

**STORAGE NAME:** h0781.hcs  
**DATE:** March 10, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE SERVICES  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 781

**RELATING TO:** Coverage for Mastectomies

**SPONSOR(S):** Rep. Peaden

**STATUTE(S) AFFECTED:** Sections 627.6417, 627.651, 627.6515, 627.6612, 641.31, 627.6699,  
F.S.

**COMPANION BILL(S):** SB 848(i), HB 689(s), SB 630(s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH CARE SERVICES
- (2) GENERAL GOVERNMENT APPROPRIATIONS
- (3)
- (4)
- (5)

---

**I. SUMMARY:**

Current statute does not expressly address coverage for breast cancer treatment except with respect to optional coverage for surgical procedures incident to mastectomies. Under this bill in-state and out-of-state individual insurers; group, blanket, or franchise health insurers; multiple-employer welfare arrangements; health maintenance organizations; and the small group standard health benefit plan will be:

- > Expressly required to provide mastectomy coverage to the same extent such coverage is provided for illness or disease;
- > Required to provide 48 hours of inpatient hospital care following mastectomy surgery;
- > Required to provide at least one home health care visit if the insured elected to be discharged prior to 48 hours;
- > Required to provide coverage for prosthetic devices and reconstructive surgery incident to a mastectomy, including mastectomies performed over two years ago where no evidence of malignancy was found;
- > Required to insure and provide breast cancer coverage for persons who have remained free from breast cancer for at least 5 years; and
- > Prohibited from classifying breast cancer followup care as a procedure for determining a preexisting condition unless breast cancer is found.

State and local government may experience a fiscal impact to the extent that this bill results in any increased costs associated with providing employee health insurance benefits.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Breast cancer is the most common form of cancer in women and the second highest cause of cancer mortality (after lung cancer) among women in the United States. Breast cancer accounts for approximately 30% of all newly diagnosed female cancers and 18% of all female cancer deaths. Over 10,000 women will be diagnosed with breast cancer in Florida this year, and more than 2,600 will die from the disease. Direct health care costs for the treatment of breast cancer in Florida exceed \$160 million annually.

There isn't one standard treatment for breast cancer. It behaves differently depending upon the patient's age, the size of her tumor and its hormone receptor status, and whether or not the cancer has spread to the lymph nodes and, if so how many lymph nodes are involved. If detected and treated early, the 5-year survival rate for patients whose cancer has not spread beyond the breast is 93%, according to the American Cancer Society.

The most common treatment is surgery followed by chemotherapy and/or radiation to decrease the risk of recurrence. Depending upon the size of the lump, it can be removed with a lumpectomy or mastectomy. It has been estimated that only 10% of breast cancer patients need mastectomies. Lumpectomies are usually performed using a general anesthetic. The patient can usually be sent home the same or next day once the effects of the anesthetic have worn off. Mastectomies usually require 2 to 3 days in the hospital, although some women opt to go home as soon as the anesthesia wears off. According to David Foster of HCIA Inc., a Baltimore research firm, about 7.6% of mastectomies performed on Medicare patients in 1995 were outpatient procedures, up from 1.6% in 1991.

Recently there has been a widespread concern over the performance of outpatient mastectomies. The controversy began last August when some doctors in Connecticut complained of new guidelines that emphasized outpatient mastectomies developed by Milliman & Robertson, a Seattle-based actuarial firm that markets guidelines to insurers and health plans, and adopted by two HMOs. In response, the 1,000 member American Association of Health Plans - which includes nearly all of the nation's HMOs - announced last November, that it will abide by recommendations against requiring mastectomies to be performed as an outpatient procedure.

Last month HHS Secretary Donna E. Shalala sent letters to 350 managed care plans contracting with Medicare prohibiting a plan from requiring outpatient mastectomies or placing time limits on hospital stays for mastectomies. Medicare paid for more than 84,000 mastectomies in 1996, or about a third of all mastectomies in the U.S.

A Blue Cross/Blue Shield survey estimates that at least 27 states will debate legislation in 1997 calling for a minimum of 48-hour stays for women undergoing mastectomies. In December New Jersey became the first state to require health insurers to provide minimum hospital stays of 72 hours following a mastectomy and 48 hours following a lymph node dissection. At the federal level, two bills have been filed: the "Breast Cancer Patient Protection Act of 1997," which guarantees a minimum stay of 48 hours for a mastectomy and 24 hours for lymph node removal, filed by Representative Rosa DeLauro (HR135) and Senator Tom Daschle (S143); and the "Women's Health and

Cancer Rights Act of 1997" by Rep. Molinari (HR616) and Senator Alfonse D'Amato (S249). The later, like Representative Anna Eschoo (HR164), would also require insurers to pay for reconstructive surgery.

**B. EFFECT OF PROPOSED CHANGES:**

Both instate and out-of-state individual insurers; group, blanket, or franchise health insurers; multiple-employer welfare arrangements; health maintenance organizations; and the small group standard health benefit plan will be:

- > Required to provide 48 hours of inpatient hospital care following mastectomy surgery;
- > Required to provide at least one home health care visit if the insured elected to be discharged prior to 48 hours;
- > Required to provide coverage for prosthetic devices and reconstructive surgery incident to a mastectomy, including mastectomies performed over two years ago where no evidence of malignancy was found;
- > Required to insure and provide breast cancer coverage for persons who have remained free from breast cancer for at least 5 years;
- > Prohibited from classifying breast cancer followup care as a procedure for determining a preexisting condition unless breast cancer is found;

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the bill gives the Department of Insurance authority to enforce additional standards on health insurers and HMOs.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, health insurers and HMOs will be required to abide by new standards established in this bill.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

**STORAGE NAME:** h0781.hcs

**DATE:** March 10, 1997

**PAGE 4**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes, if the legislation results in higher insurance premiums.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No, the bill increases government regulation of health insurance.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, the bill imposes additional standards on health insurers.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION ANALYSIS:**

[This section need be completed only in the discretion of the Committee.]

**Section 1.** Amends s. 627.6417, F.S., relating to optional individual insurance coverage for procedures incident to mastectomies, to:

- (1) Require the policy to provide hospital, medical, or surgical coverage for mastectomies to the same extent that such coverage is provided for any illness or disease under the policy, and require surgical coverage to include 48 hours of inpatient hospital care;
- (2) Permit the insured to be released prior to the 48 hour time period provided that the coverage include a home health care visit which shall not be subject to deductibles, coinsurance, or copayments;
- (3) Require mastectomy coverage to include procedures incident to the mastectomy, and to delete a provision providing a two-year statute of limitation for coverage for care incident to a mastectomy in which no evidence of malignancy is found; and
- (4) Restrict applicability of the section to breast cancer coverage.

**Section 2.** Creates s. 627.64175, F.S., relating to individual insurance policy breast cancer coverage, to:

- (1) Prohibit an insurer from refusing to provide health insurance to an applicant who has remained free of breast cancer for at least 5 years;
- (2) Prohibit an insurer from excluding breast cancer coverage if an applicant has been free of breast cancer for at least 5 years; and
- (3) Prohibit breast cancer followup care from being considered a procedure for determining a preexisting condition unless breast cancer is found.

**Section 3.** Amends s. 627.651, F.S., relating to group contracts and self-insurance plans, to require a multiple-employer welfare arrangement to comply with ss. 627.6612 and 627.6614, F.S.

**Section 4.** Amends s. 627.6515, F.S., relating to out-of-state groups, to require such groups to comply with ss. 627.6612 and 627.6614, F.S.

**Section 5.** Amends s. 627.6612, F.S., relating to group, blanket, or franchise insurance coverage for procedures incident to mastectomies, to:

- (1) Require the policy to provide hospital, medical, or surgical coverage for mastectomies to the same extent that such coverage is provided for any illness or disease under the policy, and require surgical coverage to include 48 hours of inpatient hospital care; and
- (2) Permit the insured to be released prior to the 48 hour time period provided that the coverage include a home health care visit which shall not be subject to deductibles, coinsurance, or copayments; and
- (3) Require mastectomy coverage to include procedures incident to the mastectomy, and to delete a provision providing a two-year statute of limitation for coverage for care incident to a mastectomy in which no evidence of malignancy is found.

**Section 6.** Creates s. 627.6614, F.S., relating to group, blanket, or franchise coverage for breast cancer, to:

- (1) Prohibit an insurer from refusing to cover or charging a discriminatory rate for an individual applicant who has remained free of breast cancer for at least 5 years;
- (2) Prohibit an insurer from excluding breast cancer coverage for an individual applicant who has been free of breast cancer for at least 5 years; and
- (3) Prohibit breast cancer followup care from being considered a procedure for determining a preexisting condition unless breast cancer is found.

**Section 7.** Amends s. 641.31, F.S., relating to health maintenance contracts, to:

- (1) Require the HMO contract to provide hospital, medical, or surgical coverage for mastectomies to the same extent that such coverage is provided for any illness or disease under the policy, and require surgical coverage to include 48 hours of inpatient hospital care; and
- (2) Permit the subscriber to be released prior to the 48 hour time period provided that the coverage include a home health care visit which shall not be subject to copayments;
- (3) Require mastectomy coverage to include procedures incident to the mastectomy; and
- (4) Define "mastectomy" to mean medically necessary breast removal.

**Section 8.** Creates s. 641.30198, F.S., relating to HMO coverage for breast cancer, to:

- (1) Prohibit an HMO from refusing to provide coverage or charging a discriminatory rate to an applicant who has remained free of breast cancer for at least 5 years; and
- (2) Prohibit an HMO from considering breast cancer a preexisting condition if the applicant has remained free of breast cancer for at least 5 years; and
- (3) Prohibit breast cancer followup care from being considered a procedure for determining a preexisting condition unless breast cancer is found.

**Section 9.** Amends s. 627.6699, F.S., relating to the Employee Health Care Access Act, to require the standard health benefit plan applicable to small employers to include mastectomy coverage as mandated by s. 627.6612, F.S.

**Section 10.** Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

- > With respect to the requirement that insurers and HMOs provide coverage for a minimum of 48 hours of inpatient care and provide at least one home health visit if the patient is released early - insurers and HMOs may experience additional costs, but they may also experience savings in terms of providing care which results in fewer costly complications.
- > With respect to the requirement that insurers and HMOs provide coverage for prosthetic devices and reconstructive surgery incident to the mastectomy, insurers will experience additional costs which they will pass on to the consumer in terms of increased premiums.



- > With respect to the requirement that insurers and HMOs provide health insurance and breast cancer coverage to persons who have remained cancer free for 5 years, insurers will experience additional costs which they will pass on to the consumer in terms of increased premiums.

2. Direct Private Sector Benefits:

Requiring 48 hours of inpatient hospital care and at least one home health visit for patients who opt for early discharge may benefit breast cancer patients in terms of guaranteeing a minimum quality of care.

3. Effects on Competition, Private Enterprise and Employment Markets:

None, since these requirements will have the same effect on all insurers and HMOs.

D. **FISCAL COMMENTS:**

None,

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The health insurance mandates of this bill would apply to local government health insurance plans that provide mastectomy coverage triggering the application of Article VII, s. 18. A law requiring such an expenditure is permissible if it is deemed to fulfill an important state interest and, as in this case, applies to all persons similarly situated including state and local governments.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority of counties or municipalities to raise revenues.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

**STORAGE NAME:** h0781.hcs

**DATE:** March 10, 1997

**PAGE 10**

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Legislative Research Director:

---

Meta Calder

---

Mike Hansen