

2012 STATE LEGISLATIVE AGENDA

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

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ADDRESS AND ZIP CODE

Email

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**Oregon's Senior and Disabled Property Tax Deferral Program
Proposed 2012 Legislative Changes
December 2011**

Introduction:

During the 2011 session, the Oregon Legislature redefined who is eligible to participate in the state's Property Tax Deferral Program. The new rules were aimed at keeping the program solvent, with a focus on restricting participation to lower income homeowners. However, the impact of those changes was far greater than intended. Almost half of the 10,500 program participants have been disqualified, including many low-income senior and disabled homeowners – the very people the program was designed to help.

The biggest blow was to seniors with reverse mortgages, who were suddenly cut from the tax relief program. Instead of limiting the ban to new applicants, the Department of Revenue (DOR) disqualified nearly 1,750 existing program participants simply because they had reverse mortgages. This was particularly hurtful because the state was, in effect, breaking its long-standing promise to help these low income homeowners with their property taxes. Many seniors depend on both reverse mortgages and property tax deferrals to stay in their homes. They have no other options, and enrolled in the tax deferral program with the clear understanding that reverse mortgage holders were eligible.¹

This ill-advised ban also reflects a misunderstanding of how reverse mortgages work. All banks protect themselves by limiting the amount they will lend homeowners based on the available equity in the mortgaged property. Most reverse mortgage lenders will only advance between 60% and 75% of the market value of the home, depending on the age of the borrower. Whereas many conventional home loans can be riskier because they finance as much as 90% of the property's value.

Recommendations for action in the 2012 Legislative session:

- **Immediate Fix:** The first priority must be to repair the damage by reinstating all former program participants who have been disqualified simply because they have reverse mortgages. (Note: Adequate funding was made available this year, which would allow this correction to be accomplished without jeopardizing the solvency of the fund.)
- **Long Term Sustainability:** At the same time, the Legislature needs to commit itself to a broader reform of the tax deferral program in the 2013 legislative session, assuring the program's long term sustainability without sacrificing the truly needy.

Property Tax Deferral Program Position Statement, 12-16-11

Ad hoc coalition endorsers:

Alliance of Vulnerable Homeowners, Southeast District Senior Advisory Council, Impact NW, Oregon Advocacy Coalition for Seniors and Persons with Disabilities, Oregon State Council of Retired Citizens, United Seniors of Oregon

¹ Since the tax deferral program's inception, reverse mortgages were not a problem: "A reverse mortgage does not prevent you from qualifying for the program." DOR brochure #150-490-015 entitled "2011 Oregon Property Tax Deferral for Disabled and Senior Citizens".

www.vulnerablehomeowners.org

*David Lloyd
1/11/12*

Autism Health Insurance Reform: Portland City Council Presentation

Background

- Autism is a medical and behavioral health condition that now affects 1 in 110 children nationally, with even higher rates in Oregon – incidence has risen dramatically
 - More than 8,000 Oregon children have autism, with 600 new diagnoses each year
- Autism can lead to lifelong disability – but it's treatable, especially if addressed early

Insurers Deny Coverage of Medically Necessary Care for Autism

- Kaiser, other insurers refuse to cover intensive behavioral health treatment (Applied Behavior Analysis, or ABA) despite broad acceptance as effective treatment
 - Kaiser has been ordered by Insurance Division to pay for ABA for another child
 - McHenry v PacificSource ordered PacificSource to pay for ABA
- Kaiser, other insurers limit speech, occupational, and physical therapy to 20 visits each per year – without regard to medical necessity
- City employees must rely upon their own savings, public services, or charity care – or do without the care that can make a big difference in the health outcomes of their children

Impact on Government Services, Budgets is Enormous

- Government services have been picking up the tab that the insurers have left behind – for special education and community inclusion programs
- Cost to the State of Oregon for special education for children with autism is estimated at \$200 million per biennium

How can the City of Portland Help?

- Assist city employees with their efforts to obtain the benefits that they are entitled to
 - Ask Kaiser and other insurers to provide coverage for the intensive behavioral health treatment that courts have determined to be in scope for coverage
- Work with insurers to improve both scope and cost effectiveness of coverage
 - Kaiser will only reimburse licensed providers – at a cost of \$91 / hr
 - At 25 hours / week, this is > \$118,000 / year
 - Use of BCBA's and paraprofessionals would increase quality and reduce cost to \$25 / hr
 - At 25 hours / week, this is \$32,500 / year – a savings of \$85,000, or 70%
 - Expand access to speech and occupational therapy – limits should be based on medical necessity, not arbitrary fixed amounts
- Support Autism Health Insurance Reform (LC86) in the Oregon Legislature

Proposed Legislation for 2012 Legislative Session: LC86

- Based on 2011 SB555, which was unanimously approved by Senate Health Care committee
 - Revised with extensive input from the insurance industry, professional associations
- Reinforces and clarifies existing laws requiring health benefit plans to cover the diagnosis and treatment of autism spectrum disorders, including:
 - Behavioral health treatment, including applied behavior analysis (ABA)
 - Psychiatric and Psychological care
 - Speech, occupational, and physical therapy
 - Other medically necessary care
- Establishes credentials for ABA providers to ensure high quality, cost effective care
 - Recognizes national Board Certified Behavior Analyst credentials
 - Sets training and supervision standards for paraprofessionals
- Prohibits arbitrary limits on number or frequency of visits or duration of treatment; coverage may be limited to medically necessary, evidence-based treatment
 - Insurers may review treatment plans and medical necessity on a regular basis

Why Act Now?

- 600 new children are diagnosed with autism every year in Oregon
 - With effective treatment, half of these children – 300 – can enter school without need for special education; another third will make substantial gains and need fewer services
 - Each year's delay irrevocably denies hundreds of children the opportunity for recovery
- The State of Oregon is currently spending \$200 million or more per biennium on special education and community services for children and adults with autism
 - Cost to the state would be greatly reduced if insurance was covering cost of treatment
- Legal precedent (court rulings, administrative appeals) confirms that ABA is already required for coverage under existing policies – but enforcement is difficult
 - Passing this law would improve public policy for autism coverage, and streamline both compliance and enforcement



Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services

Insurance Division

350 Winter St. NE

P.O. Box 14480

Salem, OR 97309-0405

503-947-7980

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www.insurance.oregon.gov

December 22, 2011

Sent via email

Ronald Lagergren
Kaiser Foundation Health Plans of the Northwest
500 NE Multnomah St., Suite 100
Portland, OR 97232-2099
Ronald.L.Lagergren@kp.org

RE: IPRO External Reviewers Findings ER 11105 – ██████████

Dear Mr. Lagergren:

I have received a copy of an email sent from you to Melanie Shaw, MA, BCBA at Play Connections Autism Services. In your email you stated “unfortunately, we cannot provide an authorization to another clinician. The appeal overturn was specifically for Don. We need to provide the authorization for services directly to Don”. I assume this was in reference to the external review by IPRO reference # ER11105.

Please refer to the reviewers findings on page three of the external review. The reviewer states that:

“The documents provided support the diagnosis of Autistic Disorder as well as the need for ABA interventions. It appears that the insurer is denying the ABA based on 1) lack of evidence that ABA is effective treatment, 2) ABA not meeting medical necessity, and 3) the provider not being on the policy’s approved panel.

However:

1. ABA is the current standard for treatment of behavioral issues in children with autistic spectrum disorders. The research papers about ABA show it to be the most medically effective treatment currently available.
2. Use of ABA will most likely reduce or ameliorate the child’s behavioral disability, thereby meeting the definition of medical necessity.
3. Given 1 and 2 (above), an out-of-network provider is medically necessary if a preferred provider for ABA is not available on the insurer’s panel.

Based on the above the denial is reversed.”

Point 3 specifically refers to an out-of-network provider if a preferred provider for ABA is not available on the insurer's panel. This external review was for medical necessity not who the provider would be that ultimately provides treatment. Please refer to OAR 836-053-1330 a referral for external review may not be made solely based on providers it must be either medical necessity, experimental or investigational, or continuity of care.

Does Kaiser have a network preferred provider who can deliver the ABA therapy? If not then please work with Mr. [REDACTED] to find an out of network provider who can provide the required services. Donald Shaw did not agree to be bound by the results of this review nor does he have any contract with Kaiser. Donald Shaw is not part of this agreement. Please refer to ORS 743.863 Civil penalty for failure to comply by an insurer that agreed to be bound by a decision.

If you think the issue at hand is not medical necessity please let me know. Please provide me status updates on your handling of this matter.

Please contact me if you have any questions.

Sincerely,

John Hardiman, CLU, ChFC, AIE
Market Analyst, Oregon Insurance Division
Market Conduct, (503) 947-7250, E-mail: John.Hardiman@state.or.us

DRAFT

SUMMARY

Establishes requirements for health insurance coverage of autism spectrum disorders.

A BILL FOR AN ACT

Relating to health insurance coverage of autism spectrum disorders; creating new provisions; and amending ORS 743A.190.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2012 Act are added to and made a part of the Insurance Code.

SECTION 2. As used in this section and section 3 of this 2012 Act:

(1) “Applied behavior analysis” means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

(2) “Autism line therapist” means an individual who:

(a) Has completed:

(A) A minimum of 12 semester hours, or the equivalent of 12 semester hours, of college coursework and is currently enrolled in a course of study leading to an associate’s or bachelor’s degree in psychology, education, social work, behavioral science, human development or related fields; or

(B) A minimum of 48 semester hours, or the equivalent of 48 se-

1 mester hours, of college coursework in any field;

2 (b) Has completed 40 hours of training by a board-certified behavior
3 analyst or licensed health care professional, that covers the following
4 topics:

5 (A) Introduction to autism spectrum disorder, applied behavior
6 analysis, intensive behavioral programs and typical child development;

7 (B) Principles and application of applied behavior analysis or other
8 intensive behavioral programs;

9 (C) Legal, ethical and safety issues in working with families and
10 vulnerable populations;

11 (D) Professional standards and ethics; and

12 (E) Additional topics as may be required by the Behavior Analyst
13 Certification Board, Incorporated;

14 (c) Has completed 40 hours of work in the field supervised by a
15 board-certified behavior analyst or licensed health care professional
16 during a period of 12 weeks or less;

17 (d) Has passed a criminal background check;

18 (e) Receives ongoing, scheduled oversight by a board-certified be-
19 havior analyst or licensed health care professional;

20 (f) Has been approved by the Department of Human Services pur-
21 suant to administrative rules adopted by the department or by enter-
22 ing into a provider agreement with the department; and

23 (g) Meets additional registration, supervision or credentialing re-
24 quirements as may be required by rules adopted by a board or agency
25 of this state.

26 (3) "Autism spectrum disorder" means a neurobiological condition
27 that includes autistic disorder and Asperger's disorder as defined in
28 the most recent edition of the Diagnostic and Statistical Manual of
29 Mental Disorders published by the American Psychiatric Association.

30 (4) "Behavioral health treatment" means counseling and treatment
31 programs or applied behavior analysis and other intensive behavioral

1 programs that are necessary to develop, improve, maintain or restore
2 the functioning of an individual to the maximum extent possible and
3 are provided by:

4 (a) A licensed health care professional;

5 (b) A board-certified behavior analyst; or

6 (c) An autism line therapist supervised by a board-certified behavior
7 analyst or licensed health care professional.

8 (5) "Board-certified behavior analyst" means an individual who:

9 (a) Has been certified by the Behavior Analyst Certification Board,
10 Incorporated, as a "Board Certified Behavior Analyst" or a "Board
11 Certified Assistant Behavior Analyst";

12 (b) Has passed a criminal background check;

13 (c) Has been approved by the Department of Human Services pur-
14 suant to administrative rules adopted by the department or by enter-
15 ing into a provider agreement with the department; and

16 (d) Meets additional registration, supervision or credentialing re-
17 quirements as may be required by rules adopted by a board or agency
18 of this state.

19 (6) "Coordination of care" means a service that:

20 (a) Facilitates linking patients with appropriate services and re-
21 sources in a coordinated effort to ensure that patient needs are met
22 and services are not duplicated by organizations involved in providing
23 care;

24 (b) Assists patients and families to more effectively navigate and
25 use the health care system; or

26 (c) Maximizes the value of services delivered to patients by facili-
27 tating beneficial, efficient, safe and high-quality patient experiences
28 and improved health care outcomes.

29 (7) "Diagnosis" means medically necessary assessment, evaluations
30 or tests.

31 (8) "Medical accommodations for usual care" means medical ac-

1 **commodations and services that are medically necessary in order for**
2 **an individual with an autism spectrum disorder to receive the same**
3 **medical or dental care that an individual without an autism spectrum**
4 **disorder would receive, including but not limited to sedation.**

5 **(9) “Medically necessary” means:**

6 **(a) Reasonably expected to do the following:**

7 **(A) Prevent the onset of an illness, condition, injury or disability;**

8 **(B) Reduce or ameliorate the physical, mental or developmental**
9 **effects of an illness, condition, injury or disability; or**

10 **(C) Assist an individual in achieving or maintaining maximum**
11 **functional capacity to perform daily activities, taking into account**
12 **both the functional capacity of the individual and the functional ca-**
13 **pacities that are appropriate for individuals of the same age.**

14 **(b) As determined in accordance with:**

15 **(A) The best available evidence published in peer-reviewed aca-**
16 **demie, medical or other health professional literature generally re-**
17 **cognized by the relevant academic, medical and health professional**
18 **community;**

19 **(B) Governmental, physician and other relevant health professional**
20 **specialty society recommendations;**

21 **(C) The views of health care professionals who are knowledgeable**
22 **and experienced in treating individuals with autism spectrum disorder;**
23 **and**

24 **(D) Medical, clinical and other information relevant to making de-**
25 **isions about the care of an individual patient.**

26 **(10) “Pharmacy care” means medications prescribed by a licensed**
27 **physician or other health care professional licensed to prescribe**
28 **medications, and any health-related services deemed medically neces-**
29 **sary to determine the need or effectiveness of the medications.**

30 **(11) “Psychiatric care” means direct or consultative services pro-**
31 **vided by a licensed psychiatrist or psychiatric mental health nurse**

1 practitioner.

2 (12) "Psychological care" means direct or consultative services
3 provided by a licensed psychologist, clinical social worker or profes-
4 sional counselor.

5 (13) "Therapeutic care" means services provided by a licensed
6 speech-language pathologist, occupational therapist, physical thera-
7 pist, speech-language pathology assistant, occupational therapy as-
8 sistant or physical therapist assistant.

9 (14) "Treatment for autism spectrum disorders" includes, but is not
10 limited to, the following care prescribed, provided or ordered for an
11 individual diagnosed with one of the autism spectrum disorders by a
12 licensed physician or licensed psychologist who determines the care to
13 be medically necessary:

14 (a) Behavioral health treatment;

15 (b) Pharmacy care;

16 (c) Psychiatric care;

17 (d) Psychological care;

18 (e) Therapeutic care;

19 (f) Augmentative communication devices and other assistive tech-
20 nology devices;

21 (g) Medical accommodations for usual care;

22 (h) Coordination of care; and

23 (i) Any other medically necessary care.

24 SECTION 3. (1) A health benefit plan, as defined in ORS 743.730,
25 that provides coverage for hospital, surgical or medical care shall
26 provide coverage for the screening for, diagnosis of and treatment for
27 autism spectrum disorders. An insurer may not terminate coverage
28 or refuse to issue or renew coverage for an individual solely because
29 the individual is diagnosed with one of the autism spectrum disorders
30 or has received treatment for an autism spectrum disorder.

31 (2) Coverage under this section may not be subject to utilization

1 controls regarding the number or frequency of visits or the duration
2 of treatment.

3 (3) Coverage under this section may not be subject to dollar limits,
4 deductibles, copayments or coinsurance provisions that are less fa-
5 vorable to an insured than the dollar limits, deductibles, copayments
6 or coinsurance provisions that apply to physical illness generally under
7 the health benefit plan.

8 (4) This section does not limit coverage that is otherwise available
9 to an individual under a health benefit plan or reduce benefits required
10 under ORS 743A.168.

11 (5) A claim for services described in this section may not be denied
12 on the basis that the service is habilitative or rehabilitative and does
13 not fully restore function.

14 (6) Coverage required by this section includes medically necessary
15 treatment provided in the home and in the community, except that
16 health benefit plans may impose limits on coverage for services pro-
17 vided by family or household members and for specialized education
18 and related services provided by schools as required by federal or state
19 law.

20 (7) Except for inpatient services, if an individual is receiving treat-
21 ment for an autism spectrum disorder, an insurer may request a re-
22 view of the determination that the treatment is medically necessary
23 not more than once every six months in a manner consistent with the
24 insurer's review process. The insurer may require the treatment plan
25 to include the diagnosis, the proposed treatment by type and fre-
26 quency, the anticipated duration of treatment, the anticipated out-
27 comes stated as goals and the reasons the treatment is medically
28 necessary.

29 (8) Subsections (1) to (7) of this section apply to health benefit plans
30 and to self-insurance programs offered by the Public Employees' Ben-
31 efit Board and the Oregon Educators Benefit Board.

1 **(9) ORS 743A.001 does not apply to this section.**

2 **(10) The Department of Consumer and Business Services, after no-**
3 **tice, hearing and consultation with a panel of experts with expertise**
4 **in diagnosing and treating autism spectrum disorders, may adopt rules**
5 **necessary to carry out the provisions of this section.**

6 **SECTION 4.** ORS 743A.190 is amended to read:

7 743A.190. (1) A health benefit plan, as defined in ORS 743.730, must cover
8 for a child enrolled in the plan who is under 18 years of age and who has
9 been diagnosed with a pervasive developmental disorder all medical services,
10 including rehabilitation services, that are medically necessary and are oth-
11 erwise covered under the plan.

12 (2) The coverage required under subsection (1) of this section, including
13 rehabilitation services, may be made subject to other provisions of the health
14 benefit plan that apply to covered services, including but not limited to:

15 (a) Deductibles, copayments or coinsurance;

16 (b) Prior authorization or utilization review requirements; or

17 (c) Treatment limitations regarding the number of visits or the duration
18 of treatment.

19 (3) As used in this section:

20 (a) “Medically necessary” means in accordance with the definition of
21 medical necessity that is specified in the policy, certificate or contract for
22 the health benefit plan and that applies uniformly to all covered services
23 under the health benefit plan.

24 (b)(A) “Pervasive developmental disorder” means a neurological condition
25 that includes [*Asperger’s syndrome, autism,*] developmental delay, develop-
26 mental disability or mental retardation.

27 **(B) “Pervasive developmental disorder” does not include autism**
28 **spectrum disorders as defined in section 2 of this 2012 Act.**

29 (c) “Rehabilitation services” means physical therapy, occupational ther-
30 apy or speech therapy services to restore or improve function.

31 (4) The provisions of ORS 743A.001 do not apply to this section.

1 (5) The definition of “pervasive developmental disorder” is not intended
2 to apply to coverage required under ORS 743A.168.

3 **SECTION 5. Sections 2 and 3 of this 2012 Act and the amendments**
4 **to ORS 743A.190 by section 4 of this 2012 Act apply to policies or cer-**
5 **tificates issued or renewed on or after the effective date of this 2012**
6 **Act.**

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