our group health plan at PacificSource.

Throughout 2007, PacificSource denied all of our claims for Joseph's ABA therapy, we appealed and appealed and by November of 2007, we had exhausted the internal appeals process at PacificSource. Our only option left was to request an external review through the Oregon Department of Insurance. We met the criteria to have our case sent to an external review organization, as one of our denials from PacificSource was that our son's treatment was experimental or investigational in nature. However, even though we met the criteria for external review in the State of Oregon, we were denied the opportunity by the external review organization, Imedics, as well as the Oregon Department of Insurance. It was later discovered in litigation, that PacificSource had a business relationship with IMEDICS, a conflict of interest that was not disclosed to me when I was denied my right to external review. It was disheartening to learn this information, as not disclosing this conflict of interest is a violation of Oregon law.

In May of 2008, we filed a Federal lawsuit against PacificSource, and fought through a 2 ½ year emotionally and financially exhausting litigation. During this 30 month legal process, we continued

paying \$2-3K per month, out of pocket, for our son's treatment, in addition to thousands of dollars in attorney's fees. Words cannot describe the burden this put on my family.

On January 6, 2010, the Honorable Judge Janice M. Stewart wrote a 42 page ruling stating that she believed ABA therapy is not experimental in nature, and that it is not excluded as academic based social skills training. However, there was one piece that resulted in a ruling against us. Judge Stewart found that our BCBA (Board Certified Behavior Analyst) was not an approved provider through the Oregon Department of Human Services, and she determined this is a requirement under our insurance policy, which follows part of Oregon statutory law. Although we had come so close and fought so hard to obtain benefits for Joseph, we essentially lost on a technicality. At this point, we had become quite acclimated within the autism community, and had met many other families also experiencing an unfair denial process in accessing benefits for their children's treatments. It became evident this situation was a much bigger crisis than what was occurring within our own family. We were not ready to give up.

I spent the next 28 days navigating through every branch of the Department of Human Services, in my effort assist my son's provider in becoming a DHS approved provider. This process was literally grueling, as I spent every day being transferred to different DHS employees, and retelling my situation all over again. But I succeeded in getting Joseph's provider enrolled as a DHS approved provider, and our attorney filed a Motion for Reconsideration to the court, which in turn was granted in April of 2010. Five months later, on September 28, 2010, the Judge Stewart, ruled in our favor. She declared that ABA therapy was medically necessary, and our provider, now enrolled through DHS, is now an eligible provider. Judge Stewart ordered PacificSource to pay for our son's treatment. Even after prevailing in a 30 month legal battle, PacificSource not only filed an appeal in the 9th Circuit Court of Appeals, but also decided to edit our group plan contract on our renewal date of November 1, 2010. These business practices were an obvious attempt to run around Judge Stewart's orders, as BCBA's were specifically excluded from our new contract. PacificSource later voluntarily dismissed their appeal in the 9th circuit.

At that point, we disrupted our son's treatment, and found the only provider in Oregon, that was dual-licensed as a LPC (Licensed Professional Counselor) and a BCBA (Board Certified Behavior Analyst) to provide treatment for Joseph. Even after PacificSource agreed to cover Joseph's treatment with his new LPC/BCBA from December 2010-September 2012, we had to spend well over \$12,000 in attorney's fees alone in 2011, to get PacificSource to agree to a "reasonable and customary" hourly rate to pay our new LPC/BCBA. PacificSource initially offered our non-contracted, out of network provider approximately 45% of her reasonable and customary hourly rate, which she was unable to accept as payment.

What I have described to you today may sound quite overwhelming and unfair, but unfortunately my experience with PacificSource does not end there. This past week I had to send PacificSource a letter appealing their decision to now deny medication to Joseph. PacificSource maintains their position that the only medication that we've proven is needed by Joseph is too expensive, and they wish us to try other less expensive alternatives. At the request of PacificSource, I've tried 3 other medications for Joseph over the course of the last 3 years, which have resulted in Joseph falling asleep at school, aggression towards his siblings and members of the community and causing harm to himself and others. It's not healthy, and there are severe ramifications every time I've had to change his medications to accommodate

PacificSource's request. My son isn't a science project. He's an 8 year old boy with autism and our pediatrician has repeatedly requested PacificSource to pay for his medication. Finally, yesterday I received a call from my pediatrician, stating they would finally pay for the medication for my son.

My struggles with PacificSource don't end there. The previously mentioned, dual licensed professional that treated Joseph through September 2012, left on maternity leave. In anticipation of her permanent leave, we hired a new BCBA in June of 2012. The battle with PacificSource ensued again. Denial after denial, I appealed and appealed and finally had sued PacificSource, again, in small claims court, as the claims, at that point, still remained under \$10,000. Just a few weeks ago, PacificSource demanded I dismiss the lawsuit and they would consider re-processing the 2012 claims in question. I remain in a position that I will dismiss the small claims suit when my dates of service in 2012 are reimbursed and they reimburse my court costs. After being served with this small claim suit last month, PacificSource finally reprocessed the claims, and paid for the treatment that should have been paid for last year. However, we attended small claims mediation in Clackamas County this morning at 8:30 am with Chris Jenkins, PacificSource's legal counsel, who stated that although PacificSource admits they paid the claims in question after being served legal papers, PacificSource refuses to pay our court costs and service fees. We will go to trial with PacificSource on May 14, 2012.

My advocacy for children with autism will always be a part of my life, but the insurance crisis we have in Oregon needs to end. Nobody should have to endure the circumstances my family has in trying to obtain insurance coverage. Thank you, again, Mr. Chair and members of the committee for your time and consideration today.