

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: SB 448

INTRODUCER: Senator Joyner

SUBJECT: Breast Cancer Treatment

DATE: April 10, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable
2.	Garner	Wilson	HP	Favorable
3.			GA	
4.				
5.				
6.				

I. Summary:

The bill would apply the same requirements for insurance coverage of a lymph node dissection that currently apply to coverage for a mastectomy. Specifically, the bill requires that, if an insurance policy or health maintenance organization (HMO) contract provides coverage for breast cancer treatment, the inpatient hospital coverage for *lymph node dissections* must be for the time period determined to be medically necessary by the treating physician in accordance with prevailing medical standards. The bill also requires the policy or contract providing such breast cancer treatment to provide outpatient follow-up care for a lymph node dissection consistent with prevailing medical standards. In addition, the bill specifies that these provisions do not require an insured patient to have a lymph node dissection in the hospital or stay in the hospital for any fixed period following a lymph node dissection.

The provisions of this bill would apply to individual, small group (except for standard, basic, and limited plans), large group (50 or more employees), and out-of-state policies and HMO contracts.

This bill amends ss. 627.64171, 627.66121, and 641.31, F.S., and creates one undesignated section of law.

II. Present Situation:

Breast Cancer Statistics

According to the Centers for Disease Control and Prevention, cancer is the second major cause of death in women, with heart disease being the first.¹ For 2008, the National Cancer Institute estimates that there will be 182,460 new cases of breast cancer diagnosed in women and 1,990 in men in the United States.² In Florida alone, there are an estimated 11,850 new cases of breast cancer that will be diagnosed in women this year and that 2,760 will die of this disease.³ Of the total cancer deaths, only lung cancer deaths exceed breast cancer deaths for women in Florida.⁴

The risk for breast cancer increases with age. By age 50, one out of 50 women (2 percent) will have breast cancer. By age 80, 10 percent of women will have breast cancer.⁵ This disease causes more deaths than any other form of cancer in women under age 55.⁶ The risk is somewhat higher for women whose close female relatives, such as mothers and sisters, have had the disease. The risk is also higher for women who have never had children or who had their first child after age 30. Men are also at risk for breast cancer.

Breast Cancer Diagnosis and Treatment

The best defenses against breast cancer are early detection and prompt treatment. The 5-year survival rate for breast cancer is 97 percent if the cancer has not spread. The American Cancer Society has developed recommendations for early detection, such as regular mammograms every year beginning at age 40 and annual clinical breast examinations. A mammogram is a low-dose x-ray procedure that depicts the internal structure of the breast.

Women with breast cancer have many treatment options, contingent upon the stage of the disease. These options include surgery, radiation therapy, chemotherapy, hormone therapy, and biological therapy.⁷ Surgery is the most common treatment for breast cancer. Surgical procedures may include a mastectomy or lumpectomy. A mastectomy is an operation to remove the breast, or as much breast tissue as possible, and in most cases the lymph nodes under the arm. When a lumpectomy is performed, the cancer is removed but not the entire breast. The surgeon often removes the underarm lymph nodes, as well, in a separate incision (axillary lymph node dissection) to determine whether the nodes contain cancer. For a regional lymph node dissection, some of the lymph nodes in the tumor area are removed. For a radical lymph node dissection, most or all of the lymph nodes in the tumor area are removed. A sentinel lymph node biopsy is a relatively new method for checking for cancer cells in the lymph nodes, which requires the

¹ U.S. Centers for Disease Control and Prevention. Found at:

http://www.cdc.gov/nchs/data/hestat/leadingdeaths03_tables.pdf#2 (last visited on April 10, 2008).

² National Cancer Institute. Found at: <http://www.cancer.gov/cancertopics/types/breast> (last visited on April 10, 2008).

³ American Cancer Society, National Home Office (2008). *Cancer Facts and Figures 2008*, Atlanta, GA. Found at:

<http://www.cancer.org/downloads/STT/2008CAFFfinalsecured.pdf> (last visited on April 10, 2008).

⁴ Florida Department of Health website. Found at: <http://www.doh.state.fl.us/Family/bcc/breastcancer.html> (last visited on April 10, 2008).

⁵ *Ib.id.*

⁶ Shands Health Care. Found at: <http://www.shands.org/find/service/default.asp?ID=38a> (last visited on April 10, 2008).

⁷ National Cancer Institute of the U.S. Institutes of Health. Found at:

<http://www.cancer.gov/cancertopics/pdq/treatment/breast/healthprofessional> (last visited April 10, 2008)

removal of fewer lymph nodes and causes fewer side effects. The presence of any cancer cells in the lymph nodes will help the physician determine the need for and course of subsequent therapy.

Breast Treatment Coverage in Florida

The Florida Legislature has worked for several years to support the prevention and treatment of breast cancer. For example, ss. 627.6418, 627.6613, and 641.3105, F.S., require individual and group health policies and HMO contracts to provide coverage for regular mammograms, in accordance with recommendations of the American Cancer Society.

In 1997, the Legislature enacted legislation, which provides that if a policy or contract provides coverage for breast cancer treatment, the policy or contract may not limit inpatient coverage for a mastectomy to any period of time that is less than that determined by the treating physician to be medically necessary in accordance with prevailing medical standards. This law also required that a policy or contract that provides coverage for a mastectomy must also provide coverage for outpatient post-surgical follow-up care in keeping with prevailing medical standards by a licensed health care professional qualified to provide such care.⁸ The law also provides that, unless breast cancer is found, routine follow-up care to determine the presence of breast cancer is not considered medical treatment for a preexisting condition.

The proponents of the bill, the Florida Division of the American Cancer Society, were unaware of any specific insurance company currently not providing lymph node dissection coverage.⁹ According to these proponents, coverage for lymph node dissections and follow-up care appears to be generally available; therefore, the intent of the supporters of the bill is to enact legislation to ensure that all companies provide such coverage.

Breast Cancer Coverage in Other States

According to the National Cancer Institute, 12 states have passed legislation requiring insurance coverage for inpatient care following a lymph node dissection. In five states, California, Georgia, Maine, Montana, and New York, the physician determines the minimum length of stay. In the remaining seven states, six states (New Mexico, Oklahoma, Rhode Island, Texas, Virginia, and West Virginia) provide a minimum stay of at least 24 hours following a lymph node dissection, and Connecticut provides a minimum length of stay of at least 48 hours following such a procedure. In addition, 21 states currently require insurers to cover inpatient care following a mastectomy.¹⁰

III. Effect of Proposed Changes:

Section 1. Provides that this act may be cited as the “Mary B. Hooks Act.”

⁸ Chapter 97-48, L.O.F.

⁹ *Proposed Lymph Node Dissection Statute, Report to the Agency for Health Care Administration and Legislative Committees of Substantive Jurisdiction*, American Cancer Society, Florida Division, March 18, 2008.

¹⁰ *National Cancer Institute, State Cancer Legislative Database Program*. Bethesda: National Cancer Institute, June 30, 2005.

Sections 2, 3, and 4. Amend ss. 627.64171 (individual health policies), 627.66121 (group health policies), and 641.31 (HMO contracts), F.S., relating to coverage for breast cancer treatment. These sections require that, if an insurance policy or HMO contract provides coverage for breast cancer treatment, the policy or contract may not limit inpatient hospital coverage for lymph node dissections to any period of time that is less than that determined by the treating physician to be medically necessary in accordance with prevailing medical standards. The bill also requires that such policies or contracts provide outpatient follow-up care for a lymph node dissection consistent with prevailing medical standards. The bill specifies that these provisions do not require an insured patient to have a lymph node dissection in the hospital or stay in the hospital for any fixed period following a lymph node dissection.

This mandated coverage would apply to individual and group health insurance policies and HMO contracts. The bill applies to small group policies, except for the standard, basic, and limited plans, which are exempt from mandated benefit laws unless the law is made expressly applicable to such policies.¹¹ This mandated coverage would apply to Florida residents covered under group policies issued outside of Florida, due to the cross-reference in the out-of-state-group statute¹² to a section amended by this bill (s. 627.66121, F.S.).

In summary, this bill applies the same requirements for coverage for a lymph node dissection that currently apply to coverage for a mastectomy.

Section 5. Provides that this act will take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹¹ S. 627.6699(16), F.S.

¹² S. 627.651(4), F.S.

B. Private Sector Impact:

Since lymph node dissections are an important part of staging and determining breast cancer treatments and outcomes, patients incurring out-of-pocket expenses associated with limited inpatient or outpatient care would benefit from the implementation of this bill. This mandate would apply to individual, small group (except for standard, basic, and limited plans), large group, and out-of-state policies and HMO contracts.

Since lymph node dissections assist the physician in determining the need for and course of subsequent therapy, based upon whether the cancer has spread beyond the breast, the inpatient and outpatient care is likely to be already covered or provided by an insurer or HMO.

To the extent an insurer or HMO limits such coverage, this mandate would cause an indeterminate increase in premiums. An estimated 50 percent of all employers in the U.S. are self-insured and thus exempt under ERISA (federal Employee Retirement Income Security Act of 1974, which regulates such plans) from providing state mandated benefits, as required by this bill. In addition, the bill does not apply to a standard, basic, or limited benefit policy issued in the small group market, since these policies are not subject to a mandated benefit without a specific reference to such small group policies in the law. However, the standard, basic, and limited benefit plans represent an estimated ten percent or less of the small group market.

If such coverage were not currently provided, insurers and HMOs would be required to make new form and rate filings for all affected policy forms and rates with the Office of Insurance Regulation, in order to comply with the provisions of the bill. The associated administrative costs for filing the forms and rates are indeterminate.

C. Government Sector Impact:

The bill does not have a direct impact on the Office of Insurance Regulation, which regulates rates, forms, policies, and contracts.

The fiscal impact on the Division of State Group Health Insurance of the Department of Management Services related to the mandated coverage in the bill is indeterminate at this time. The estimated cost to notify state employees of changes in covered benefits is \$67,860.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 624.215, F.S., requires proponents of legislative proposals mandating health coverage to submit a report to the Agency for Health Care Administration and the legislative committees having jurisdiction that assesses the social and financial impacts of the proposed coverage. The Florida Division of the American Cancer Society submitted a report.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
