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SB 338: Amendments Relating to Medicaid Postpartum Coverage

Ivona Relja
irelja1@student.gsu.edu

Meredith Elkin
melkin1@student.gsu.edu

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SOCIAL SERVICES

Public Assistance: Amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, Relating to Medical Assistance Generally, so as to Increase Postpartum Coverage Under Medicaid from Six Months to One Year Following the End of the Pregnancy; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 49-4-159 (amended)
BILL NUMBER:	SB 338
ACT NUMBER:	870
GEORGIA LAWS:	2022 Ga. Laws 759
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	This Act amends Medicaid postpartum coverage for mothers from a period of six months to one year. The Department of Human Services will provide postpartum care Medicaid coverage to mothers for a period of one year following the date pregnancy ends.

History

Maternal health coverage remains a hot topic as states continue to enact laws promoting the closure of Medicaid coverage gaps.¹ Because Medicaid provides coverage for almost half of all births nationwide, it plays a significant role in supporting the health of new mothers and their babies.² For years, maternal mortality rates in the United States have significantly increased for all races and age groups; however,

1. *Medicaid Postpartum Coverage Extension Tracker*, KAISER FAM. FOUND. (June 17, 2022), <https://www.kff.org/medicaid/issue-brief/medicaid-postpartum-coverage-extension-tracker/> [<https://perma.cc/B65A-SGDM>].

2. *Health Insurance/Income*, MARCH OF DIMES, <https://www.marchofdimes.org/peristats/data?reg=99&top=11&stop=154&lev=1&slev=1&obj=18> [<https://perma.cc/YJ35-QUXL>] (Dec. 2020) (“In 2020, 42.0% of mothers had Medicaid at the time of birth.”).

states that have expanded Medicaid have shown a decrease in maternal mortality compared to non-expansion states.³

Where does the State of Georgia weigh in? Georgia has one of the highest rates of maternal and infant mortality.⁴ To address this, the Georgia General Assembly passed Senate Bill (SB) 273 during the 2014 Legislative Session.⁵ SB 273 established the Georgia Maternal Mortality Review Committee (MMRC) to “identify the causes and potential solutions to Georgia’s high maternal mortality rates” and develop reports analyzing maternal death cases.⁶ After reviewing approximately 250 maternal deaths between 2012 and 2014, the MMRC found that approximately 101 of the 250 maternal deaths were pregnancy-related.⁷ The 2014 Georgia Maternal Mortality Report further noted that 55% of pregnancy-related deaths occurred within forty-two days postpartum.⁸ African American women accounted for the majority of these pregnancy-related deaths.⁹ Data suggested approximately 60% of the pregnancy-related deaths were preventable.¹⁰

As a result of the MMRC’s findings, the Georgia House of Representatives passed House Resolution (HR) 589 during the 2019 Legislative Session.¹¹ HR 589 created the House Study Committee on Maternal Mortality (the Committee).¹² Acknowledging maternal

3. See DONNA L. HOYERT, NAT’L CTR. FOR HEALTH STAT., MATERNAL MORTALITY RATES IN THE UNITED STATES, 2020, at 4 fig.1, 5 fig.2 (2022); ERICA L. ELIASON, *Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality*, 30 WOMEN’S HEALTH ISSUES 147, 149 fig.1, 150 (2020).

4. CTR. FOR REPROD. RTS., MATERNAL HEALTH IN GEORGIA 1 (2019) [hereinafter MATERNAL HEALTH IN GEORGIA], <https://reproductiverights.org/wp-content/uploads/2020/12/USPA-MHRI-GA-FS-Final-ForPrint-Pages.pdf> [<https://perma.cc/5SUB-2C7Y>]; AM.’S HEALTH RANKINGS, UNITED HEALTH FOUND., HEALTH OF WOMEN AND CHILDREN REPORT 2021, at 6 (2021), https://assets.americashealthrankings.org/app/uploads/2021_ahr_hwc_executive_brief_final.pdf [<https://perma.cc/J8AY-YM67>].

5. 2014 Ga. Laws 337, § 1, at 337–39; H.R. STUDY COMM. ON MATERNAL MORTALITY, FINAL REPORT, at 4 (Ga. 2019) [hereinafter MATERNAL MORTALITY].

6. 2014 Ga. Laws 337, § 1, at 337–38 (codified at O.C.G.A. § 31-2A-16 (2019 & Supp. 2022)); MATERNAL MORTALITY, *supra* note 5.

7. GA. DEP’T OF PUB. HEALTH, MATERNAL MORTALITY REPORT 2014, at 3 (2019), https://reviewtoaction.org/sites/default/files/2021-03/Maternal%20Mortality%20BookletGeorgia.FINAL_hq_%20%281%29.pdf [<https://perma.cc/3PJD-ZXDH>].

8. *Id.* at 10.

9. *Id.*

10. *Id.* at 3.

11. MATERNAL MORTALITY *supra* note 5, at 2; see HR 589, as passed, 2019 Ga. Gen. Assemb.

12. HR 589, as passed, 2019 Ga. Gen. Assemb.

deaths as “a serious public health concern” with “tremendous family and societal impact, affecting diverse populations,” the Committee sought to develop strategies to decrease maternal deaths in Georgia.¹³ The Committee found that the “leading causes of pregnancy-related deaths in Georgia . . . were cardiomyopathy, hemorrhage, cardiovascular and coronary conditions, embolism, preeclampsia and eclampsia, and amniotic fluid embolism.”¹⁴ Following review and testimony by university-based programs and providers, the Committee made numerous recommendations, including to “[e]xtend Georgia’s Medicaid coverage for eligible pregnant women to one-year postpartum to allow for continued access to health care services.”¹⁵

Medicaid and Mothers

Medicaid provides mothers and children with numerous medical care benefits, including immunizations and health check-ups, prescription medications, and dental and vision care.¹⁶ Although federal law requires certain Medicaid benefits, “[s]tates establish and administer their own Medicaid programs and determine the type, amount, duration, and scope of services within broad federal guidelines.”¹⁷ Because most maternal deaths occur postpartum, extending Medicaid coverage to one year post-pregnancy provides uninsured, low-income mothers with resources and benefits to ensure they remain healthy.¹⁸

13. *Id.*

14. MATERNAL MORTALITY, *supra* note 5, at 5.

15. *Id.* at 12.

16. *Family Medicaid*, GA. MEDICAID, <https://medicaid.georgia.gov/family-medicaid> [<https://perma.cc/NRZ9-G66Q>].

17. *Benefits*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/benefits/index.html> [<https://perma.cc/Z5UW-GBQL>].

18. NICOLE L. DAVIS, ASHLEY N. SMOOTS & DAVID A. GOODMAN, DIV. OF REPROD. HEALTH, NAT’L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION, CTRS. FOR DISEASE CONTROL & PREVENTION, PREGNANCY-RELATED DEATHS: DATA FROM 14 U.S. MATERNAL MORTALITY REVIEW COMMITTEES, 2008-2017, at 2 (2019), https://www.cdc.gov/reproductivehealth/maternal-mortality/docs/pdf/MMR-Data-Brief_2019-h.pdf [<https://perma.cc/QP9N-QSZH>].

Gradual Changes

In 2021, Congress passed House Resolution 1319, the American Rescue Plan Act (the Plan).¹⁹ The Plan implemented numerous changes and sought to provide millions of individuals with economic relief by allocating over \$1 trillion to various programs.²⁰ Of note, the Plan provided states with the option “to extend Medicaid coverage up to one year postpartum through a state plan amendment.”²¹ In 2021, Georgia received federal approval for its request to extend coverage through six months postpartum, an improvement over Georgia’s previous Medicaid coverage for new mothers which lasted sixty days.²²

Soon after Georgia received federal approval to extend coverage to six months postpartum, a new bill began moving through the Georgia legislature to extend the approved six months of coverage to twelve months postpartum.²³ SB 338 passed with support from Governor Brian Kemp (R) and the Georgia Department of Community Health,

19. American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

20. See *id.*; *Summary of American Rescue Plan Act of 2021 and Provisions Affecting Hospitals and Health Systems*, AM. HOSP. ASS’N (Mar. 17, 2021), <https://www.aha.org/advisory/2021-03-17-summary-american-rescue-plan-act-2021-and-provisions-affecting-hospitals-and> [<https://perma.cc/AHU3-822L>].

21. Kate Bradford, Khanh Nguyen & Emily Blanford, *States Act on Postpartum Medicaid Coverage*, NAT’L CONF. OF STATE LEGISLATURES (Mar. 29, 2022), <https://www.ncsl.org/research/health/states-act-on-postpartum-medicaid-coverage-magazine2022.aspx> [<https://perma.cc/P68J-UVXD>]; American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9812, 135 Stat. 4, 212 (2021). Before the Plan, states leveraged 1115 Medicaid waivers. Madeline Guth, Elizabeth Hinton, MaryBeth Musumeci & Robin Rudowitz, *The Landscape of Medicaid Demonstration Waivers Ahead of the 2020 Election*, KAISER FAM. FOUND. (Oct. 30, 2020), <https://www.kff.org/medicaid/issue-brief/the-landscape-of-medicaid-demonstration-waivers-ahead-of-the-2020-election/> [<https://perma.cc/4HWB-HM7N>]. 1115 Medicaid waivers provide states with the ability to test different Medicaid approaches from those required by federal statutes. *Id.*

22. *CMS Approves Georgia’s Postpartum Medicaid Extension for New Mothers*, GA. DEP’T OF CMTY. HEALTH (Apr. 21, 2021) <https://dch.georgia.gov/announcement/2021-04-21/postpartum-new-mother-extension> [<https://perma.cc/2XRM-B9XZ>] [hereinafter *CMS Approves*]; RIGHT FROM THE START MEDICAID (RSM), GA. DEP’T OF HUM. SERVS., https://dhs.georgia.gov/sites/dhs.georgia.gov/files/related_files/document/DFCS.RSM%20Medicaid%205.12.pdf [<https://perma.cc/5QEA-LTMX>].

23. See SB 338, as introduced, 2022 Ga. Gen. Assemb.; see also Sam Whitehead, *States Extend Medicaid for New Mothers—Even as They Reject Broader Expansion*, KAISER HEALTH NEWS (June 17, 2022), <https://khn.org/news/article/medicaid-postpartum-extension-mothers-states/> [<https://perma.cc/3NUJ-LXU6>].

paving the way for possible improvements to Georgia's maternal health outcomes.²⁴

Bill Tracking of SB 338

Consideration and Passage by the Senate

Senator Dean Burke (R-11th), a practicing obstetrician and gynecologist, authored SB 338.²⁵ Twenty-five Senators, Democrats and Republicans, signed onto SB 338 as co-sponsors.²⁶ The Senate read SB 338 for the first time on January 24, 2022, and referred the bill to the Senate Committee on Health and Human Services on the same day.²⁷ On February 2, 2022, the Senate Committee favorably reported on the bill by substitute.²⁸ The substitute removed the language marking the beginning of the postpartum care coverage period as the date “the woman gives birth.”²⁹ Instead, the substitute uses the date that “the pregnancy ends” to mark the beginning of the coverage period.³⁰ The Senate read SB 338 for the second time on February 3, 2022, and for a third time on February 7, 2022.³¹ The Senate passed

24. *CMS Approves*, *supra* note 22; see Maya T. Prabhu, *Expansion of Postpartum Medicaid from 6 to 12 Months Heads to Governor's Desk*, ATLANTA J.-CONST. (Apr. 6, 2022), <https://www.ajc.com/politics/expansion-of-postpartum-medicaid-from-6-to-12-months-heads-to-governors-desk/J3M5NQDOSRE37DGFSRXOUI5RY/> [<https://perma.cc/J7W4-J6RB>].

25. SB 338, as introduced, 2022 Ga. Gen. Assemb.; *Sen. Burke Honored by Georgia Hospital Association*, EARLY CNTY. NEWS (July 16, 2019), <https://www.earlycountynews.com/articles/sen-burke-honored-by-georgia-hospital-association/> [<https://perma.cc/URU5-EJLF>].

26. Georgia General Assembly, SB 338, Bill Tracking [hereinafter SB 338, Bill Tracking], <https://www.legis.ga.gov/legislation/61152> [<https://perma.cc/32VJ-MUHH>]. Sponsors include: Sen. Dean Burke (R-11th), Sen. Chuck Hufstetler (R-52nd), Sen. Ben Watson (R-1st), Sen. Kay Kirkpatrick (R-32nd), Sen. Blake Tillery (R-19th), Sen. Mike Dugan (R-30th), Sen. Gloria Butler (D-55th), Sen. Carden Summers (R-13th), Sen. Russ Goodman (R-8th), Sen. Butch Miller (R-49th), Sen. Bill Cowsert (R-46th), Sen. Lindsey Tippins (R-37th), Sen. Bruce Thompson (R-14th), Sen. Max Burns (R-23rd), Sen. Marty Harbin (R-16th), Sen. Bo Hatchett (R-50th), Sen. Burt Jones (R-25th), Sen. Brian Strickland (R-17th), Sen. Lee Anderson (R-24th), Sen. John Albers (R-56th), Sen. Larry Walker, III (R-20th), Sen. Brandon Beach (R-21st), Sen. Freddie Powell Sims (D-12th), Sen. Sonya Halpern (D-39th), and Sen. Ed Harbison (D-15th). *Id.*

27. State of Georgia Final Composite Status Sheet, SB 338, May 19, 2022; SB 338, Bill Tracking, *supra* note 26.

28. State of Georgia Final Composite Status Sheet, SB 338, May 19, 2022.

29. SB 338 (SCS), § 1, p. 1, l. 16, 2022 Ga. Gen. Assemb.

30. *Id.*

31. State of Georgia Final Composite Status Sheet, SB 338, May 19, 2022.

SB 338 by a vote of 54 to 0 on February 7, 2022, ensuring that the legislation traveled to the House well before Crossover Day.³²

Consideration and Passage by the House of Representatives

Representative Sharon Cooper (R-43rd), Chairman of the House Health and Human Services Committee, sponsored SB 338 in the House.³³ The House first read the bill on February 8, 2022, and again on February 10, 2022.³⁴ Although the House Committee favorably reported on the bill on March 23, 2022, SB 338 was withdrawn and recommitted two days later on March 25, 2022.³⁵ On April 4, 2022, the House Committee once again favorably reported on the bill, and the House read SB 338 for the third time.³⁶

Final Passage and the Governor's Signature

On April 4, 2022, the House passed SB 338 and adopted the bill by a vote of 142 to 18.³⁷ The Senate sent SB 338 to the Governor on April 7, 2022.³⁸ Governor Kemp signed SB 338, now Act 870, on May 13, 2022.³⁹ The Act's effective date is July 1, 2022.⁴⁰

The Act

The Act amends Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to medical assistance generally.⁴¹ The overall purpose of the Act is to increase postpartum coverage under Medicaid from six months to one year.⁴²

32. *Id.*; Georgia Senate Voting Record, SB 338, #476 (Feb. 7, 2022). Crossover Day for the 2022 Georgia General Assembly was March 15, 2022. Caitlin Highland, *Crossover Day 2022: Strong Health and Economic Legislation Cross Over, But Dangerous Tax Treat Remain*, GA. BUDGET & POL'Y INST. (Mar. 16, 2022), <https://gbpi.org/crossover-day-2022/> [<https://perma.cc/FE8Q-7HEU>].

33. SB 338, Bill Tracking, *supra* note 26.

34. State of Georgia Final Composite Status Sheet, SB 338, May 19, 2022.

35. *Id.*; SB 338, Bill Tracking, *supra* note 26.

36. State of Georgia Final Composite Status Sheet, SB 338, May 19, 2022.

37. *Id.*; Georgia House of Representatives Voting Record, SB 338, #892 (Apr. 4, 2022).

38. State of Georgia Final Composite Status Sheet, SB 338, May 19, 2022.

39. *Id.*

40. SB 338, Bill Tracking, *supra* note 26.

41. 2022 Ga. Laws 759.

42. *Id.*

Section 1

Section 1 of the Act revises paragraph (2) of subsection (a) of Code section 49-4-159, which relates to Medicaid coverage for postpartum care for mothers.⁴³ The Act increases Medicaid coverage for postpartum care from six months to one year.⁴⁴ Further, the Act changes the event that triggers postpartum coverage.⁴⁵ Originally, the language read that postpartum coverage was triggered “following the date the woman gives birth.”⁴⁶ The Act revised the statute to read “following the date the pregnancy ends.”⁴⁷

Section 2

Section 2 repeals all laws in the Official Code of Georgia Annotated that conflict with the Act.⁴⁸

Analysis

Step Together in the Right Direction

Proponents of SB 338 see it as a first step towards curbing Georgia’s maternal mortality rate.⁴⁹ Between 2012 and 2014, 149 women died “while pregnant or within the year following their pregnancy.”⁵⁰ Of note, African American women made up approximately 60% of the women who died from pregnancy-related causes—deaths which occur during pregnancy or up to one year postpartum.⁵¹ With many pregnancy-associated deaths being preventable, the Medicaid

43. 2022 Ga. Laws 759, § 1, at 759 (codified at O.C.G.A. § 49-4-159 (2022)).

44. *Id.*

45. *Id.*

46. O.C.G.A. § 49-4-159 (2021).

47. 2022 Ga. Laws 759, § 1, at 759 (codified at O.C.G.A. § 49-4-159 (2022)).

48. 2022 Ga. Laws 759, § 2, at 759.

49. Video Recording of Senate Proceedings at 2 hr., 45 min., 45 sec. (Feb. 7, 2022) [hereinafter Senate Proceedings Video] (remarks by Sen. Michael Rhett (D-33rd)), <https://vimeo.com/showcase/9076378?video=673243627> [<https://perma.cc/SN6X-4X4V>].

50. MATERNAL HEALTH IN GEORGIA, *supra* note 4, at 2.

51. *Id.*

expansion from six months to one year is intended to address maternal health concerns and reduce such deaths.⁵²

Senator Nan Orrock (D-36th) said, “What a positive thing it was to see [Senators] come together across party lines and do the right thing.”⁵³ Although legislators commended their colleagues for this positive step forward, some also argued that “it is not doing enough.”⁵⁴ These legislators proposed additional steps to reduce Georgia’s maternal mortality rates, including full expansion of Medicaid to cover more low-income Americans.⁵⁵

Other States Take Similar Steps

With SB 338’s passage, Georgia joins other states that have recently taken action to address maternal mortality concerns.⁵⁶ As of June 17, 2022, nineteen states have implemented a twelve-month extension for postpartum coverage, and twelve states plan to implement such an extension.⁵⁷ Because postpartum Medicaid expansion is a recent development in many states, statistics regarding the impact of the expansion of Medicaid coverage are not yet available. It is expected, however, that the expansion from six months to one year will decrease, or at least slow the increase of, maternal mortality.⁵⁸

Conclusion

Georgia “rank[s] near the bottom in the nation for . . . maternal mortality.”⁵⁹ With SB 338, Georgia takes the next step in an attempt

52. *Id.* at 3; Eliason, *supra* note 3, at 148.

53. Senate Proceedings Video, *supra* note 50, at 2 hr., 50 min., 55 sec. (remarks by Sen. Nan Orrock (D-36th)).

54. Video Recording of House Proceedings at 2 hr., 08 min., 30 sec. (Apr. 4, 2022) (remarks by Rep. Park Cannon (D-58th)), <https://vimeo.com/showcase/8988696?video=695905066> [<https://perma.cc/4TAX-6LKU>].

55. *Id.*; Senate Proceedings Video, *supra* note 50, at 2 hr., 45 min., 44 sec.

56. Andy Miller, *Georgia Senate Backs Longer Medicaid Benefits for Postpartum Women*, GA. PUB. BROAD. (Feb. 8, 2022, 3:34 PM), <https://www.gpb.org/news/2022/02/08/georgia-senate-backs-longer-medicaid-benefits-for-postpartum-women> [<https://perma.cc/5FCV-R69F>].

57. *Medicaid Postpartum Coverage Extension Tracker*, *supra* note 1.

58. See Eliason, *supra* note 3, at 149 fig.1.

59. Interview with Sen. Mike Dugan (R-30th) (May 11, 2022) (on file with the Georgia State University Law Review).

to “significantly reduce” its maternal mortality rate.⁶⁰ Although the impact of SB 338 is yet to be seen, legislators who support increased Medicaid coverage for postpartum care for mothers acknowledge and address Georgia’s “unacceptable” maternal mortality rates.⁶¹

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60. *Id.*

61. *Id.*

