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***Kaiser and Regence Sued For Disability Discrimination***

Lawsuit Alleges that the Insurers Illegally Exclude Coverage of Needed, Cost-Effective Treatment for Hearing Loss

October 30, 2017, Seattle, WA – Today, two lawsuits were filed in federal district court in Seattle, Washington alleging that health insurers illegally discriminate against insureds with hearing loss by excluding nearly all treatment for their disability. The insurance companies sued are Regence BlueShield and its parent, Cambia Health Solutions (collectively referred to as “Regence”), and Kaiser Foundation Health Plan of Washington; Kaiser Foundation Health Plan of Washington Options, Inc.; Kaiser Foundation Health Plan of the Northwest, and the parent of the three health carriers, Kaiser Foundation Health Plan Inc. (collectively referred to as “Kaiser”). Copies of the lawsuits may be found at [www.syshlaw.com/hearinglosslitigation](http://www.syshlaw.com/hearinglosslitigation).

The lawsuits were brought by three plaintiffs, two adults and one child, all of whom have hearing loss, a federally-recognized disability. *See* 42 C.F.R. §84.3 (j)(1); (2). All need treatment for their hearing loss, including outpatient medical visits with audiologists, and durable medical equipment/prostheses, such as hearing aids. Both the Kaiser and Regence policies exclude all treatment for hearing loss, with the exception of treatment related to cochlear implants. The lawsuits allege that the Regence and Kaiser “Hearing Loss Exclusions” violate the Affordable Care Act’s (“ACA”) anti-discrimination statute, 42 U.S.C. §18116.

“Insurers like Kaiser and Regence discriminate on the basis of disability when they design and sell health insurance that contain a ‘Hearing Loss Exclusion,’” said Rick Spoonemore of Sirianni Youtz Spoonemore Hamburger, the law firm that filed the cases. “These are among the first cases brought under the ACA’s anti-discrimination statute. If successful, these cases will show that insurance companies can no longer categorically exclude coverage based upon an insured’s disability.”

Hearing loss is a highly prevalent disability. Approximately 14.9% of children in the United States have a significant hearing loss in one or both ears.<sup>1</sup> Approximately 28.6 million Americans are diagnosed with an auditory disorder.<sup>2</sup> In 2005, the

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<sup>1</sup><https://www.asha.org/public/hearing/Prevalence-and-Incidence-of-Hearing-Loss-in-Children/>.

<sup>2</sup> *Id.*

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Washington Department of Social and Health Services estimated that over 650,000 state residents had hearing loss, and approximately 617,500 would benefit from hearing aids.<sup>3</sup>

Treatment with cochlear implants is more expensive than treatment with hearing aids, and is generally only available after a person shows that they did not significantly benefit from hearing aids.<sup>4</sup> Despite their higher cost, cochlear implants are now covered by most major insurers including Kaiser and Regence, while other forms of effective and less expensive hearing treatment remain excluded.<sup>5</sup>

“Children and adults with hearing loss need coverage for hearing treatment other than with cochlear implants,” said Jodi Sternoff, one of the plaintiffs in the case against Regence. “There are many different types of hearing loss that require different devices to treat the condition. Many kinds of hearing loss cannot be treated with cochlear implants. Regence’s refusal to provide needed hearing treatment is discrimination when applied to adults with hearing loss like me. For children like E.S., however, the exclusions are not only discriminatory, but also can result in a significant impairment of a child’s development.”

“Kaiser’s hearing loss exclusion is discrimination, pure and simple,” said Andrea Schmitt, the plaintiff in the case against Kaiser. “I need a hearing aid to treat my hearing loss, just like other insured people need different medical equipment, such as wheelchairs and lifts. Instead, Kaiser excludes coverage of the key medical equipment to treat my disability. That is the very essence of discrimination.”

Until the ACA was enacted, categorical exclusions of coverage for treatment for a particular health condition were permitted. The ACA’s anti-discrimination law ends such discrimination. “The promise of the ACA is that all people, regardless of their disability, can receive coverage for the essential health benefits that they need,” said Ele Hamburger of Sirianni Youtz Spoonemore Hamburger. “To fulfill that promise, insurers must eliminate all categorical exclusions based upon insureds’ disabilities. The Kaiser and Regence hearing loss exclusions have got to go.”

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<sup>3</sup>“Hearing Aids Mandated Benefits Sunrise Review,” Washington Dept. of Health (January 2005), pp. 3, 6, available at [www.sylaw.com/hearinglosslitigation](http://www.sylaw.com/hearinglosslitigation) (hereinafter referred to as “Sunrise Review”).

<sup>4</sup>*Id.*, pp. 8; <https://www.asha.org/public/hearing/Cochlear-Implant-Frequently-Asked-Questions/>.

<sup>5</sup> Sunrise Review, pp. 8-10.