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## INSURANCE

### *Insurance Generally: Prohibit Disparate Insurance Coverage Between Physical Disorders and Mental Health Disorders Under Certain Conditions*

**CODE SECTIONS:** O.C.G.A. §§ 33-24-28.1 to -29 (amended), -29.1 (new)

**BILL NUMBER:** SB 620

**ACT NUMBER:** 813

**GEORGIA LAWS:** 1998 Ga. Laws 736

**SUMMARY:** The Act provides for mental health parity under certain conditions. The Act applies to individual, small group, and large group policies; self-insured companies are exempted from the Act. In general, an employer is not required to offer mental health insurance coverage. However, if such coverage is offered, the Act provides that coverage of mental health disorders must be as extensive, provide the same degree of coverage, and provide the same annual lifetime dollar limits as coverage of physical disorders. Under the Act, separate deductibles and separate out-of-pocket limits continue to apply under small and large group health insurance plans. Additionally, the Act permits different limits on inpatient and outpatient treatment days for mental health disorders under individual and small group plans. Moreover, for all plans except individual plans, the Act has a built-in repeal date of January 1, 2000, if parity for mental health disorders causes an increase of insurance premiums exceeding two percent.

**EFFECTIVE DATE:** July 1, 1998

*History*

Generally, people who have insurance have little difficulty obtaining coverage for physical ailments.<sup>1</sup> However, in the past, due to limitations on coverage in insurance plans, such as caps on treatment sessions and lack of coverage for certain mental disorders, people often found a “different story” when they sought treatment for mental health disorders.<sup>2</sup> However, the government is taking steps toward establishing parity between mental health and physical health insurance coverage,<sup>3</sup> and recent federal<sup>4</sup> and state<sup>5</sup> legislation may lead to changes in the current discriminatory insurance coverage of mental illnesses.<sup>6</sup>

SB 245,<sup>7</sup> which failed to pass the 1997 Georgia General Assembly, began as a stronger mental health parity bill than the current Act.<sup>8</sup> SB 245, as introduced in 1997, mandated parity for certain group insurance policies.<sup>9</sup> While some mental health organizations<sup>10</sup> supported the broadest possible parity bill, the Georgia Chamber of Commerce<sup>11</sup> and insurance organizations, such as the Georgia Association of Health Maintenance Organizations (HMOs), opposed the mandatory proposals, taking the position that “mandates will increase rates and shove people out of the market.”<sup>12</sup> Advocates,

1. See Andy Miller, “Mental Health Parity” Getting Lawmaker Support, ATLANTA J. & CONST., Feb. 24, 1998, at C4 (discussing Rep. Michele Henson’s personal experience with the lack of parity between mental health and physical health coverage).

2. *Id.*

3. See Telephone Interview with Cynthia Wainscott, Director, Mental Health Association of Georgia (May 21, 1998) [hereinafter Wainscott Interview].

4. See Mental Health Parity Act of 1996, 29 U.S.C. § 1185a (Supp. 1998); 42 U.S.C. § 300gg-5 (Supp. 1998).

5. See Wainscott Interview, *supra* note 3 (stating that about 20 states have passed a version of mental health parity).

6. See *id.* (citing survey conducted by University of Georgia finding that 90% of Georgians surveyed believed that insurance should cover mental illness).

7. See SB 245, as introduced, 1997 Ga. Gen. Assem.

8. See Telephone Interview with Ellen Jaeger, Director of Public Policy, Mental Health Association of Georgia (May 22, 1998) [hereinafter Jaeger Interview]. Compare SB 245, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. §§ 33-24-28.1 to -29.1 (Supp. 1998).

9. See SB 245, as introduced, 1997 Ga. Gen. Assem.

10. See Wainscott Interview, *supra* note 3. One such mental health organization is the Mental Health Association of Georgia, which is backed by the Coalition for Advocates of Georgia Elderly (Co-AGE). See *id.*

11. See Jaeger Interview, *supra* note 8.

12. *Mental Health Parity Bills Moving Through States*, BESTWIRE, Apr. 17, 1998, available in LEXIS, News Library, CURNWS file [hereinafter *Parity*].

armed with government studies on the cost increases associated with mental health parity, stated that cost increases were actually very modest, with increases as low as one percent.<sup>13</sup> While this stronger version of the bill passed the Georgia Senate,<sup>14</sup> SB 245 did not succeed in the House and, consequently, failed to pass in the 1997 legislative session.<sup>15</sup>

In 1998, Senators Connie Stokes and Charles Walker sponsored a new mental health parity bill, SB 620.<sup>16</sup> Senator Walker sponsored the bill because of his belief that mental health should be treated the same as physical health relative to coverage and illnesses.<sup>17</sup> After working with the Mental Health Association, Senator Connie Stokes sponsored the bill primarily because families would benefit from the bill.<sup>18</sup> Further, Senator Guy Middleton publicly endorsed the bill, noting that "the cost to society [of mental illness] is great."<sup>19</sup>

### *SB 620*

#### *Introduction*

The Act amends Article 1 of Chapter 24, Title 33 by amending Code sections 33-24-28.1, relating to coverage for the treatment of mental disorders, and -29, relating to Medicare supplemental health insurance and small group plans, and by adding Code section 33-24-29.1, relating to large group policies providing medical benefits.<sup>20</sup> Since most of the controversial points, including a mandate for mental health parity for group plans, had already been debated in 1997 under SB 245, the Act passed as introduced.<sup>21</sup> The Senate passed the Act by a vote of forty-four to two<sup>22</sup> and there was only one dissenting vote in the House.<sup>23</sup>

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13. See Wainscott Interview, *supra* note 3; *Mental Health Parity: Government Study Finds Modest Cost*, HEALTH LINE, Mar. 26, 1998, available in LEXIS, News Library, CURNWS file.

14. See Miller, *supra* note 1.

15. See 1997 Georgia House of Representatives First Reader Summary (last updated on Apr. 20, 1998) <[http://www2.state.ga.us/legis/1997\\_98/leg/sum/sb245.htm](http://www2.state.ga.us/legis/1997_98/leg/sum/sb245.htm)>.

16. See SB 620, as introduced, 1998 Ga. Gen. Assem.

17. See E-mail Interview with Sen. Charles Walker, Senate District No. 22 (May 29, 1998) [hereinafter Walker Interview].

18. See Telephone Interview with Sen. Connie Stokes, Senate District No. 43 (June 18, 1998) [hereinafter Stokes Interview].

19. Miller, *supra* note 1 (quoting Sen. Guy Middleton).

20. See O.C.G.A. §§ 33-24-28.1, -29, -29.1 (Supp. 1998).

21. See Walker Interview, *supra* note 17; Compare SB 620, as introduced, 1998 Ga. Gen. Assem., with O.C.G.A. §§ 33-24-28.1, -29, -29.1 (Supp. 1998).

22. See Jaeger Interview, *supra* note 8; Georgia Senate Voting Record, SB 620

*Definitions*

The Act defines “mental disorder” as “hav[ing] the same meaning as defined by *The Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association) or *The International Classification of Diseases* (World Health Organization) . . . or as the Commissioner may further define such term by rule and regulation.”<sup>24</sup> The Act is broader than some mental health parity bills introduced in other states because it does not limit coverage to a narrow, exhaustive list of mental disorders.<sup>25</sup> Moreover, the Act is distinctive because it includes substance abuse in the definition of mental disorder.<sup>26</sup>

*Applicability*

While the Act does set forth differing parity requirements, depending on whether the insurance plan is an “individual accident and sickness insurance policy”<sup>27</sup> or a “group or blanket accident and sickness insurance policy,”<sup>28</sup> the Act does not exclude small companies that employ between two and fifty people.<sup>29</sup> In this respect, the Act is broader than SB 245, as introduced in the 1997 session, which excluded small companies.<sup>30</sup> However, the scope of the Act may prove to be limited because it does not apply to self-insured companies, which include nearly all large companies.<sup>31</sup>

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(Feb. 19, 1998) <<http://www.ganet.org/cgi-bin/pub/leg/legdoc?billname=1997/SB620&docpart=status>>.

23. See Georgia House of Representatives Voting Record, SB 620 (Mar. 18, 1998) <[http://www2.state.ga.us/Legis/1997\\_98/votes/vh98677.htm](http://www2.state.ga.us/Legis/1997_98/votes/vh98677.htm)>.

24. O.C.G.A. § 33-24-28.1(a)(2) (Supp. 1998).

25. See Wainscott Interview, *supra* note 3 (commenting that studies show it only costs an additional .2% to cover all mental illnesses).

26. See *id.* (commenting that it is “amazing” that the Act includes substance abuse).

27. O.C.G.A. § 33-24-28.1 (Supp. 1998).

28. *Id.* §§ 33-24-29 to -29.1.

29. See Wainscott Interview, *supra* note 3.

30. See Jaeger Interview, *supra* note 8.

31. See Telephone Interview with Robert J. Gabriele, Senior Vice President, National Mental Health Association (May 22, 1998) (stating that approximately 30%-40% of people in any given state will be covered by a state parity bill); see also Benjamin Boley et al., *Bad Case for Mental Health*, N.J. L.J. 24 (Feb. 23, 1998) (noting that under Employee Retirement Income Security Act, states may not regulate self-insured plans).

*Specific Requirements*

The Act requires every insurer “to make available as part of, or as an optional endorsement to all such policies providing major medical insurance coverage . . . , coverage for the treatment of mental disorders.”<sup>32</sup> Unlike SB 245, however, the Act is not a mandate.<sup>33</sup> Instead, the Act only requires that if an employer offers insurance coverage for mental health, then that mental health coverage must be similar to the policy holder’s physical health coverage.<sup>34</sup> Moreover, the policyholder may elect not to purchase the optional mental health coverage made available under the Act.<sup>35</sup> In that case, the Act does not prohibit disparate coverage of mental disorders and physical disorders in the same insurance plan.<sup>36</sup>

Addressing individual plans, the Act provides that any “limitations as to coverages, deductibles, or coinsurance provisions”<sup>37</sup> that apply to mental disorders shall not differ from those that apply to physical disorders.<sup>38</sup> However, the Act continues to permit caps on the number of treatment days for mental disorders, while not placing similar caps on physical disorders.<sup>39</sup> Further, for each policy year, insurers are not required to cover more than thirty days of inpatient treatment or forty-eight outpatient visits for mental disorders.<sup>40</sup>

The Act also addresses small group plans.<sup>41</sup> The coverage requirements for small group plans parallel those of individual plans in that every insurer must make available, either as part of its plan or as an optional endorsement, “coverage [which is] at least as extensive and provide[s] at least the same degree of coverage and the same annual and lifetime dollar limits . . . as that provided by the respective plan . . . for the treatment of . . . physical illnesses.”<sup>42</sup> As with

32. Prepared Summary of SB 620 by Sen. Stokes, Senate District No. 43 [hereinafter Stokes Summary] (available in Georgia State University College of Law Library).

33. See Parity, *supra* note 12.

34. See Wainscott Interview, *supra* note 3.

35. See Parity, *supra* note 12.

36. See O.C.G.A. § 33-24-28.1(e) (Supp. 1998).

37. *Id.* § 33-24-28.1(c).

38. See *id.*

39. See *id.* § 33-24-28.1(b).

40. See *id.*

41. See *id.* § 33-24-29(c); see also Stokes Summary, *supra* note 32.

42. O.C.G.A. § 33-24-29(c) (Supp. 1998); see also Jane Bryant Quinn, *Mentally Speaking Reform May Be Enough to Make You Sick*, PITTSBURGH POST-GAZETTE, Feb. 23, 1998, at E1 (stating that previously, lifetime caps on payments for mental disorders were commonly \$50,000 or \$100,000, compared to physical disease, which was often

individual plans, the Act allows small group insurers to provide disparate coverage for mental health and physical health illnesses in regard to length of inpatient stays and number of outpatient treatment visits.<sup>43</sup> However, for small group plans, the Act does not state the maximum number of days that an insurer is required to cover inpatient and outpatient treatment.<sup>44</sup> Further, for small groups plans, the Act explicitly allows deductibles, copayments,<sup>45</sup> and out-of-pocket limits that apply only to the treatment of mental disorders and not to physical illnesses.<sup>46</sup> Still, the Act approaches parity by providing that “the separate deductible that applies to the treatment of mental disorders shall not exceed the deductible allowed for medical or surgical coverages.”<sup>47</sup> Moreover, while separate out-of-pocket limits may apply to mental disorders, in general, those limits may not exceed the maximum out-of-pocket limits for physical illnesses.<sup>48</sup> Of note, specific coverage requirements for small group plans are satisfied if such coverage is “made available to the master policyholder of such plan.”<sup>49</sup>

Finally, the Act addresses large group plans.<sup>50</sup> The coverage requirements for large group plans is basically the same as that for small group plans; however, there is one major difference between the two types of plans.<sup>51</sup> For large group plans, the Act prohibits optional endorsements from containing “any exclusions and limitations as to coverages, including . . . limits on the number of inpatient treatment days and outpatient treatment visits which apply to the treatment of mental disorders.”<sup>52</sup> This provision was not heavily opposed by representatives from the insurance industry,<sup>53</sup> one reason may be that

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capped at \$1,000,000).

43. See O.C.G.A. § 33-24-29(c) (Supp. 1998); Stokes Summary, *supra* note 32.

44. Compare O.C.G.A. § 33-24-29(c) (Supp. 1998), with *id.* § 33-24-28.1(b).

45. See Wainscott Interview, *supra* note 3 (commenting that copayments can still be higher for treatment of mental disorders).

46. See O.C.G.A. § 33-24-29(d)(2) (Supp. 1998); Stokes Summary, *supra* note 32.

47. Stokes Summary, *supra* note 32.

48. See O.C.G.A. § 33-24-29(d)(2) (Supp. 1998).

49. *Id.* § 33-24-29(f). Generally, there is only one master policy when an insurance policy is written to cover a group of persons for group insurance. See BLACK'S LAW DICTIONARY 976 (6th ed. 1990). However, under the Act, it is the individual employees, not the master policy holder (*i.e.*, the employer) who may elect whether to receive mental health coverage. See Stokes Interview, *supra* note 18.

50. See Stokes Summary, *supra* note 32.

51. See *id.*

52. *Id.*

53. See Stokes Interview, *supra* note 18.

most large group plans are employer managed and, therefore, not covered by the Act.<sup>54</sup>

### *Repeal*

For both small and large group plans, the Act has a built in repeal date of January 1, 2000, which will be triggered in the event of premium increases.<sup>55</sup> The Act requires the Commissioner to collect and analyze data relating to premium increases from the period of July 1, 1998 through October 1, 1999.<sup>56</sup> If the Act results, on average, in an annual rate increase of more than two percent, the Code sections relating to small and large group plans will automatically be repealed.<sup>57</sup> The repeal provision represents a compromise between representatives from the insurance industry, who argued that premiums would increase substantially if the bill were enacted, and the sponsors of the bill, who maintained that all Georgians would benefit from mental health parity.<sup>58</sup>

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54. *See id.*

55. *See* O.C.G.A. §§ 33-24-29(g), -29.1(g) (Supp. 1998).

56. *See id.*

57. *See id.*

58. *See* Stokes Interview, *supra* note 18.