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INSURANCE

Individual or Group Accident and Sickness Insurance: Provide Mandatory Coverage for Certain Cancer Tests

CODE SECTIONS:	O.C.G.A. §§ 33-29-3.2, 33-30-4.2 (amended)
BILL NUMBER:	HB 538
ACT NUMBER:	1146
SUMMARY:	The Act requires individual and group accident and sickness insurance policies to contain coverage for mammograms and Papanicolaou smears (Pap smears) for women and prostate specific antigen tests for men. Insurers must provide this coverage only for the categories of women and men specifically stated in the Act. The coverage is mandatory, but is subject to some limitations and exclusions which may be approved by the Insurance Commissioner.
EFFECTIVE DATE:	July 1, 1992

History

One out of nine women will get breast cancer.¹ This number has increased from one in twenty in 1961 to one in ten in 1985 to what it is today.² Last year close to 45,000 women died from breast cancer.³ It was the leading cause of cancer related deaths for black women.⁴ Early detection could lower the death rate in women up to thirty percent.⁵ One doctor stated that according to the National Cancer Institute, in 1990, while this country spent \$12 billion treating cancer, it only spent \$3 billion on early detection or prevention.⁶ Mammography, an x-ray screening device for early breast cancer detection, can reduce the cost of treating advanced cancer by five times.⁷ The U.S. Preventive Services

1. OFFICE OF THE INSURANCE COMMISSIONER, REPORT ON H.B. 538: MAMMOGRAMS AND PAP SMEARS 1 (Feb. 17, 1992) [hereinafter COMMISSIONER'S REPORT].

2. *Id.*

3. Phyllis Perry, *Bill Makes Insurance Cover Tests for Cancer*, ATLANTA J. & CONST., Feb. 18, 1992, at D1 (Insurance Commissioner Tim Ryles said, "Last year 45,000 women—wives, mothers, sisters, daughters—died from breast cancer").

4. *Id.*

5. COMMISSIONER'S REPORT, *supra* note 1, at 3.

6. R. Allen Lawhead, Jr., *Letters to the Editor: Early Detection Can Stop Women Dying From Cancer*, ATLANTA CONST., Nov. 6, 1991, at A10.

7. COMMISSIONER'S REPORT, *supra* note 1, at 2. "It is about five times more expensive to treat breast cancer after it has spread to distant organs (at a cost of about \$100,000) than when it is still confined to the breast." *Id.*

Task Force found that the only early detection devices which have proven highly effective are the mammogram and Pap smear.⁸ At least thirty-three states mandate insurance coverage for the effective mammogram, and at least nine of those mandate coverage for the Pap smear.⁹

HB 538

In response to the startling statistics of the cancer rate and a push for preventive health measures, the 1992 General Assembly adopted HB 538 which requires insurance coverage for early detection tests.¹⁰ The Act was passed to save money and lives.¹¹

The Act amends Code sections 33-29-3.2, relating to individual accident and sickness coverage, and 33-30-4.2, relating to group coverage.¹² Previously, coverage for mammogram and Pap smears was optional and prostate tests were not mentioned at all.¹³ These sections now mandate insurers in this state to cover mammograms, Pap smears, and prostate tests for certain categories of high risk men and women.¹⁴

The Act defines what categories of men and women are required to be covered, what tests are required, and what type of insurance policies are affected.¹⁵ First, a "female at risk" under the Act is one who has a personal history of breast cancer or of biopsy which has proven benign, who has a grandmother, mother, sister, or daughter who has had the

8. *Id.* at 2-3.

9. *Id.* at 4.

10. Telephone Interview with Rep. Mable Able Thomas, House District No. 31 (Apr. 28, 1992) [hereinafter Thomas Interview]. Rep. Thomas said that this is a bill whose time has come. *Id.* Perry, *supra* note 3. Rep. Wesley Dunn, Chairman of the House Insurance Committee, said at a public forum on HB 538 that "I don't think you have to convince anybody up here of the need for this legislation." *Id.*

11. Thomas Interview, *supra* note 10. Rep. Thomas said the Act will save the lives of men and women in the State of Georgia. Perry, *supra* note 3. Not everyone supported the bill. Bert Fridlin, state director of the National Federation of Independent Business spoke in opposition to the bill saying that "insurance was never set up to cover all preventive tests." *Id.*

12. O.C.G.A. §§ 33-29-3.2, 33-30-4.2 (Supp. 1992). The changes to the two sections are identical. For purposes of this article, the changes will only be discussed once and cited only to section 33-29-3.2, but the subsection numbers correspond directly to section 33-30-4.2, the group coverage section.

13. 1990 Ga. Laws 1057 (formerly found at O.C.G.A. § 33-29-3.2(b) (1985)). Insurers "shall be required . . . to offer, either as a part of or as an optional endorsement to each such policy" coverage for mammograms and Pap smears. *Id.* Rep. Thomas remarked that the bill as a mandatory option did not go far enough because the cancer rates were still rising. Thomas Interview, *supra* note 10.

14. O.C.G.A. §§ 33-29-3.2, 33-30-4.2 (Supp. 1992).

15. *Id.* § 33-29-3.2(a) (Supp. 1992).

disease, or who has not had a child before the age of 30.¹⁶ This list of characteristics was added by the House Committee on Insurance.¹⁷ The original language was more broad and allowed for coverage for tests "when recommended by a physician for a female . . . where needed for diagnostic purposes or when she, her mother, or her sister has had a prior history of breast cancer."¹⁸

The Act defines a mammogram and gives the frequency of the administration of the tests which must be covered for certain age groups of women.¹⁹ A mammogram is defined as "any low-dose radiologic screening procedure for the early detection of breast cancer."²⁰ The Act also includes as part of the covered procedure the physician's interpretation of the test results.²¹ The Senate Committee Substitute²² also included "interpretation by a radiologist experienced in mammograms," recognizing that physicians are not always the ones to read x-rays, and allowing for consultation.²³

The Act describes the classes of women whose insurance must cover the cost of mammograms.²⁴ Coverage is mandated once as a "baseline" mammogram for women ages 35-40, once every two years for women 40-50, once a year for women 50 and over, and anytime when ordered by a doctor for a woman at risk as defined previously.²⁵ This breakdown mirrors the guidelines set forth by the American Cancer Society and is supported by the National Cancer Institute and the American College of Radiology.²⁶

The Act also defines a Pap smear as "an examination . . . of the tissues of the cervix of the uterus for the purpose of detecting cancer."²⁷ To ensure accuracy, this test must be performed in accordance with the standards of the American College of Pathologists.²⁸ This test, unlike the mammogram, does not have age limitations, but is covered whenever "ordered" by a doctor up to once a

16. *Id.* § 33-29-3.2(a)(1) (Supp. 1992).

17. HB 538 (HCS), 1992 Ga. Gen. Assem.

18. HB 538, as introduced, 1992 Ga. Gen. Assem.

19. O.C.G.A. § 33-29-3.2(a)(2)(A)-(D) (Supp. 1992).

20. *Id.* § 33-29-3.2(a)(2) (Supp. 1992). This definition is consistent with the recognized importance of the quality assurance and accuracy demanded for early detection. COMMISSIONER'S REPORT, *supra* note 1, at 4.

21. O.C.G.A. § 33-29-3.2(a)(2) (Supp. 1992).

22. HB 538 (SCS), 1992 Ga. Gen. Assem.

23. O.C.G.A. § 33-29-3.2(a)(2) (Supp. 1992).

24. *Id.* § 33-29-3.2(a)(2)(A)-(D) (Supp. 1992).

25. *Id.*

26. COMMISSIONER'S REPORT, *supra* note 1, at 3.

27. O.C.G.A. § 33-29-3.2(a)(3) (Supp. 1992).

28. *Id.*

year, or more often if necessary.²⁹ The original bill used the word "recommended" instead of ordered.³⁰

The Act defines the policies covered as "any benefit plan, contract, or policy *except* a disability income policy, specified disease policy, or hospital indemnity policy."³¹ The mandated coverage only applies to general health insurance policies.³² The bill as originally introduced did not include the exceptions, but they were included in the House committee substitute.³³

Finally, the Act defines a prostate specific antigen test in accordance with the standards established by the American College of Pathologists.³⁴ The original bill did not contain this coverage for men at all, but it was added by the House Committee with no opposition from the original supporters of the bill.³⁵ The bill was labeled a profamily measure with this addition.³⁶

The Act mandates coverage of the previously defined tests.³⁷ Any insurer of women in the state, as a part of an individual or group accident or sickness policy, "shall include" coverage for mammograms and Pap smears at least as minimally required under the Act.³⁸ Additionally, any insurer of men shall include prostate test coverage as described annually for men forty-five or older and men forty or older when ordered by a physician.³⁹ This language changes the existing law which did not mandate this coverage.⁴⁰

The Act does provide some limitations on the coverage apart from the technical definitions of what is covered. First, the coverage "may be subject to such exclusions, reductions, or other limitations as to coverages, deductibles, or coinsurance provisions as may be approved by the Commissioner."⁴¹ This allows insurers to keep the same deductible

29. *Id.*

30. HB 538, as introduced, 1992 Ga. Gen. Assem.

31. O.C.G.A. § 33-29-3.2(a)(4) (Supp. 1992) (emphasis added).

32. The bill will impact forty percent of the insurance business in Georgia. Thomas Interview, *supra* note 10.

33. Compare HB 538, as introduced, 1992 Ga. Gen. Assem., with HB 538 (HCS), 1992 Ga. Gen. Assem. The language found in the House committee substitute was adopted by the Act. See O.C.G.A. § 33-29-3.2(a)(4) (Supp. 1992).

34. O.C.G.A. § 33-29-3.2(a)(5) (Supp. 1992). The Act defines a prostate specific antigen test as a measurement "of a substance produced by the epithelium to determine if there is any benign or malignant prostate tissue." *Id.*

35. Thomas Interview, *supra* note 10; see HB 538 (HCS), 1992 Ga. Gen. Assem.

36. Thomas Interview, *supra* note 10. Rep. Thomas remarked that the bill is a profamily, consumer-driven bill. *Id.*

37. O.C.G.A. § 33-29-3.2(b) (Supp. 1992).

38. *Id.*

39. *Id.*

40. 1990 Ga. Laws 1057 (formerly found at O.C.G.A. § 33-29-3.2 (1985)).

41. O.C.G.A. § 33-29-3.2(c) (Supp. 1992).

and coinsurance rates while ensuring that the Insurance Commissioner retains control over any limits the insurers may place on the coverage.⁴² The Act also provides that nothing in the Act shall limit the standard preferred provider organizations from carrying differing levels of benefits.⁴³ Finally, the Act provides that insurers are not limited to the minimum requirements of the Act and may provide greater or more favorable benefits than required.⁴⁴

Susan Rappa

42. The original bill did not leave these exclusions subject to the Insurance Commissioner's approval. See HB 538, as introduced, 1992 Ga. Gen. Assem.

43. O.C.G.A. § 33-29-3.2(f) (Supp. 1992).

44. *Id.* § 33-29-3.2(d) (Supp. 1992).