



319 SW Washington Ave. Suite 607
Portland, OR 97204
tel. 503-223-5587
fax 503-223-4101
www.oregontriallawyers.org

Senate Committee on Business and Transportation
Shenoa Payne, Portland, OR
Please Vote YES on Senate Bill 317
February 4, 2015

Chair Beyer and members of the Committee,

I am attorney Shenoa Payne. I serve on the Board of the Oregon Trial Lawyers Association and on the Board of A Hope for Autism Foundation (AHFA).

I am here to urge the passage of SB 317, which will level the playing field for Oregon consumers of health insurance by codifying the ban on discretionary clauses in health policies that the Oregon Insurance Division (OID) enacted 10 years ago.

OID banned these clauses in 2004 with the understanding that insurance companies would voluntarily comply with the ban. Unfortunately, insurance companies continue to insert these deceptive clauses into their policies, even though OID requires insurers to check a box on the forms they submit to the OID, confirming their policies do not include these deceptive clauses. This legislation would as a matter of law forbid insurance companies from inserting discretionary clauses, which give much of the health care decision making to the bean counters at insurance companies, subject to an extremely deferential “abuse of discretion” judicial review that is often more or less a rubber stamping of a very biased decision.

This legislation will enhance the OID’s authority to take action against insurance companies that are not playing by the rules and instead are choosing profits over people--their customers’ health. It also makes absolutely clear to any reviewing judge that any discretionary clause in the policy is banned and has no effect.

OID does not have adequate funding to go through every insurance policy line by line and too many insurers are not complying with the existing ban. Unfortunately, once a policy is approved, OID has no authority to challenge the policy or force the insurer to remove the discretionary clause.

23 states have banned discretionary clauses, including Texas, Idaho, Kentucky and Indiana---not exactly bastions for consumer rights. All of our neighboring states, California, Washington and Idaho, as well as Hawaii, Montana, Wyoming and Utah have banned discretionary clauses in recent years.

This is a critical issue for consumers. Until there is a statutory ban in Oregon, insurers will find every possible loophole to deny coverage to Oregonians in need of essential health care. For example, often families with a child on the autism spectrum are denied coverage for the therapies proven to help their child, such as ABA therapy. The family must then choose no therapy or incur huge debt paying out of pocket for all their child’s medicines, therapy and other health care needs. Oregon families already facing the challenges of raising a child on the spectrum certainly deserve better treatment and access to the insurance they have been paying for when they need it most.

Please vote Yes on SB 317. Thank you.