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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E.S., by and through her parents, R.S. and J.S.,
and JODI STERNOFF, both on their own
behalf, and on behalf of all similarly situated
individuals,

Plaintiffs,

v.

REGENCE BLUESHIELD; and CAMBIA
HEALTH SOLUTIONS, INC., f/k/a THE
REGENCE GROUP,

Defendants.

NO. 2:17-cv-1609

COMPLAINT
(CLASS ACTION)

[REDACTED]

I. PARTIES

1. *E.S.* Plaintiff E.S. is the six-year-old daughter and dependent of R.S. and J.S. and resides in King County, Washington. E.S. is insured under a Regence BlueShield insured health plan. E.S. is diagnosed with hearing loss.

2. *Jodi Sternoff.* Plaintiff Sternoff is an adult diagnosed with hearing loss who resides in King County, Washington. Sternoff is insured under a Regence BlueShield insured health plan.

1 3. **Regence BlueShield.** Regence BlueShield is an authorized health
2 carrier based in King County and is engaged in the business of insurance in the State of
3 Washington, including King County. Regence BlueShield is a Washington corporation
4 that does business in the State of Washington, including King County. Regence
5 BlueShield is a “health program or activity” that must comply with the Affordable Care
6 Act, Section 1557.

7 4. **Cambia Health Solutions, Inc., f/k/a The Regence Group.** Cambia
8 Health Solutions, Inc., f/k/a The Regence Group (“Cambia”) is the nonprofit sole
9 member and corporate owner of Regence BlueShield. Cambia is also the sole member
10 and owner of other authorized health carriers engaged in the business of insurance in
11 the State of Washington, including Regence BlueCross BlueShield of Oregon and
12 BridgeSpan Health. Based upon information and belief, Cambia is also a “health
13 program or activity” that must comply with the Affordable Care Act, Section 1557.

14 5. **Relationship between Regence BlueShield and Cambia.** Regence
15 BlueShield and Cambia are “alter egos.” See *McKinnon v. Blue Cross-Blue Shield of*
16 *Alabama*, 691 F. Supp. 1314, 1319 (1988), *aff’d*, 874 F.2d 820 (1989). Regence BlueShield
17 and the other authorized health carriers doing business in Washington that are wholly
18 owned and/or managed by Cambia use the same or similar standard contracts for
19 insured policies, and specifically, use the same or similar standard exclusions of
20 coverage for hearing examinations, programs or treatment for hearing loss, the same
21 standard definition of “medical necessity” and the same internal policies and procedures
22 for determining when treatment for hearing loss is excluded. For the purpose of this
23 Complaint, both Regence BlueShield and Cambia are referred to as a single defendant,
24 “Regence.”

II. JURISDICTION AND VENUE

1 6. This action arises under the Patient Protection and Affordable Care
2 Act (“Affordable Care Act” or “ACA”) §1557, 42 U.S.C. §18116.

3 7. Jurisdiction of this Court also arises pursuant to 28 U.S.C. §§1331,
4 1343.

5 8. Venue is proper under 28 U.S.C. §1391(b)(1) and (2), because, *inter*
6 *alia*, a defendant resides or may be found in this district and a substantial part of the
7 events giving rise to the claims occurred in King County.

III. NATURE OF THE CASE

9 9. Plaintiffs seek to end Regence’s standard discriminatory practice of
10 categorically excluding all benefits for treatment of hearing loss, except for cochlear
11 implants. Specifically, Regence’s insured health plans in Washington contain the
12 following benefit exclusion:

13 *We do not cover routine hearing examinations, programs or*
14 *treatment for hearing loss*, including but not limited to non-
15 cochlear hearing aids (externally worn or surgically
16 implanted) and the surgery and services necessary to implant
17 them.

18 (emphasis added). (In this Complaint, the condition is referred hereafter to as “Hearing
19 Loss” and Regence’s exclusion as the “Hearing Loss Exclusion.”) Regence excludes
20 benefits for Hearing Loss even when the treatment is medically necessary to treat
21 qualified individuals with disabilities such as the named Plaintiffs. Regence applies its
22 Hearing Loss Exclusion even though it covers the same benefits for other health
23 conditions, including coverage of outpatient office visits and durable medical equipment
24 or prosthetic devices.

25 10. By categorically excluding insureds with Hearing Loss of all
26 medical treatment related to their disability (except for cochlear implants), Regence

1 engages in illegal disability discrimination. The Affordable Care Act prohibits
2 discrimination on the basis of disability by covered entities, including health insurers
3 like Regence. See 42 U.S.C. §18116. Specifically, Section 1557 provides that “an
4 individual shall not, on the ground prohibited under ... Section 504 of the Rehabilitation
5 Act of 1973 (29 U.S.C. §794) be excluded from participation in, *denied the benefits of* or
6 be subjected to discrimination under *any health program* or activity....” 42 U.S.C.
7 §18116(a) (emphasis added); 45 C.F.R. §92.101(a)(1); see also 45 C.F.R. §92.207(b)(2) (“A
8 covered entity shall not, in providing or administering health-related insurance or other
9 health related coverage ... have benefit designs that discriminate on the basis of ...
10 disability.”). As the federal regulators state, “an explicit, categorical (or automatic)
11 exclusion or limitation of coverage for all health services related to [race, gender, age or
12 disability] is unlawful on its face.” 81 Fed. Reg. 31429.

13 11. Regence is a covered “health program or activity” that must comply
14 with the Affordable Care Act’s §1557.

15 12. Regence violates §1557 and engages in illegal discrimination on the
16 basis of disability by designing its health plans to include a blanket Hearing Loss
17 Exclusion.

18 13. This lawsuit seeks remedies under the Affordable Care Act arising
19 out of Regence’s failure to comply with §1557. It seeks a court order declaring Regence’s
20 blanket exclusion of benefits for Hearing Loss void and unenforceable, enjoining
21 Regence from continuing to apply the Hearing Loss Exclusion and requiring corrective
22 notice to all Regence insureds concerning its required coverage of Hearing Loss. It also
23 seeks damages stemming from Regence’s deliberate discriminatory exclusion of
24 medically necessary care that, but for the application of its Exclusion, would otherwise
25 be covered.
26

IV. CLASS ALLEGATIONS

1 14. *Definition of Class.* The class consists of all individuals who:

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3 (1) have been, are or will be insured under a health
4 insurance plan that has been, is or will be delivered,
5 issued for delivery, or renewed by (a) Regence; (b) any
6 affiliate of Regence; (c) predecessors or successors in
7 interest of any of the foregoing; and (d) all subsidiaries
8 or parent entities of any of the foregoing, at any time on
9 or after October 30, 2014; and
- 10 (2) have required, require or will require treatment for
11 Hearing Loss other than treatment associated with
12 cochlear implants.

13 15. *Size of Class.* The class of Regence insureds who have required,
14 require or will require treatment for Hearing Loss, excluding treatment associated with
15 cochlear implants, is expected to be so numerous that joinder of all members is
16 impracticable.

17 16. *Class Representatives E.S. and Sternoff.* Named plaintiffs E.S. and
18 Sternoff are enrollees in a Regence insured health plan in the State of Washington. Both
19 have Hearing Loss that requires treatment other than with cochlear implants. Both are
20 “qualified individuals with a disability” under the Affordable Care Act and Section 504
21 of the Rehabilitation Act. Both require outpatient office visits (such as to licensed
22 audiologists) and durable medical equipment and/or prosthetic devices (such as hearing
23 aids) to treat their Hearing Loss. Regence has denied both named Plaintiffs’ requests for
24 coverage of their hearing aids and outpatient office visits to their audiologists because
25 of Regence’s blanket Hearing Loss Exclusion. Plaintiffs’ claims are typical of the claims
26 of the other members of the class. Plaintiff E.S., by and through her parents, and Plaintiff
Sternoff, directly, will fairly and adequately represent the interests of the class.

17. *Common Questions of Law and Fact.* This action requires a
determination of whether Regence’s blanket Hearing Loss Exclusion violates the

1 requirements of the Affordable Care Act's §1557 and discriminates against Plaintiffs on
2 the basis of their disability, Hearing Loss. Adjudication of this issue will in turn
3 determine whether Regence may be enjoined from enforcing the Hearing Loss Exclusion,
4 and found liable under the Affordable Care Act for injunctive relief, classwide damages
5 and other relief.

6 18. *Regence Has Acted on Grounds Generally Applicable to the Class.*

7 Regence, by imposing a uniform, blanket exclusion of all coverage for Hearing Loss, has
8 acted on grounds generally applicable to the class, rendering declaratory relief
9 appropriate respecting the whole class. Certification is therefore proper under
10 FRCP 23(b)(2).

11 19. *Questions of Law and Fact Common to the Class Predominate Over*

12 *Individual Issues.* The claims of the individual class members are more efficiently
13 adjudicated on a classwide basis. Any interest that individual members of the class may
14 have in individually controlling the prosecution of separate actions is outweighed by the
15 efficiency of the class action mechanism. Upon information and belief, there has been
16 no class action suit filed against these defendants for the relief requested in this action.
17 This action can be most efficiently prosecuted as a class action in the Western District of
18 Washington, where Regence BlueShield has its principal place of business, does
19 business, and where E.S. and Sternoff reside. Issues as to Regence's conduct in applying
20 standard policies and practices towards all members of the class predominate over
21 questions, if any, unique to members of the class. Certification is therefore additionally
22 proper under FRCP 23(b)(3).

23 20. *Class Counsel.* Plaintiffs have retained experienced and competent
24 class counsel.

V. FACTUAL BACKGROUND

1 21. During the relevant time periods, E.S., Sternoff and members of the
2 class have been insured in one or more Regence insured plans.

3 22. Plaintiffs E.S., Sternoff and other members of the class have been
4 diagnosed with Hearing Loss, a physical impairment that limits a major life activity so
5 substantially as to require medical treatment. As a result, E.S., Sternoff and other
6 members of the class are “qualified individuals with a disability.” *See* 28 C.F.R. §39.103.

7 23. Plaintiffs E.S., Sternoff and other members of the class have
8 required, require and/or will require medical treatment for their Hearing Loss,
9 excluding treatment with cochlear implants.

10 24. Regence is a “health program or activity” part of which receives
11 federal financial assistance. 42 U.S.C. §18116; 45 C.F.R. §92.4. As a result, Regence is a
12 “covered entity” under the Affordable Care Act, §1557.

13 25. Regence provided assurances to the U.S. Department of Health and
14 Human Services that it complies with the requirements of §1557. *See* 45 C.F.R. §92.5.

15 26. Despite these assurances, Regence has designed, issued and
16 administered Washington health plans that exclude all benefits for Hearing Loss, except
17 for cochlear implants. Regence continues to do so, to date.

18 27. Based upon the Hearing Loss Exclusion, Regence has denied
19 coverage of medically necessary treatment and equipment for E.S., Sternoff and other
20 members of the class, solely because the requested treatment and equipment would treat
21 their Hearing Loss.

22 28. As a result of its deliberate discriminatory actions, Regence insureds
23 with Hearing Loss, like E.S. and Sternoff, do not receive coverage for medically necessary
24 outpatient office visits to audiologists or for medically necessary hearing aids, a type of
25 durable medical equipment or prosthetic device.

