The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Policy Committee

BILL:	CS/SB 1010
INTRODUCER:	Banking and Insurance Committee and Senators Hill and Bullard
SUBJECT:	Health Insurance/Prostate Screening Coverage
DATE:	April 11, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mays	Deffenbaugh	BI	**Fav/CS**
2.	Garner	Wilson	HP	**Favorable**
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill specifies that this act may be cited as the "Senator Les Miller Act."

The bill requires all individual, group, and out-of-state group health insurance policies, including all health maintenance organization (HMO) contracts, to provide coverage for an annual screening for prostate cancer to a man age 40 or over, as set forth in the early detection guidelines of the National Comprehensive Cancer Network (NCCN).

The bill provides that the coverage for prostate cancer screening must consist of, at minimum, a prostate specific antigen (PSA) blood test and a digital rectal exam (DRE). If a medical practitioner recommends that an insured, subscriber, or enrollee undergo a PSA test, coverage may not be denied because that person previously had a DRE with negative results.

This bill amends ss. 627.6515 and 641.31, F.S., and creates ss. 627.64091 and 627.6614, F.S., and two undesignated sections of law.

II. Present Situation:

Background on Prostate Cancer

Prostate cancer is a common disease among older men. In the United States, prostate cancer is second only to lung cancer as the primary cause of cancer deaths in men. For the general population, a man has about a 16 percent chance (1 in 6) of being diagnosed with prostate cancer in his lifetime, and a 3 percent chance (1 in 33) of dying from the disease.[1]

Several risk factors increase a man's chances of developing prostate cancer, including age, genetic predisposition, and race. African American men have the highest rate of prostate cancer. The prostate cancer death rate among African American men is more than twice as high as that of white men, and over three times greater than that of Hispanic men, while Asian and Native American men have the lowest rates. In addition, there is some evidence that a diet higher in fat, especially animal fat, may increase the risk of prostate cancer. According to the National Cancer Institute, an estimated 218,890 new cases of prostate cancer would be diagnosed in the U.S. in 2007 with 27,000 expected deaths.[2]

Two procedures are currently used to detect prostate cancer: the prostate-specific antigen (PSA) test and the digital rectal exam (DRE). Prostate-specific antigen is a blood protein. Levels of the protein increase when the prostate has cancer or other diseases, including simple infections or inflammation. The PSA test measures this protein in samples of blood drawn from men and the results are usually reported as nanograms of PSA per milliliter (ng/ml). In the past, most doctors considered PSA values below 4.0 ng/ml as normal. However, recent research has found prostate cancer in men with PSA levels below 4.0 ng/ml.

There is no specific normal or abnormal PSA level; however, the higher a man's PSA level, the more likely it is that cancer is present. Nevertheless, since various factors can cause PSA levels to fluctuate, one abnormal PSA test does not necessarily indicate a need for other diagnostic tests. When PSA levels continue to rise over time, other tests may be needed.[3]

Recommendations of the National Comprehensive Cancer Network

The National Comprehensive Cancer Network (NCCN), the organization cited in this bill, is a not-for-profit alliance of 20 worldwide cancer centers (including the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida). All member institutions are not-for-profit organizations.

The NCCN guidelines, Prostate Cancer Early Detection (2006), are available on its website.[4] These guidelines recommend a baseline DRE and PSA at age 40. If the PSA is lower than 0.6, a

[1] U.S. Centers for Medicare and Medicaid Services. *Prostate Cancer Screening: A Decision Guide for Men with Medicare.* Found at: http://www.medicare.gov/Publications/Pubs/pdf/11042.pdf (last visited on April 11, 2008)
[2] National Caner Institute. Found at: http://www.cancer.gov/cancertopics/factsheet/Detection/early-prostate (last visited on April 11, 2008)
[3] National Caner Institute. Found at: http://www.cancer.gov/cancertopics/factsheet/Detection/PSA (last visited on April 11, 2008)
[4] National Comprehensive Cancer Network. http://www.nccn.org/professionals/physician_gls/PDF/prostate_detection.pdf (last visited on April 11, 2008)

follow-up is recommended at age 45. If the PSA is at or below 0.6 at age 45, a DRE and PSA is recommended at age 50 and annually thereafter. If the follow-up PSA at age 45 is greater than 0.6, the guidelines recommend an annual DRE and PSA thereafter.

For African-Americans, all men with a family history of prostate cancer, and men who have a PSA equal to or greater than 0.6 for the base line PSA at age 40, the guidelines recommend an annual DRE and PSA beginning at age 40.

This is a broad summary of the guidelines that provide further qualifications and recommendations, including emphasis that any clinician is expected to use independent medical judgment in determining any patient's care.

Insurance Coverage in Florida

Health insurance coverage issued in Florida often covers a PSA test and the DRE as medically necessary preventative services for the screening of prostate cancer. However, there exists a disparity as to what age these screening tests are covered.

The Division of State Group Insurance of the Department of Management Services contracts with Blue Cross Blue Shield of Florida (BCBSF) to administer the state employees' Preferred Provider Organization (PPO) plan. This plan provides these tests, but limits them to men age 50 and over. High-risk individuals are determined to be so at the discretion of their physician. According to a representative of BCBSF, most of their individual, group, and HMO contracts meet these same guidelines for prostate cancer screening.

According to information retrieved from Aetna for its health insurance policies, men age 40 and over, and those under the age of 40 who are high risk for prostate cancer, are eligible for annual PSA tests and DREs.

Medicare covers both the PSA test and a DRE once every 12 months for all men age 50 and over with Medicare coverage.[5] In Florida, the Medicaid program recommends PSA screening and DREs for males over age 45 as part of the adult health screen. However, if there is a family history of prostate cancer the recommended age for screening is 40. Medicaid will reimburse the prostate cancer screening up to three times a year with no specified age restriction according to the Agency for Health Care Administration (AHCA) fiscal analysis for this bill.

Other State Laws

The 2007 Health Insurance Mandates in the States report, issued by the Council for Affordable Health Insurance, indicates 32 states have insurance laws requiring coverage for prostate cancer screening.[6] The majority of those states mandating prostate cancer screening require health insurance contracts to, at a minimum provide coverage to men age 50 and older, while providing coverage at age 40 for those in a high-risk category. Some states have more progressive

[5] U.S. Centers for Medicare and Medicaid Services. *Medicare Prostate Coverage*. Found at: http://www.medicare.gov/Coverage/Search/Results.asp?State=FL%7CFlorida&Coverage=52%7CProstate+Cancer+Screening&submitState=View+Results+%3E (last visited on April 11, 2008)

[6] Found at: http://www.cahi.org/cahi_contents/resources/pdf/MandatesInTheStates2007.pdf (last visited on April 11, 2008)

variances to their laws with respect to the minimum age for prostate cancer screening coverage. Alaska, for example, has provided minimum coverage requirements to annual screening for two groups of patients: a man who is age 35-40 in a high-risk group; and for a man who is 40 or more. Indiana and Maryland require insurance providers to cover prostate cancer screening for men age 40 and over, but do not specify high-risk requirements.

III. Effect of Proposed Changes:

Section 1. Provides that the act may be cited as the "Senator Les Miller Act."

Section 2. Creates s. 627.64091, F.S., requiring that all individual health insurance policies providing coverage to men age 40 and older must provide coverage for annual screening for prostate cancer in accordance with the prostate cancer early detection guidelines of the NCCN.

The bill mandates coverage for prostate cancer screening consisting of, at minimum, a PSA blood test and the DRE. The bill also states that if a medical practitioner recommends that an insured, subscriber, or enrollee undergo a PSA test, coverage may not be denied because that person previously had a DRE and the exam results were negative.

Section 3. Amends s. 627.6515, F.S., specifying the same requirements as in Section 2 above, but applying them to out-of-state group health insurance policies covering a Florida resident.

Section 4. Creates s. 627.6614, F.S., specifying the same requirements as in Section 2 above, but applying them to group health insurance policies.

Section 5. Amends s. 641.31, F.S., specifying the same requirements as in Section 2 above, but applying them to HMO contracts.

Section 6. Creates an undesignated section of law specifying that the Legislature finds that the provisions of this act fulfill an important state interest. (See, Municipality/County Mandates Restrictions, below).

Section 7. Provides that the act shall take effect January 1, 2009, and shall apply to policies or contracts issued or renewed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The health insurance benefit required by this bill applies to local government health insurance plans. Section 18(a), Art. VII of the State Constitution provides that a city or county is not bound by any general law requiring the city or county to spend funds or to take an action to expend funds unless the Legislature has determined that the law fulfills an important state interest and unless, for purposes relevant to this bill, the expenditure is required to comply with a law that applies to all persons similarly situated or the law requiring the expenditure is approved by two-thirds of the membership of each house of the Legislature. The bill applies to all similarly situated persons and expressly states that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Florida Constitutional language is explicit regarding Florida's Separation of Powers doctrine. Article II, Section 3, provides, "No person belonging to one branch shall exercise powers appertaining to either of the other branches unless expressly provided herein."

Florida Courts strictly adhere to the rule that the Legislature may not delegate its authority to make laws. When material other than Florida law is incorporated in a statute by reference, only the version of that material which existed at the time the Legislature made the incorporation will be given effect, regardless of how general the terms of the incorporation are. The courts have noted, "The Legislature may lawfully adopt provisions of other laws or regulations which are in existence (and are therefore presumably incorporated into the legislative act) at the time of enactment. But the courts have uniformly and without deviation held that any attempt by the legislature or other law making branch of any segment of the government to incorporate into a law, future regulations of administrative bodies, or law of other jurisdictions is an unconstitutional delegation of a power it alone possesses…"[7]

Therefore, adopting the NCCN guidelines in this language may be interpreted as *only the NCCN guidelines*, and thus, be in violation of delegation of legislative authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to a spokesperson for the National Prostate Cancer Coalition, the most recent study on fiscal impacts of mandated prostate cancer screening comes from the Massachusetts Division of Health Care Finance and Policy in 2004. The Lewin Group performed an actuarial analysis for the Massachusetts Legislature to determine whether health insurance premiums would increase due to a proposed mandate that required prostate cancer screening for all men age 40, and all men, regardless of age, who have a

[7] State of Florida v. Welch 279 So.2d 11

history of prostate cancer. Their findings indicated that all major carriers in Massachusetts already covered the two main screening tests. Officials responsible for the study did not think it seemed likely that passage of these proposals would add much to the cost of premiums. The Lewin Group's best estimate of increased premium costs per member, per year was $0.16. However, if there was a substantial increase in the number of men tested, the Lewin Group officials felt that there would likely be an increase in the number of follow-up exams, tests, and biopsies, some of which would be lifesaving, and others of which would prove to be unnecessary. Those cost estimates provided did not include indirect costs of additional biopsies, exams, and tests that may have resulted from increased utilization of PSA tests.

According to the Office of Insurance Regulation's analysis of the bill, increased claims costs arising from this legislation will be passed through to all policyholders and/or subscribers in the form of increased health insurance plan premium cost. However, the extent to which plan premium costs would rise in Florida is indeterminate. A representative of BCBSF stated that prostate cancer screening tests, including both the PSA test and DRE, usually run between $30 and $40 for the tests, but requires an analysis by a doctor or professional staff, which is on average priced at $288.

C. Government Sector Impact:

According to representatives of the Department of Management Services, the State Group Health Insurance Program will be required to expand its covered benefits. For Plan Year 2009, the projected increased Trust Fund cost for the PPO Plan would be in excess of $230,000. The magnitude of cost increases attributable to increased HMO premiums could be similar. The HMO costs cannot be accurately predicted since contractual arrangements between individual HMOs and providers may vary by HMO and by contracted provider. Negotiations with the state contracted HMOs for calendar year 2008 rates have not begun.

The estimated annual recurring impact to the State Employees Health Insurance Trust Fund is $460,000. The additional expenses are attributed to increased utilization and possibly increased HMO premiums. Furthermore, resulting savings may not offset expenses or future cost avoidance since the U.S. Preventive Task Force and the American Academy of Family Physicians found insufficient evidence to recommend for or against screenings specified.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to s. 624.215, F.S., every person seeking consideration of a legislative proposal, which would mandate health coverage by an insurer, health care service contractor, or health maintenance organization, shall submit to the legislative committees having jurisdiction a report, which assesses the social and financial impacts of the proposed coverage. A report was not filed addressing the specific items listed in this statute, but the bill sponsor provided professional staff

in the Senate Banking and Insurance Committee with a 2004 actuarial study of the fiscal impacts of mandated prostate cancer screening by the Lewin Group for the Massachusetts Division of Health Care Finance and Policy, summarized above.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 1, 2008
The CS changes the reference to the guidelines that must be followed for the required coverage to refer only to the NCCN and striking the additional reference to "other evidence based sources."

The CS changes the section number in the Florida Statutes that would be created in Section 4 of this bill in order to place the group insurance requirements in Part VII of the insurance code. The CS also makes the conforming change to the cross reference in Section 3.

B. Amendments:

None.