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## INSURANCE Insurance Generally: Provide Coverage for Medically Necessary Equipment and Supplies for Individuals with Diabetes

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## INSURANCE

### ***Insurance Generally: Provide Coverage for Medically Necessary Equipment and Supplies for Individuals with Diabetes***

CODE SECTION:	O.C.G.A. § 33-24-59.2 (amended)
BILL NUMBER:	HB 1492
ACT NUMBER:	782
GEORGIA LAWS:	2002 Ga. Laws 646
SUMMARY:	The Act creates a provision requiring every major medical and group health insurance policy, group health insurance plan or policy, and any other form of managed or capitated care plans or policies to provide coverage for medically necessary equipment and supplies for individuals with various types of diabetes who adhere to a doctor-prescribed treatment regimen. The Act further requires the office of the Commissioner of Insurance to promulgate rules and regulations relating to standards of diabetes care to become effective July 1, 2002.
EFFECTIVE DATE:	O.C.G.A. § 33-24-59.2(b)(3), May 9, 2002; §§ 33-24-59.2(a) to -(b)(2), -(c) to -(e), July 1, 2002. <sup>1</sup>

#### *History*

In the state of Georgia, more than 370,000 people suffer from different types of diabetes.<sup>2</sup> Untreated, diabetes can lead to serious complications affecting other bodily functions, often resulting in blindness, vascular problems, or death.<sup>3</sup> Many health insurance companies do not cover the costs of medically necessary equipment,

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1. 2002 Ga. Laws 646, § 2, at 647. The § 33-24-59.2(b)(3) of the Act became effective upon approval by the Governor. *See id.*

2. Audio Recording of Senate Proceedings, Apr. 9, 2002 (remarks by Sen. Nadine Thomas), at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter Senate Audio 1].

3. Audio Recording of Senate Proceedings, Apr. 10, 2002 (remarks by Sen. J. Phillip Gingrey), at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter Senate Audio 2].

supplies, pharmacologic agents, and self-management training items that may help to prevent the development of complications.<sup>4</sup> Because many people do not have the funds to pay for needed medical supplies that health insurance companies do not cover, the State spends substantial amounts of money annually to pay for those hospitalized because of complications associated with diabetes.<sup>5</sup>

In 1997, the General Assembly passed legislation allowing, but not requiring, insurance companies to pay for these items.<sup>6</sup> However, insurance companies did very little to cover the needed items.<sup>7</sup> This Act mandates that all insurance companies cover those costs.<sup>8</sup>

### *HB 1492*

#### *Consideration by the House of Representatives*

Representatives Bobby Parham, Thomas Murphy, Ken Birdsong, Butch Parrish, and Dubose Porter of the 122nd, 18th, 123rd, 144th, and the 143rd Districts, respectively, sponsored HB 1492 and introduced it on February 20, 2002.<sup>9</sup> The House Speaker assigned the bill to the House Insurance Committee.<sup>10</sup> On March 19, 2002, the Committee favorably reported a substituted version of the bill.<sup>11</sup> The substituted version added a provision requiring the patient to “adhere to the prognosis and treatment regimen prescribed by a physician” in order for the insurance to pay for the equipment, supplies, and training.<sup>12</sup> As introduced, the Act provided that the benefits would “not be subject to dollar limits, deductibles, or copayment provisions that are greater than those for physical illness generally.”<sup>13</sup> However, the substituted version retained language of Georgia Code section 33-24-59.2(C), subjecting the provided insurance benefits “to the same annual deductibles or coinsurance established for all other covered

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4. Senate Audio 1, *supra* note 2 (remarks by Sen. Nadine Thomas).

5. *Id.*

6. O.C.G.A. § 33-24-59.2 (2001 Supp.).

7. Senate Audio 1, *supra* note 2 (remarks by Sen. Nadine Thomas).

8. *Id.*

9. HB 1492, as introduced, 2002 Ga. Gen. Assem.

10. State of Georgia Final Composite Status Sheet, HB 1492, Apr. 12, 2002.

11. State of Georgia Final Composite Status Sheet, HB 1492, Apr. 12, 2002.

12. *Compare* HB 1492, (cs), *with* HB 1492, as passed, 2002 Ga. Gen. Assem.

13. HB 1492, as introduced, 2002 Ga. Gen. Assem.

benefits within a given policy.”<sup>14</sup> The House passed the bill by a vote of 105 to 46 on March 26, 2002.<sup>15</sup>

### *Consideration by the Senate*

On March 26, 2002, the Senate referred HB 1492 to its Insurance and Labor Committee.<sup>16</sup> On April 2, 2002, the Committee favorably reported the bill.<sup>17</sup> During the Senate debate of the 28th District, Senator Mitch Seabaugh introduced an amendment, to create a new Code section that would prevent any additional coverage mandates for a two-year period until a task team could determine the mandate’s effect on insurance premiums.<sup>18</sup> However, the Senate did not vote on the amendment because it was not germane to the Code section affected by the Act.<sup>19</sup> The Senate vote of 24 to 19 did not yield the needed constitutional majority of votes, so the bill was lost.<sup>20</sup> Senator Nadine Thomas asked for reconsideration, which passed by a vote of 25 to 18.<sup>21</sup> After further debate, the Senate passed the bill without further changes on April 10, 2002.<sup>22</sup> Governor Roy E. Barnes signed the bill into law on May 9, 2002.<sup>23</sup>

### *The Act*

The Act amends Code section 33-24-59.2 by creating a mandate requiring health insurance companies to “provide coverage for medically necessary equipment, supplies, pharmacologic agents, and outpatient self-management training and education” for individuals with various types of diabetes “who adhere to the prognosis and

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14. Compare HB 1492, (cs), with HB 1492, as passed, 2002 Ga. Gen. Assem. See also O.C.G.A. § 33-24-59.2(c) (2001).

15. Georgia House of Representatives Voting Record, HB 1492 (Mar. 26, 2002); State of Georgia Final Composite Status Sheet, HB 1492, Apr. 12, 2002.

16. State of Georgia Final Composite Status Sheet, HB 1492, Apr. 12, 2002.

17. *Id.*

18. Senate Audio 1, *supra* note 2 (remarks by Sen. Mitch Seabaugh).

19. Senate Audio 1, *supra* note 2 (remarks by Sen. Mark Taylor).

20. Georgia Senate Voting Record, HB 1492 (Apr. 9, 2002).

21. Georgia Senate Voting Record, HB 1492 (Apr. 9, 2002).

22. Compare HB 1492, committee substitute, 2002 Ga. Gen. Assem., with HB 1312, as passed, 2002 Ga. Gen. Assem. See also Georgia Senate Voting Record, HB 1492 (Apr. 10, 2002).

23. See 2002 Ga. Laws 646, § 2, 647; State of Georgia Final Composite Status Sheet, HB 1492, Apr. 12, 2002.

treatment regiment prescribed by a physician.”<sup>24</sup> Prior to the Act, insurance companies could choose whether to offer this coverage.<sup>25</sup>

The Act further amends Code section 33-24-59.2 by adding a new subparagraph, requiring the office of the Commissioner of Insurance to “promulgate rules and regulations, relating to standards of diabetes care” and to adopt the rules and regulations “in accordance with the provisions of Code Section 33-2-9.”<sup>26</sup> Additionally, the office of the Commissioner of Insurance must consult with the Department of Human Resources, the American Diabetes Association, and the National Institutes of Health prior to promulgating the rules and regulations.<sup>27</sup>

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24. Compare 1998 Ga. Laws 660, § 1, at 660-61 (formerly found at O.C.G.A. § 33-24-59.2 (Supp. 2001)), with O.C.G.A. § 33-24-59.2 (Supp. 2002).

25. Compare 1998 Ga. Laws 660, § 1, at 660-61 (formerly found at O.C.G.A. § 33-24-59.2 (Supp. 2001)), with O.C.G.A. § 33-24-59.2 (Supp. 2002).

26. Compare 1998 Ga. Laws 660, § 1, at 660-61 (formerly found at O.C.G.A. § 33-24-59.2 (Supp. 2001)), with O.C.G.A. § 33-24-59.2 (Supp. 2002). The office of the Commissioner of Insurance passed temporary regulations regarding the standards for diabetes care. See Notice of Emergency Rulemaking from John W. Oxendine, Commissioner of Insurance (July 1, 2002), available at <http://www.gainsurance.org/documents/EmergencyRuleMaking.asp>. Regulation Chapter 120-2-88-0.11, passed in “order to address timing issues relative to the final promulgation of such regulations,” is effective for a period of 120 days. *Id.* These regulations require a physician to order self-management training based on an individual’s need. See Standards of Diabetes Care—Self-Management Training and Education, Ch. 120-2-88-0.11, § -.03(a)-(c) (Off. of Comm’r of Ins. July 1, 2002). The insurance mandate requires coverage for training of “an insured who has not previously received covered initial training, . . . furnished within a continuous 12-month period . . . [that] does not exceed a total of 10 hours.” *Id.* at § -.03(d)(1)-(3). Additionally, the regulations require that nine hours of the training are to be “in a group setting consisting of 2 to 20 individuals, . . . furnished in increments of no less than one-half hour, . . . [and] may include 1 hour of individual training for an assessment of the insured’s training needs.” *Id.* at § -.03(d)(4)-(6). If no group session is available within two months of the date the physician ordered the training or if the physician documents special needs that would “hinder effective participation in a group training session,” the regulation requires coverage of individual training. *Id.* at § -.03(e). The regulations require coverage of follow-up training, consisting of no more than two hours of individual or group training to address a specific medical condition the physician documented, furnished “within 12 months following any 12 month period after which the insured began the initial or the last follow-up training.” *Id.* at § -.03(f). In order for the training to be covered, the regulations enumerate a list of possible medical conditions the insured must have had present within the year prior to the physician’s order for the training. *Id.* at § -.03(g). Finally, the regulations require that “a certified, registered or licensed health care professional with expertise in diabetes satisfying the criteria for Medicare coverage for diabetes education and training pursuant to 42 CFR Part 410” provide the training. *Id.* at § -.03(h).

27. Compare 1998 Ga. Laws 660, § 1, at 660-61 (formerly found at O.C.G.A. § 33-24-59.2 (Supp. 2001)), with O.C.G.A. § 33-24-59.2 (Supp. 2002).

*Opposition to HB 1492*

Opposition to HB 1492 came primarily from small business owners.<sup>28</sup> Small business owners are concerned that requiring insurance companies to cover these costs will cause their monthly insurance premiums to increase.<sup>29</sup> Because of increased costs associated with previous mandates, many business owners have already been forced to stop providing insurance for their employees' families and, in some cases, for their employees themselves.<sup>30</sup> Senator Mitch Seabaugh noted that one report indicated that previous mandates had an impact of 2% to 30% on premium costs.<sup>31</sup> If small business owners were to discontinue providing insurance for their employees, the result is that less people are insured, as most employees would not pay for the coverage on their own.<sup>32</sup>

Senator Nadine Thomas, of the 10th District, countered by stating that insurance companies were among the richest industries and could therefore afford to provide the coverage.<sup>33</sup> Additionally, Senators Richard Marable and J. Phillip Gingrey, of the 37th District, noted that if diabetes were left untreated, the individual with the disease would suffer complications including blindness, vascular

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28. Senate Audio 1, *supra* note 2 (remarks by Sens. Seth Harp and Mitch Seabaugh); *see also* Senate Audio 2, *supra* note 3 (remarks by Sen. Don Thomas, Seth Harp, Tommie Williams, Richard Marable, and J. Phillip Gingrey); Susan Lacetti Meyers, *General Assembly Clears Several Key Health Care Bills*, ATLANTA J. CONST., Apr. 13, 2002, at E3.

29. Senate Audio 1, *supra* note 2 (remarks by Sen. Mitch Seabaugh).

30. Senate Audio 1, *supra* note 2 (remarks by Sen. Seth Harp); *see also* Senate Audio 2, *supra* note 3 (remarks by Sens. Seth Harp and Tommie Williams); *see also* Susan Lacetti Meyers, *Mandated Health Care Coverage*, ATLANTA J. CONST., Apr. 7, 2002, at F1. According to William Custer, an economist in Georgia State University's Department of Risk Management and Insurance, there is not a noticeable decline after each mandate. *See* Electronic Mail Interview with William Custer, Department of Risk Management and Insurance (July 6, 2002) [hereinafter Custer Interview]. Additionally, most mandates have small effects in the number of people covered or in costs. *Id.*

31. Senate Audio 1, *supra* note 2 (remarks by Sen. Mitch Seabaugh). According to William Custer: Premiums are equal to expected claims plus administration costs and profits. The effect of any mandate is to increase expected claims. To determine the actual increase you would have to project the number of people with diabetes times the increase in their claims as a result of the mandate divided by the total number of people covered. [M]ost mandates don't increase costs significantly because most insurance plans cover the mandated services, the increased costs over what is currently offered is negligible, or because the number of people affected is small relative to the total number of covered lives. However, the cumulative effect of mandates may increase costs, and there are some that are broad enough to have significant impacts.

Custer Interview, *supra* note 30.

32. Senate Audio 2, *supra* note 3 (remarks by Sen. Tommie Williams).

33. Senate Audio 1, *supra* note 2 (remarks by Sen. Nadine Thomas).

problems, and death.<sup>34</sup> The insurance companies will cover the costs of the treatment for these complications, but at a much higher expense that will ultimately be passed on to small businesses.<sup>35</sup>

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34. Senate Audio 2, *supra* note 3 (remarks by Sens. Richard Marable and J. Phillip Gingrey).

35. Senate Audio 2, *supra* note 3 (remarks by Sen. Richard Marable); *see also Bill Requiring Insurance Coverage of Diabetes Supplies Wins Final Approval*, APWIRES, Apr. 10, 2002.