Senate Committee on Judiciary
Paul Terdal, Portland, OR
Please Vote YES on Senate Bill 313 and 314
March 16, 2015

Chair Prozanski and members of the Committee,

Over the past few years, I have volunteered as a consumer advocate and have assisted well over 100 families with issues related to insurance coverage for autism and other health conditions. I'm not a lawyer – I'm just an everyday consumer and private citizen; I got started after I overturned denials of critical care for my own kids, and other families came to me for help. My advocacy has helped many of these families get access to life-changing treatment for their children. It has also led to the Insurance Division's recent bulletins implementing Oregon's Mental Health Parity law – and to several class action lawsuits in Oregon and Washington when administrative appeals have run into legal roadblocks.

Most consumer issues with insurers can and should be resolved effectively through administrative appeals and consumer advocacy by the Insurance Division. I know from experience that the Insurance Division is genuinely committed to helping consumers. But I also know that that isn't always enough – and that consumers need the right to get help from lawyers and the courts.

I have seen many extreme situations in which insurers have gone to very great lengths to deny claims. Here are a few examples:

- After several consumers made progress in appeals over an autism treatment, an insurer forbade the referring physician from ever submitting a referral for that service again.
- An insurer provided inaccurate information to consumers, the Insurance Division, and Independent Review Organizations about medical evidence for the effectiveness of a treatment. When asked for copies of the underlying reports the insurer was referring to – which by federal law it was required to provide – the insurer replied that the consumer didn't really need to see them. Since we found those reports on our own, and noted that they directly contradicted the insurer's claims, that wasn't too surprising.
- After issuing several denials claiming that a service was "experimental," an insurer acknowledged in a court filing that its own staff had concluded that it wasn't experimental months before, but continued issuing "experimental" denials while it "evaluated cost and pricing." The insurer's definition of "experimental" makes no reference to "cost and pricing."
- One insurer even told a U.S. District Court judge that it had structured denials to several consumers for the purpose of evading the legally mandated External Review process. The insurer told the court that it had intentionally sought to provoke litigation so it could make its arguments about medical effectiveness to a judge rather than to a medical doctor appointed by the Insurance Division.

Two years ago, I wrote SB414, which gave the Insurance Division the ability to seek restitution on behalf of consumers for an insurer's violation of the law. That was a great bill, but it is in no way a substitute

for SB313 and SB314. Despite the support of several insurers for that bill in the 2013 legislative session, discussions about implementation in the Rules Advisory Committee were heated and intense. In our final committee meeting, a senior executive at one major insurer told the Division very directly that any attempt to impose any substantial amount of restitution would be met with years of expensive litigation against the State. While the Division has warned several insurers of its restitution authority, it has never actually ordered restitution.

Insurers have also retaliated against "uppity" consumers and health care professionals. One of the first consumers I helped with an appeal was an insurance company employee. He was terminated within a week of winning an IRO decision overturning the denial of coverage.

Here are excerpts of correspondence with providers and insurance company employees expressing their fear of speaking up about treatment for autism:

- "I hope you understand that I am in full support of ABA services being available and covered by insurance for all children in Oregon. ... I have been speaking with ... [my colleagues, about] how we can be supportive ... without placing our employment at risk."
- "I spoke with my [colleague] She stated ... that they are being told not to mention ... [you] to their patients. ... They know their jobs are on the line."
- "Once my baby is safe I don't mind talking to [the Insurance Division] .... I respect my job ... but I also won't sit back and allow others to be victimized just to protect my job."

Currently, there are essentially no consequences to an insurer of misconduct. The Insurance Division rarely imposes civil penalties and has never sought restitution. When a consumer does sue and win in court, all the insurer is required to do is pay the claim, and attorneys' fees. There is no punitive damage or multiple, even in the most egregious cases of misconduct. Although many legal experts believe it is possible to force an insurer to "disgorge" unjust profits – reimbursing a consumer for services he or she should have received if the claim had been approved on time – this is untested, an in practice a low income consumer forced to go without treatment has literally no recourse and no opportunity for recovery. That encourages insurers to play fast and loose with the law, and to take risky legal positions that harm consumers, knowing that there is no consequence for failure.

Please pass SB313 and/or SB314 – to give consumers the ability to defend their own rights in court.

Sincerely,

Paul Terdal