

9-1-1999

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Recommended Citation

Donald L. Thomas, *INSURANCE Insurance Generally: Breast Cancer Patient Care Act*, 16 GA. ST. U. L. REV. (1999).
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INSURANCE

Insurance Generally: Breast Cancer Patient Care Act

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| CODE SECTIONS: | O.C.G.A §§ 33-24-70 to -72 (new) |
| ACT NUMBER: | HB 604 |
| ACT NUMBER: | 270 |
| GEORGIA LAWS: | 1999 Ga. Laws 319 |
| SUMMARY: | The Act requires health insurers to provide a minimum of inpatient medical care coverage for patients who undergo a mastectomy or lymph node dissection. The Act defines “mastectomy” and “lymph node dissection” and other terms used in the language of the Act. The Act further requires insurance carriers to provide notice of this Code section to their insured. |
| EFFECTIVE DATE: | July 1, 1999 |

History

Prior to the Act, Georgia law did not require health insurers to provide coverage for the cost of inpatient medical care following a mastectomy or lymph node dissection.¹ Representatives Gail Buckner of the 95th District, Nan Orrock of the 56th District, Buddy Childers of the 13th District, Terry Coleman of the 142nd District, Michele Henson of the 65th District, and Jim Martin of the 47th District sponsored HB 604 to require that insurance providers provide adequate coverage for such inpatient care.²

Senators Richard Marable of the 52nd District, Nathan Dean of the 1st District, and Eddie Madden of the 47th District originally supported a similar bill, SB 431, in the 1998 legislative session.³ SB 431 passed in the Senate but failed in the House.⁴

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1. See O.C.G.A. § 33-24-71 (Supp. 1999).
 2. See *id.*; SB 604, as introduced, 1999 Ga. Gen. Assem.
 3. See SB 431, as introduced, 1998 Ga. Gen. Assem.
 4. See State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

*HB 604**Introduction*

The bill prohibits insurance companies from categorizing mastectomies and lymph node dissections as inpatient procedures, thereby avoiding the need to pay for these procedures under certain insurance policies.⁵ Instead, the Act allows the patient and the physician to agree upon the length of the patient's hospital stay following such procedure and requires that insurance companies pay for the cost of the patient's recovery time in the hospital.⁶

Consideration by the House Insurance Committee

After reviewing the bill as originally drafted, the House Insurance Committee deleted the proposed language in Code section 33-24-72 that required the patient to agree with the physician when deciding the length of the patient's hospital stay following a mastectomy or lymph node dissection.⁷ The Committee also altered the proposed language in the bill that would limit the definition of the term "Health Benefit Policy" by providing that the term does not include any limited benefit insurance policy as defined within Code section 33-30-12(e)(4).⁸

Further, the Committee removed the time requirement included in the original version of the bill that would have required a specific length of stay following each procedure.⁹ The Committee replaced this provision by adding that the insurance coverage shall continue until the end of the appropriate period as mutually determined between the attending physician and the patient.¹⁰ The Committee also added that coverage must be provided for appropriate follow-up visits, whether these visits at the patient's home or at the doctor's office.¹¹ Also, the

5. See O.C.G.A. § 33-24-72(b) (Supp. 1999).

6. See *id.*

7. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

8. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem. See generally O.C.G.A. § 33-30-12(e)(4) (Supp. 1999).

9. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

10. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

11. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

Committee deleted the provision in the original version of the bill that set minimum periods of coverage following lymph node dissections.¹²

The Committee removed the express provision requiring that the attending physician confer with the patient before shortening the length of hospital stay to less than the proposed minimum.¹³ Further, the Committee deleted the provisions that required follow-up coverage whenever the patient's stay had been shortened to less than the minimum without a conference with the attending physician.¹⁴

The Committee decided not to authorize the Insurance Commissioner to adopt rules and regulations necessary to implement the new Code section.¹⁵ Representative Martin, who co-sponsored the Act, supported the removal of this language because "the statute is self-explanatory, and regulatory change is unnecessary."¹⁶ Further, the Committee removed a provision requiring that insurance companies adjust all contracts relating to the provision of healthcare to reflect changes in services required by the Code section.¹⁷ Finally, the Committee deleted an express provision that stated that the Code section did not affect the Federal Employee's Retirement Income Security Act.¹⁸

From House Committee Substitute to Senate Insurance and Labor Committee

The House passed the bill by substitute and the bill proceeded to the Senate Insurance and Labor Committee.¹⁹ The Senate Committee altered the bill to provide that follow-up visits covered by the insurance carriers could be conducted not only by the attending

12. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

13. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

14. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

15. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

16. Telephone Interview with Rep. Jim Martin, House District No. 47 (June 10, 1999) [hereinafter Martin Interview]. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

17. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

18. Compare HB 604, as introduced, 1999 Ga. Gen. Assem., with HB 604 (HCS), 1999 Ga. Gen. Assem.

19. See State of Georgia Final Composite Status Sheet, May 3, 1999.

physician, but also by a physician's assistant or a registered professional nurse with experience and training in post-operative care.²⁰

From Senate Committee Substitute to Senate Floor Amendment

The Senate Insurance and Labor Committee favorably reported the substitute bill to the Senate floor.²¹ The Senate amended the proposed language of Code section 33-24-72 by replacing the requirement that the attending physician and the patient agree upon the appropriate length of a hospital stay with a requirement that the physician consult with the patient before determining when the patient should be discharged.²² The Senate also replaced the requirement that the attending physician and the patient agree upon whether the physician should conduct follow-up visits at home or in the doctor's office with a requirement that the physician consult with the patient before determining the extent of necessary follow-up procedures.²³

The Senate passed the substitute as amended.²⁴ The House agreed to the Senate changes on March 24, 1999, and Governor Roy Barnes signed the bill on April 4, 1999.²⁵

The Act

Prior to the Act, some insurance companies in Georgia had classified lymph node dissections and mastectomies as outpatient procedures; they thereby avoided the need to pay for hospital inpatient care associated with those procedures.²⁶ The General Assembly, acting on "sufficient scientific data," passed HB 604 to protect breast cancer patients from receiving unsafe and inappropriate treatment.²⁷ The Act states that the term of the patient's hospital stay

20. Compare HB 604 (HCS), 1999 Ga. Gen. Assem., with HB 604 (SCS), 1999 Ga. Gen. Assem.

21. See State of Georgia Final Composite Status Sheet, May 3, 1999.

22. Compare HB 604 (SCS), 1999 Ga. Gen. Assem., with HB 604 (SCSFA), 1999 Ga. Gen. Assem.

23. Compare HB 604 (SCS), 1999 Ga. Gen. Assem., with HB 604 (SCSFA), 1999 Ga. Gen. Assem.

24. See State of Georgia Final Composite Status Sheet, May 3, 1999.

25. See *id.*

26. See O.C.G.A. § 33-24-71(1) (Supp. 1999).

27. *Id.* § 33-24-71(2).

constitutes a clinical decision which the patient and the physician should make—not the patient’s insurance company.²⁸

Opposition to HB 604

The Act encountered minimal opposition; only four representatives and one senator voted against it.²⁹ The insurance industry and its employees voiced some concern about whether the bill would potentially increase the cost of health insurance.³⁰ However, as Representative Martin noted, insurance companies may safeguard against excessive costs by monitoring physicians’ practices to prevent excessive or unnecessary post-surgical stays or follow-up visits.³¹

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28. *See id.* § 33-24-71(3).

29. *See* Georgia House of Representatives Voting Record, HB 604 (Mar. 10, 1999); Georgia Senate Voting Record, HB 604 (Mar. 22, 1999).

30. *See* Martin Interview, *supra* note 16.

31. *See id.*