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HB 429 – Insurance: Insurance Generally

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INSURANCE

Insurance Generally: Amend Chapter 24 of Title 33 of the Official Code of Georgia Annotated, Relating to Insurance Generally, so as to Provide that No Health Benefit Plan Shall Restrict Coverage for Prescribed Treatment Based Upon the Insured’s Diagnosis with a Terminal Condition; Provide for Definitions; Provide for Penalties; Provide for Certain Insurance Coverage of Autism Spectrum Disorders; Provide for Definitions; Provide for Limitations; Provide for Premium Cap and Other Conditions; Provide for Applicability; Provide for Related Matters; Provide Effective Dates; Provide for Contingent Repeal; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 33-24-59.10 (amended), -59.18 (new)
BILL NUMBER:	HB 429
ACT NUMBER:	31
GEORGIA LAWS:	2015 Ga. Laws 111
SUMMARY:	The Act prohibits a health benefit plan from restricting coverage for treatment of a terminal condition when the treatment is prescribed by a physician and is consistent with the best practices for treatment of the terminal condition, except in cases that are considered assisted suicide. The Act provides a limited autism coverage guarantee of \$30,000 for covered insurance plans for children six years of age or younger with autism spectrum disorders.
EFFECTIVE DATE:	O.C.G.A. §§ 33-24-59.10, -59.18, July 1, 2015; O.C.G.A. § 33-24-59.10, January 1, 2017 ¹

1. See 2015 Ga. Laws 111, § 3, at 116. Section 3(a) provides that Section 1 and Section 2A of the Act will become effective on July 1, 2015. *Id.* Section 3(b) provides:

Section 2B of this Act shall become effective on January 1, 2017, only if the

History

House Bill (HB) 429 is the combination of HB 429 and Senate Bill (SB) 1 and, therefore, has two distinct parts.² Section 1 addresses terminal conditions³ and Section 2 pertains to autism.⁴

Section 1: Terminal Conditions

In 1997, Oregon enacted its Death with Dignity Act, giving citizens with a terminal illness the option “to end their lives through the voluntary self-administration of lethal medications.”⁵ Since the passage of Oregon’s Death with Dignity Act, physician-assisted suicide has slowly gained acceptance; Washington, Vermont, and California have all passed statutes permitting the practice,⁶ while Montana permits the practice through judicial decision.⁷ According to a May 2015 Gallup poll, over half of Americans believe physician-assisted suicide is a morally acceptable option.⁸ The recent increase in acceptability may be from the highly publicized death of Brittany

amendment to the Georgia Constitution proposed by HR 808 is ratified by the voters at the November, 2016, general state-wide election, in which event Section 2A of this Act shall stand repealed on January 1, 2017. If such constitutional amendment is not so ratified, then Section 2B of this Act shall not become effective and shall stand repealed on January 1, 2017.

Id. HR 808 currently sits in the House Ways & Means Committee. State of Georgia Final Composite Status Sheet, HR 808, May 14, 2015.

2. See generally 2015 Ga. Laws 111.

3. See O.C.G.A. § 33-24-59.18 (Supp. 2015).

4. See O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

5. OR. HEALTH AUTH., DEATH WITH DIGNITY ACT, <https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/index.aspx> (last visited Oct. 30, 2015).

6. *Physician-Assisted Suicide Fast Facts*, CNN, <http://www.cnn.com/2014/11/26/us/physician-assisted-suicide-fast-facts/> (last updated Oct. 6, 2015, 3:25 PM). Washington’s Death with Dignity Act went into effect in 2009, Vermont passed its Patient Choice and Control at End of Life Act in 2013, and California’s End of Life Option Act was signed into law in October 2015. *Id.*; see also CAL. HEALTH & SAFETY CODE §§ 443–443.22 (West, Westlaw through 2015); VT. STAT. ANN. tit. 18, §§ 5281–5292 (West, Westlaw through 2015); WASH. REV. CODE ANN. §§ 70.245.010–70.245.904 (West, Westlaw through 2015).

7. *Baxter v. State*, 224 P.3d 1211 (Mont. 2009).

8. Michael J. New, *Gallup Poll Shows Increased Support for Physician Assisted Suicide*, FIRST THINGS (June 1, 2015), <http://www.firstthings.com/blogs/firstthoughts/2015/06/gallup-poll-shows-increased-support-for-physician-assisted-suicide> (noting that “[i]n 2013, only 45 percent of Americans found doctor assisted suicide ‘morally acceptable[,]’” compared to the May 2015 poll, which “indicated that percentage had risen to 56 percent”).

Maynard in November 2014, which created “a global dialogue” about physician-assisted suicide.⁹

Though physician-assisted suicide was an option for Maynard, many people with terminal conditions strive to maximize their life, but lack the financial resources to do so.¹⁰ Their fight for survival often becomes costly due to the high-priced, often experimental, drugs necessary to combat aggressive diseases.¹¹ For instance, Oregon citizen Barbara Wagner’s last hope for survival was a \$4,000 per month drug that her Oregon health plan did not cover.¹² However, because the drugs for physician-assisted suicide are inexpensive—in this case, only fifty dollars—Wagner’s insurer agreed to cover them.¹³

Representative Ron Stephens (R-164th) also experienced the costs of a terminal condition after his father was diagnosed with aggressive lung cancer and prescribed a \$5,000 per month drug.¹⁴ Though initially given three months to live, Representative Stephens’s father’s cancer is in remission over three years later as a result of the drug.¹⁵

Even though physician-assisted suicide is not a legal option in Georgia,¹⁶ death still results if a patient’s insurance refuses to cover necessary and costly treatments the patient cannot afford alone. Representative Stephens introduced HB 429 to continue Georgia’s pro-life tradition by ensuring that health plans cover all treatments necessary to combat a terminal condition, as long as prescribed by an appropriate healthcare professional.¹⁷

9. Bill Briggs, *Beyond Brittany: Assisted Suicides Happen in Every State, Insiders Say*, NBC NEWS (Oct. 18, 2014, 11:58 AM), <http://www.nbcnews.com/health/health-news/beyond-brittany-assisted-suicides-happen-every-state-insiders-say-n226966>.

10. See, e.g., Susan Donaldson James, *Death Drugs Cause Uproar in Oregon*, ABC NEWS (Aug. 6, 2008), <http://abcnews.go.com/Health/story?id=5517492>.

11. See *id.*

12. *Id.*

13. *Id.* “It was horrible, . . . I got a letter in the mail that basically said if you want to take the pills, we will help you get that from the doctor and we will stand there and watch you die. But we won’t give you the medication to live.” *Id.*

14. See Video Recording of House Insurance Committee, Mar. 10, 2015 at 19 min. 0 sec. (remarks by Rep. Ron Stephens (R-164th)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives/96.aspx> [hereinafter House Committee Video].

15. *Id.*

16. See O.C.G.A. § 16-5-5 (2011 & Supp. 2015); see also Kelly Connors & Vera Powell, *Crimes and Offenses: Homicide*, 29 GA. ST. U. L. REV. 278 (2012).

17. Video Recording of House Proceedings, Mar. 13, 2015 (PM 1) at 1 hr., 45 min., 16 sec. (remarks

Section 2: Ava's Law

Ava Bullard, the Act's namesake, is a ten-year-old girl from Lyons, Georgia who was diagnosed with an autism spectrum disorder when she was two.¹⁸ When first diagnosed, Ava did not speak, respond to her name, play with her toys, or even recognize her mother.¹⁹ Now, as a result of Applied Behavior Analysis (ABA) therapy, Ava is "completely indistinguishable from her peers"²⁰

Experts agree that the key to an autistic child's future success is early diagnosis and treatment.²¹ However, in January of 2015, Georgia was one of only twelve states that did not require insurance companies to cover ABA therapy, even though autism affects approximately 30,000 children in Georgia.²² Without insurance coverage, the necessary ABA therapy is expensive—one Augusta family spent \$115,000 within the first year of their son's diagnosis.²³ Ava's mother, Anna Bullard, campaigned for seven years to guarantee insurance coverage for autism spectrum disorder treatment.²⁴ On April 29, 2015,²⁵ Georgia became the forty-first state to "mandate insurance for children with Autism."²⁶

Legislation similar to Ava's Law was introduced in the Georgia General Assembly in previous years. Previous bills, similar to Ava's Law, include HB 309 by Representative Ben Harbin (R-122nd),²⁷ SB

by Rep. Ron Stephens (R-164th)), www.gpb.org/lawmakers/2015/day-30-crossover-day [hereinafter House Day 30 Video].

18. Anne Hart, *Hart to Heart: A Mom's Fight for Ava's Law*, SAVANNAH MORNING NEWS (Jan. 16, 2015), <http://savannahnow.com/accent/2015-01-16/hart-heart-moms-fight-avas-law>.

19. *Id.*; Caleb Hellerman, *Mothers Fight to Pass Ava's Law for Autism Coverage*, CNN (Mar. 12, 2013, 10:47 AM), <http://www.cnn.com/2013/03/12/health/autism-insurance-coverage/>.

20. Hellerman, *supra* note 19.

21. *Id.* ("In one landmark study, among children who began treatment before turning 3, nearly half improved to the point where they were indistinguishable from same-age peers.")

22. Hart, *supra* note 18; see also Jaye Watson, *The Autism Gap: The Fight for Insurance*, 11 ALIVE (Feb. 19, 2013, 2:39 PM), <http://www.11alive.com/news/article/278329/40/The-Autism-Gap-The-Fight-for-Insurance>. Georgia joined the majority of other states by passing the law around the same time that five other state legislatures enacted similar laws. See Tina Tyus-Shaw, *Ava's Law Impact: Victory for Children with Autism*, WSAV 3 (Apr. 22, 2015, 2:54 AM), <http://www.wsav.com/story/28864468/avas-law-impact-victory-for-children-with-autism>.

23. Hellerman, *supra* note 19.

24. Doug Richards, *Autism Bill Signing Caps Seven Year Struggle*, 11 ALIVE (Apr. 29, 2015, 6:22 PM), <http://www.11alive.com/story/news/2015/04/29/georgia-politics-autism/26597463/>.

25. State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

26. Tyus-Shaw, *supra* note 22.

27. HB 309, as introduced, 2013 Ga. Gen. Assem.

191 by Senator John Albers (R-56th),²⁸ and HB 559 by former Representative Chuck Sims (R-169th).²⁹ Each bill was introduced in the 2013 session but did not pass out of its respective chamber because of “concerns about the high cost and questionable effectiveness of the treatments.”³⁰ Rather, the concept was given to the “non-legislative health insurance mandates committee,” instead of a Georgia legislative committee, for review and a recommendation before the 2014 session.³¹ In the 2014 legislative session, then-Senator Tim Golden (R-8th)³² introduced the bill as SB 397.³³ The bill was paired with the medical marijuana bill and renamed the Kids’ Care Act, but ultimately failed because it never emerged from the House Insurance Committee.³⁴

The Act finally succeeded in 2015 due to a compromise that lowered the amount of required coverage to \$30,000 annually, but allowed Representative Richard Smith (R-134th) to introduce legislation in 2016 that will ask voters to “levy a 0.2[%] sales tax increase to raise as much as \$300 million for autism treatments for children up to [eighteen].”³⁵ Section 2 of the Act was initially introduced as SB 1 by Senator Charlie Bethel (R-54th) and was later combined with HB 429.³⁶ The Act passed both chambers unanimously.³⁷

28. SB 191, as introduced, 2013 Ga. Gen. Assem.

29. HB 559, as introduced, 2013 Ga. Gen. Assem.

30. See *Ava’s Law Never Makes It to House Floor*, TURNT010.COM (May 2, 2014, 1:10 AM), <http://www.turnto10.com/story/25034853/avas-law-never-makes-it-to-house-floor> [hereinafter *Ava’s Law Never Makes It*].

31. Robb D’Arcy, *Ava’s Law – How Will It Affect Individuals with Autism?*, GA. COUNCIL ON DEV. DISABILITIES (Aug. 20, 2013), <http://www.gcdd.org/blogs/gcdd-blog/2518-avas-law-how-will-it-affect-individuals-with-autism.html>.

32. Georgia General Assembly, Senate: Senators, 2013-2014 Regular Session, <http://www.senate.ga.gov/senators/en-US/SenateMembersList.aspx>.

33. SB 397, as introduced, 2014 Ga. Gen. Assem.

34. *Ava’s Law Never Makes It*, *supra* note 30.

35. Greg Bluestein, *Georgia Law Now Guarantees Autism Coverage for Children*, AJC.COM (Apr. 29, 2015), <http://politics.blog.ajc.com/2015/04/29/georgia-law-now-guarantees-autism-coverage-for-children/>; see also HR 808, as introduced, 2015 Ga. Gen. Assem.

36. See discussion *infra* *Bill Tracking of HB 429*.

37. See *infra* notes 50, 68 and accompanying text.

*Bill Tracking of HB 429**Consideration and Passage by the House*

Representatives Ron Stephens (R-164th), Joe Wilkinson (R-52nd), Jason Shaw (R-176th), Matt Dollar (R-45th), Carl Rogers (R-29th), and Sam Teasley (R-37th) sponsored HB 429.³⁸ The House read the bill for the first time on February 23, 2015,³⁹ and the second time on February 24, 2015.⁴⁰ Speaker David Ralston (R-7th) assigned the bill to the House Insurance Committee, which favorably reported the bill on March 11, 2015.⁴¹ The Committee noted the importance of distinguishing the values of Georgians from citizens of other states, namely Oregon, where patients can choose physician-assisted suicide.⁴² This discussion in Committee likely spurred the floor amendment offered by Representative Ed Setzler (R-35th) and Representative Stephens when the bill was on the House floor for a vote.⁴³

Representative Setzler's amendment provided that "treatment," as defined in the bill, did not "include any medication or medical procedure, regardless of where actually prescribed, dispensed, or administered, which if prescribed, dispensed, or administered in this state would constitute assisted suicide in violation of Code Section 16-5-5."⁴⁴ The importance of the amendment was discussed on the House floor and quelled worries of a "death panel."⁴⁵ The amendment ensures that HB 429 will not require Georgia insurance companies to finance an assisted suicide procedure when an individual moves to a state where assisted suicide is legal.⁴⁶ This amendment sought to correct the unintended consequence of funding

38. Georgia General Assembly, HB 429, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/429>.

39. State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

40. *Id.*

41. *Id.*

42. House Committee Video, *supra* note 14.

43. HB 429 (HFA), § 1, p. 1, ln. 21–24, 2015 Ga. Gen. Assem.

44. *Id.*

45. House Day 30 Video, *supra* note 17, at 1 hr., 46 min., 47 sec. (remarks by Rep. Scot Turner (R-21st)).

46. *See id.* at 1 hr., 48 min., 23 sec. (remarks by Rep. Ed Setzler (R-35th)).

assisted suicide in other states, like Oregon.⁴⁷ The House read HB 429 for the third time, with the Amendment to HB 429, on March 13, 2015.⁴⁸ The House adopted the Setzler Amendment by a vote of 105 to 61,⁴⁹ and passed HB 429 as amended by a vote of 170 to 0.⁵⁰

Consideration and Passage by the Senate

Senator Charlie Bethel (R-54th) sponsored HB 429 in the Senate.⁵¹ The Senate read the bill for the first time March 18, 2015, and it was assigned to the Senate Insurance and Labor Committee.⁵² The Senate Insurance and Labor Committee favorably reported the bill by substitute.⁵³ In Committee, HB 429 underwent significant substantive changes and emerged much lengthier, dealing with two pressing issues: insurance for terminal conditions and for autism spectrum disorders.⁵⁴

The Senate read SB 1 on January 13, 2015,⁵⁵ and referred it to the Insurance and Labor Committee.⁵⁶ The Committee favorably reported SB 1 by substitute on January 27, 2015.⁵⁷ The Senate passed the Committee substitute on January 29, 2015, by a vote of 54 to 0.⁵⁸ SB 1 was read by the House for the first time on February 2, 2015, and for the second time on February 3, 2015, but it died in the House Insurance Committee.⁵⁹ SB 1, or Ava’s Law, was revived and usurped by HB 429 in the Senate Insurance and Labor Committee, and it became Sections 2A and 2B of HB 429.⁶⁰

In Committee, HB 429 was an “available” bill for the incorporation of SB 1, and HB 429’s sponsors were willing partners

47. *See id.* at 1 hr., 47 min., 16 sec. (remarks by Rep. Ron Stephens (R-164th)).

48. State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

49. Georgia House of Representatives Voting Record, HB 429, Vote #238 (Mar. 13, 2015).

50. Georgia House of Representatives Voting Record, HB 429, Vote #239 (Mar. 13, 2015).

51. Georgia General Assembly, HB 429, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/429>.

52. State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

53. *Id.*

54. *Compare* HB 429 (HFA), 2015 Ga. Gen. Assem., *with* HB 429 (SCS), 2015 Ga. Gen. Assem.

55. State of Georgia Final Composite Status Sheet, SB 1, May 14, 2015.

56. *Id.*

57. *Id.*

58. Georgia Senate Voting Record, SB 1 (Jan. 29, 2015).

59. State of Georgia Final Composite Status Sheet, SB 1, May 14, 2015.

60. *See* HB 429 (SCS), § 2A–2B, p. 2–6, ln. 42–197, 2015 Ga. Gen. Assem.

for passing the limited autism guarantee bill.⁶¹ In essence, HB 429 passed without opposition in the House and was in Committee when an agreement was reached to pass an autism guarantee bill.⁶²

Section 2A and Section 2B of HB 429 provide for certain insurance coverage for autism spectrum disorders.⁶³ Notably, Section 2A requires insurers to cover accident and sickness contracts, policies, or benefit plans to provide coverage for autism spectrum disorders for children six years of age or under, specifically ABA, up to \$30,000 per year.⁶⁴ Section 2B defines autism as a neurological disorder which usually appears in the first three years of life and prohibits an insurer that provides benefits for neurological disorders from denying such benefits to individuals diagnosed with autism.⁶⁵ Section 3 of the Committee substitute provides for a July 1, 2015, effective date, and specifies that Section 2B will become effective on January 1, 2017, if certain conditions are met.⁶⁶

The Senate read HB 429 for the second time on March 27, 2015, and for the third time on March 31, 2015.⁶⁷ The Senate passed the Committee substitute by a vote of 54 to 0.⁶⁸ On April 2, 2015, the House agreed to the Senate substitute by a vote of 161 to 0.⁶⁹ HB 429 was sent to the Governor on April 9, 2015, and signed into law on April 29, 2015.⁷⁰

The Act

The Act amends Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, preventing health benefit plans from restricting coverage for prescribed treatment based

61. Telephone Interview with Sen. Charlie Bethel (R-54th) (Apr. 13, 2015) [hereinafter Bethel Interview].

62. *Id.*

63. HB 429 (SCS), § 2A–2B, p. 2–6, ln. 42–197, 2015 Ga. Gen. Assem.

64. *See* Bethel Interview, *supra* note 61. When incorporating SB 1 into HB 429, the Committee decreased the autism coverage limit from \$35,000 in SB 1 to \$30,000 in the final version. *Compare* SB 1, as passed Senate, 2015 Ga. Gen. Assem., *with* O.C.G.A. § 33-24-59.10(b) (2013 & Supp. 2015).

65. HB 429 (SCS), § 2B, p. 6, ln. 187–95, 2015 Ga. Gen. Assem.

66. HB 429 (SCS), § 3, p. 6, ln. 199–205, 2015 Ga. Gen. Assem.

67. State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

68. Georgia Senate Voting Record, HB 429 (Mar. 31, 2015).

69. Georgia House of Representatives Voting Record, HB 429 (Apr. 2, 2015); State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

70. State of Georgia Final Composite Status Sheet, HB 429, May 14, 2015.

on the insured's terminal condition diagnosis, and providing certain insurance coverage for autism spectrum disorders.⁷¹

Section 1 of the Act added a new Code section to Chapter 24 of Title 33.⁷² Subsection (a) defines the terms “health benefit plan,”⁷³ “terminal condition,”⁷⁴ and “treatment.”⁷⁵ It also reinforces Georgia’s pro-life stance by emphasizing that “treatment” does not include procedures which constitute assisted suicide in violation of Code section 16-5-5.⁷⁶ Subsection (b) requires health benefit plans to cover physician prescribed, medically appropriate treatment for terminal conditions, “so long as such end of life care is consistent with best practices.”⁷⁷ Subsection (c) describes violations of this Code section,⁷⁸ while subsection (d) states that any such violation constitutes a “per se violation of Chapter 6 of this title,” so all penalties applicable to a Chapter 6 violation apply.⁷⁹

Section 2A of the Act amends Code section 33-24-59.10 by further defining “accident and sickness contract, policy, or benefit plan,”⁸⁰ defining “applied behavior analysis,”⁸¹ redefining “autism” as a spectrum disorder,⁸² and defining treatment options for the disorder.⁸³ Subsection (b) grants a child six years of age and younger with an autism spectrum disorder coverage:⁸⁴ (1) for evaluations for autism spectrum disorder diagnosis,⁸⁵ (2) for medically necessary treatment of autism spectrum disorders,⁸⁶ (3) with no limitation on the number of visits,⁸⁷ (4) for up to \$30,000 annually,⁸⁸ and (5) for prescription drugs, if such coverage is provided by the policy or contract.⁸⁹

71. 2015 Ga. Laws 111, at 111.

72. 2015 Ga. Laws 111, § 1, at 111.

73. O.C.G.A. § 33-24-59.18(a)(1) (Supp. 2015).

74. O.C.G.A. § 33-24-59.18(a)(2) (Supp. 2015).

75. O.C.G.A. § 33-24-59.18(a)(3) (Supp. 2015).

76. *Id.*

77. O.C.G.A. § 33-24-59.18(b) (Supp. 2015).

78. O.C.G.A. § 33-24-59.18(c) (Supp. 2015).

79. O.C.G.A. § 33-24-59.18(d) (Supp. 2015).

80. O.C.G.A. § 33-24-59.10(a)(1) (2013 & Supp. 2015).

81. O.C.G.A. § 33-24-59.10(a)(2) (2013 & Supp. 2015).

82. O.C.G.A. § 33-24-59.10(a)(3) (Supp. 2015).

83. O.C.G.A. § 33-24-59.10(a)(4) (Supp. 2015).

84. Provided that the child is covered by an accident and sickness contract, policy, or health benefit plan defined in subsection (a)(1). O.C.G.A. § 33-24-59.10(b) (2013 & Supp. 2015).

85. O.C.G.A. § 33-24-59.10(b)(1) (Supp. 2015).

86. O.C.G.A. § 33-24-59.10(b)(2) (Supp. 2015).

87. O.C.G.A. § 33-24-59.10(b)(3) (Supp. 2015).

Subsection (c) allows policies providing coverage under this Code section to have provisions for maximum benefits, coinsurance and reasonable limitations, deductibles, and exclusions, as long as such provisions are consistent with this Code section's requirements.⁹⁰ Subsection (d) clarifies that this Code section does not affect previous obligations under individualized family service plans, individualized education plans, or individualized service plans.⁹¹

Subsection (e) provides an exemption for providing behavior health treatment coverage as of December 31, 2016, if the insurer, corporation, health maintenance organization, or governmental entity meets the conditions in subsections (e)(1)(A) and (e)(1)(B).⁹² This exemption is only good for one year⁹³ but can be renewed for a subsequent year if the same aforementioned conditions are met.⁹⁴ Section 2A also exempts any employer with ten or fewer employees⁹⁵ and says that any benefits required by this Code section that exceed the essential health benefits required under the federal Affordable Care Act are not required of a qualified health plan when such plan is "offered in this state through the exchange."⁹⁶ But subsection (h) specifies that this Code section shall not be construed to "limit any coverage under any accident and sickness contract policy or benefit plan."⁹⁷

Finally, Section 2A creates a mandatory reporting requirement beginning January 15, 2017, and continuing annually.⁹⁸ Every January 15, the General Assembly must receive a report detailing (1) "The total number of insureds diagnosed with autism spectrum disorder;"⁹⁹ (2) "The total cost of all claims paid out in the immediately preceding calendar year for coverage required by this Code section;"¹⁰⁰ (3) "The cost of such coverage per insured per

88. O.C.G.A. § 33-24-59.10(b)(4) (Supp. 2015).

89. O.C.G.A. § 33-24-59.10(b)(5) (Supp. 2015).

90. O.C.G.A. § 33-24-59.10(c) (Supp. 2015).

91. O.C.G.A. § 33-24-59.10(d) (Supp. 2015).

92. O.C.G.A. § 33-24-59.10(e)(1) (Supp. 2015).

93. O.C.G.A. § 33-24-59.10(e)(2) (Supp. 2015).

94. O.C.G.A. § 33-24-59.10(e)(3) (Supp. 2015).

95. O.C.G.A. § 33-24-59.10(g) (Supp. 2015).

96. O.C.G.A. § 33-24-59.10(f) (Supp. 2015).

97. O.C.G.A. § 33-24-59.10(h) (Supp. 2015).

98. O.C.G.A. § 33-24-59.10(i) (Supp. 2015).

99. O.C.G.A. § 33-24-59.10(i)(1) (Supp. 2015).

100. O.C.G.A. § 33-24-59.10(i)(2) (Supp. 2015).

month;”¹⁰¹ and (4) “The average cost per insured for coverage of applied behavior analysis.”¹⁰²

Section 3 contains a sunset provision that allows the Code section to revert back to its original language—preserved in Section 2B—if voters ratify an amendment to the Georgia Constitution, proposed by House Resolution (HR) 808, in November 2016.¹⁰³ If the Constitution is amended in November 2016, Section 2A will be repealed on January 1, 2017; but if it is not amended, then Section 2B will be repealed on January 1, 2017.¹⁰⁴

Analysis

Experimental Treatment for Terminal Conditions: Georgia, Rhode Island, and California

In passing the Act (Georgia’s Act or the Act), Georgia has joined states that require insurance coverage for experimental treatment of terminal conditions and deviated from the traditional statute limiting experimental treatment for cancer.¹⁰⁵ Rhode Island is an example of a state whose experimental treatment coverage is limited to anticancer medication.¹⁰⁶ The Rhode Island statute requires insurance policies that provide coverage for intravenous cancer medication also cover “prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells”¹⁰⁷

The Act creates no such limitations. First, by defining “terminal condition” as “any disease, illness, or health condition that a physician has diagnosed as expected to result in death in 24 months or less,” this Code section is not limited to assisting only those with cancer.¹⁰⁸ Second, the treatment covered by this Act is broader than

101. O.C.G.A. § 33-24-59.10(i)(3) (Supp. 2015).

102. O.C.G.A. § 33-24-59.10(i)(4) (Supp. 2015).

103. 2015 Ga. Laws 111, § 3, at 116.

104. *Id.*

105. Elaine Reckner Sammon, Note, “*Experimental Treatment*”: *Legislating Against Unfair Denials*, 27 HOFSTRA L. REV. 143, 155 (1998) (“Of the statutes enacted to require coverage for experimental treatments under certain conditions, the five with the broadest applicability focus on cancer. They ignore, however, other illnesses for which experimental treatments might be needed.”).

106. See R.I. GEN. LAWS ANN. § 27-18-80 (West, Westlaw through Jan. 2015 Sess.).

107. R.I. GEN. LAWS ANN. § 27-18-80(a) (West, Westlaw through Jan. 2015 Sess.).

108. O.C.G.A. § 33-24-59.18(a)(2) (Supp. 2015) (emphasis added).

that of Rhode Island's statute.¹⁰⁹ Instead of limiting treatment coverage to intravenous or orally administered medication, the Act includes coverage for "any drug or device," as long as it is medically appropriate, prescribed by a physician, approved by the patient, supported by peer reviewed medical literature, and "consistent with best practices for the treatment of the terminal condition"¹¹⁰

Finally, Georgia's Act applies to a wider range of insurance policies than Rhode Island's statute.¹¹¹ Rhode Island's statute does not apply to insurance coverage providing benefits for hospital confinement indemnity, disability income, accident only, long-term care, Medicare supplement, limited benefit health, specified disease indemnity, sickness or bodily injury or death by accident or both, or other limited benefit policies.¹¹² Conversely, Georgia's Act applies to "any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract or agreement with a health maintenance organization, subscriber contract or agreement, preferred provider organization, accident and sickness insurance benefit plan, or other insurance contract under any other name."¹¹³

California employs a different approach than Georgia regarding experimental treatment coverage. California requires each health care service plan to provide an "external, independent review process to examine the plan's coverage decisions regarding experimental or investigational therapies"¹¹⁴ for enrollees with a "life-threatening or seriously debilitating condition."¹¹⁵ The statute defines "life-threatening" as either diseases or conditions with a high likelihood of death if left alone,¹¹⁶ or those with potentially fatal outcomes "where the end point of clinical intervention is survival."¹¹⁷ "Seriously

109. Compare R.I. GEN. LAWS ANN. § 27-18-80(a) (West, Westlaw through Jan. 2015 Sess.), with O.C.G.A. § 33-24-59.18(b) (Supp. 2015).

110. O.C.G.A. § 33-24-59.18(b) (Supp. 2015).

111. Compare R.I. GEN. LAWS ANN. § 27-18-80(b) (West, Westlaw through Jan. 2015 Sess.), with O.C.G.A. § 33-24-59.18(a)(1) (Supp. 2015).

112. R.I. GEN. LAWS ANN. § 27-18-80(b) (West, Westlaw through Jan. 2015 Sess.).

113. O.C.G.A. § 33-24-59.18(a)(1) (Supp. 2015).

114. CAL. HEALTH & SAFETY CODE § 1370.4(a) (West, Westlaw through 2015).

115. CAL. HEALTH & SAFETY CODE § 1370.4(a)(1)(A) (West, Westlaw through 2015).

116. CAL. HEALTH & SAFETY CODE § 1370.4(a)(1)(B)(i) (West, Westlaw through 2015).

117. CAL. HEALTH & SAFETY CODE § 1370.4(a)(1)(B)(ii) (West, Westlaw through 2015).

debilitating” is defined as “diseases or conditions that cause major irreversible morbidity.”¹¹⁸

With its broad definition of applicability, California’s statute has the potential to cover more terminal conditions than the stringent twenty-four-month timeline Georgia law provides.¹¹⁹ However, California’s statute does not require health plans to cover experimental treatments, but rather to submit its decision to “delay, deny, or modify” such treatments to an independent medical review process.¹²⁰ The medical review will determine whether the plan is justified in its refusal to cover experimental treatments for the enrollee, thereby focusing on ensuring the validity of the denial, rather than on widening the treatment options available to terminally ill patients.¹²¹

The Act’s broad language and minimal restrictions of “treatment” significantly expands options for those living with terminal conditions, reinforcing Georgia’s opposition to physician-assisted suicide.¹²²

Comparing Ryan’s Law, South Carolina’s Autism Insurance Mandate, with Ava’s Law

The enactment of Sections 2A and 2B of the Act, commonly referred to as Ava’s Law, was the apex of a seven-year fight for Georgia children with autism.¹²³ The fiscal concerns that prevented the passage of Ava’s Law during that seven-year period are not at all exclusive to Georgia.¹²⁴ Despite its conservative fiscal posture, the Act is a huge triumph for families affected by autism.¹²⁵ However, if Georgia decides in the future to provide more coverage for children

118. CAL. HEALTH & SAFETY CODE § 1370.4(a)(1)(C) (West, Westlaw through 2015).

119. See O.C.G.A. § 33-24-59.18(a)(2) (Supp. 2015).

120. CAL. HEALTH & SAFETY CODE § 1370.4(b) (West, Westlaw through 2015).

121. See CAL. HEALTH & SAFETY CODE § 1370.4(c)(3) (West, Westlaw through 2015).

122. See House Day 30 Video, *supra* note 17, at 1 hr., 46 min., 38 sec. (remarks by Rep. Ron Stephens (R-164th)).

123. Bethel Interview, *supra* note 61.

124. Angela Barner, Note, *Unlocking Access to Insurance Coverage for Autism Treatment*, 6. J.L. ECON. & POL’Y 107, 127 (2009). Ryan’s Law was passed because the South Carolina legislature overrode Governor Mark Sanford’s (R) veto. *Id.* at 114, 127. The Governor believed mandating insurance coverage for autism spectrum disorders would severely affect families in terms of higher insurance premiums. *Id.* at 127.

125. See O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

affected by autism spectrum disorders, it would be beneficial to look to South Carolina for an example.¹²⁶ South Carolina has proven moderate autism treatment coverage can financially help families without greatly increasing insurance premiums.¹²⁷ Ryan’s Law—South Carolina’s autism insurance mandate—is similar to Ava’s Law in many respects¹²⁸ and a viable model of how autism insurance coverage under the Act will be implemented in Georgia.

In 2007, the South Carolina legislature passed Ryan’s Law.¹²⁹ Ryan’s Law defines “autism spectrum disorder” by referring to the most recent definition in the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, and explicitly provides coverage for children diagnosed with autism, Asperger’s syndrome, or another pervasive developmental disorder.¹³⁰ Defining “autism spectrum disorder” broadly allows more children to be covered by the law, and does not require that a child’s primary diagnosis be an “autism spectrum disorder.”¹³¹ Georgia’s Act defines “autism spectrum disorder” by reference to the Diagnostic and Statistical Manual of Mental Disorders.¹³² Defining “autism spectrum disorder” in relation to a medical manual allows the law to account for new and emerging medical diagnoses and treatments.

Ryan’s Law, similar to the Act, defines a covered plan as a “group health insurance policy or group health benefit plan offered by an insurer.”¹³³ This includes the State Health Plan, but excludes “any health insurance plan offered in the individual market . . . any health

126. See S.C. CODE ANN. § 38-71-280 (West, Westlaw through 2015); see also Barner, *supra* note 124, at 115. The \$50,000 annual cap on behavioral treatment “is high enough to reasonably provide for ABA therapy each year.” *Id.*

127. Hellerman, *supra* note 19. While autism costs society an estimated \$126 billion annually, states mandating some form of insurance company for individuals with autism only saw increases between \$1.20 and \$9.96 in insurance premiums annually. *Id.*

128. Compare O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015), with S.C. CODE ANN. § 38-71-280(A) (West, Westlaw through 2015).

129. *South Carolina Autism Insurance Bill Passed*, AUTISM SPEAKS (June 7, 2007), <https://www.autismspeaks.org/news/news-item/%5Btitle-raw%5D-178>.

130. S.C. CODE ANN. § 38-71-280(A)(1) (West, Westlaw through 2015).

131. *FAQs on the South Carolina Autism Insurance Reform Law (Ryan’s Law)*, AUTISM SPEAKS (June 30, 2007), <https://www.autismspeaks.org/advocacy/advocacy-news/faqs-south-carolina-autism-insurance-reform-law-ryans-law> [hereinafter *FAQs South Carolina*].

132. O.C.G.A. § 33-24-59.10(a)(3) (Supp. 2015).

133. S.C. CODE ANN. § 38-71-280(A)(4) (West, Westlaw through 2015).

insurance plan individually underwritten, or any health insurance plan provided to a small employer”¹³⁴ This definition keeps the law fiscally conservative, protects small businesses, and considers the issue of federal preemption.¹³⁵ However, these considerations have an adverse effect on families who need financial help to pay for treatment but do not have the requisite insurance plan.¹³⁶

Health insurance plans included in Ryan’s Law require insurance companies to provide coverage for autism spectrum disorder treatments prescribed by the insured’s doctor.¹³⁷ Covered plans cannot “deny or refuse to issue coverage on, refuse to contract with, or refuse to renew or refuse to reissue or otherwise terminate or restrict coverage on an individual solely because the individual is diagnosed with autism spectrum disorder.”¹³⁸ Although this provision cannot protect against every discriminatory denial—because insurance companies can find a superfluous reason to deny coverage by not *solely* denying coverage based on an autism diagnosis—the provision protects individuals with an autism spectrum disorder more than Georgia’s Act.¹³⁹ Georgia’s Act does not have a similar clause prohibiting insurance companies from terminating or restricting coverage to individuals diagnosed with an autism spectrum disorder.¹⁴⁰

In subsection (C), Ryan’s Law prevents covered health insurance plans from subjecting prescribed treatment of autism spectrum disorders, except behavioral treatment, to “dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness”¹⁴¹ However, the coverage for treatment of

134. *Id.*

135. See *FAQs South Carolina*, *supra* note 131; see also Bethel Interview, *supra* note 61.

136. See S.C. CODE ANN. § 38-71-280(A)(4) (West, Westlaw through 2015).

137. S.C. CODE ANN. § 38-71-280(B) (West, Westlaw through 2015); see also *FAQs South Carolina*, *supra* note 131. Ryan’s law does not specifically include a list of covered services but covers whatever treatment is considered medically necessary. S.C. CODE ANN. § 38-71-280(C) (West, Westlaw through 2015).

138. S.C. CODE ANN. § 38-71-280(B) (West, Westlaw through 2015).

139. Compare S.C. CODE ANN. § 38-71-280(B) (West, Westlaw through 2015), with O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

140. See O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

141. S.C. CODE ANN. § 38-71-280(C) (West, Westlaw through 2015). Ryan’s Law notably limits behavioral treatment although ABA is one of the “best-established treatments for children with autism spectrum disorders.” Hellerman, *supra* note 19. This behavioral approach “entails intense coaching to

autism spectrum disorders can still be subject to a number of other general exclusions and limitations of a health insurance plan, which potentially creates loopholes enabling insurance companies to avoid paying for treatment.¹⁴² The Georgia Act does not have such a provision.¹⁴³ However, if Section 2B becomes effective in 2017, insurance companies must provide the same benefits for autism spectrum disorders as any other neurological disorder.¹⁴⁴

Furthermore, coverage for the treatment of an autism spectrum disorder under Ryan's Law is premised on the existence of a treatment plan.¹⁴⁵ The treatment plan must include a diagnosis, proposed treatment type, projected frequency, duration of treatment, and anticipated outcomes or stated goals of the treatment.¹⁴⁶ The health insurance company can request an updated treatment plan every six months to review it for medical necessity.¹⁴⁷ The health insurance company can also perform a utilization review, which allows the insurance company to question the individual's diagnosis of an autism spectrum disorder.¹⁴⁸ Georgia's Act includes similar provisions and allows an insurance company to request a licensed physician or licensed psychologist to demonstrate annually the ongoing medical necessity for treatment.¹⁴⁹

Subsection (E) of Ryan's law sets specific requirements for covered individuals.¹⁵⁰ Individuals eligible for benefits under the law "must be diagnosed with autism spectrum disorder at age eight or younger" and may only receive benefits until sixteen years of age.¹⁵¹

teach basic skills that nonautistic children learn more intuitively, especially skills involving communication." *Id.* One study employing this behavioral treatment, which is often intensive and expensive, found that "among children who began treatment before turning 3, nearly half improved to the point where they were indistinguishable from same-age peers." *Id.*

142. S.C. CODE ANN. § 38-71-280(C) (West, Westlaw through 2015) (stating coverage "may be subject to other general exclusions and limitations of the health insurance plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, utilization review of health care services including review of medical necessity, case management, and other managed care provisions").

143. *See* O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

144. 2015 Ga. Laws 111, §§ 2B to 3, at 115-16.

145. S.C. CODE ANN. § 38-71-280(D) (West, Westlaw through 2015).

146. *Id.*

147. *Id.*

148. S.C. CODE ANN. § 38-71-280(C) (West, Westlaw through 2015).

149. O.C.G.A. § 33-24-59.10(b)(2) (Supp. 2015).

150. S.C. CODE ANN. § 38-71-280(E) (West, Westlaw through 2015).

151. *Id.*; *see also* CTRS. FOR DISEASE CONTROL AND PREVENTION, AUTISM SPECTRUM DISORDER

Further, coverage for behavioral therapy is limited to \$50,000 per year.¹⁵² This limit on behavior therapy, more commonly referred to as ABA, reflects the controversial nature of this treatment.¹⁵³ ABA is controversial because insurance companies believe the treatment is more educational and developmental than it is medical and clinical.¹⁵⁴ In contrast to Ryan’s Law, the Act limits coverage for ABA to \$30,000 per year and only covers children age six years of age or younger.¹⁵⁵ The Act’s \$30,000 per year cap and younger age limit are, in part, products of a conservative posture and compromise.¹⁵⁶

The Act’s younger age cap is also entangled with the effectiveness of behavioral treatment at a young age.¹⁵⁷ Six years was chosen as the cut off to maintain a conservative stance because early intervention is most effective and children generally enter first grade at six years of age.¹⁵⁸ If children are diagnosed with an autism spectrum disorder by the time they are six, they qualify for an individualized education plan.¹⁵⁹ Individualized education plans are very expensive for local schools.¹⁶⁰ In limiting coverage at six, the Act incentivizes families to seek early treatment for children affected by an autism spectrum disorder.¹⁶¹ Early intervention lightens the

DATA & STATS., <http://www.cdc.gov/ncbddd/autism/data.html> (last updated Aug. 12, 2015) (noting research shows “a diagnosis of autism at age 2 can be reliable, valid, and stable”) [hereinafter DATA & STATISTICS].

152. S.C. CODE ANN. § 38-71-280(E) (West, Westlaw through 2015).

153. Barner, *supra* note 124, at 108.

154. *Id.* The controversy over ABA is rooted in “[d]etermining whether private health insurance or special education programs funded by the government should pay for autism treatment . . .” *Id.* However, this is a “question of public policy for the legislature.” *Id.*

155. O.C.G.A. § 33-24-59.10(b) (Supp. 2015).

156. Bethel Interview, *supra* note 61; *see generally* Hellerman, *supra* note 19.

157. Bethel Interview, *supra* note 61. Similar to Ava’s Law, Texas’s original autism insurance mandate only provided coverage for children between the age of three and five. Barner, *supra* note 124, at 116. Texas’s original law “avoided an overlap in benefits by requiring private insurance to cover a child’s treatment until he entered the education system, ensuring some form of treatment during a crucial time period for effective intervention.” *Id.* Although the original law seemed good in theory, Texas lawmakers updated the law to provide coverage until age ten because some school systems “were unable to provide the behavioral treatments,” and “parents were burdened with out-of-pocket expenses.” *Id.*

158. Bethel Interview, *supra* note 61.

159. *Id.*

160. *Id.*

161. *See id.*

financial burden on local schools because once children start first grade the ABA therapy has already made its beneficial impact.¹⁶²

Ryan's Law successfully provides coverage to children affected by autism spectrum disorders.¹⁶³ The law, however, is not without its problems. For example, whether an out-of-state insurance company issuing policies to an out-of-state employer covering South Carolina residents is included under Ryan's Law remains unclear.¹⁶⁴ If the insurance company is not covered, then it will not be required to provide coverage for autism spectrum disorders and certain South Carolina families will be excluded from the law's protections.¹⁶⁵ Georgia's Act will likely not run into this problem. The Act does not define an insurer as an organization "licensed to engage in the business of insurance in this State and which is subject to state insurance regulation"—the ambiguous phrase causing the above problem in Ryan's Law.¹⁶⁶ Instead, the Act does not define an insurer.¹⁶⁷

The history of Ryan's Law is similar to Ava's Law. In South Carolina, Ryan's Law faced the same criticism—covering treatment for autism spectrum disorders would increase insurance premiums at the expense of South Carolina families.¹⁶⁸ However, the implementation of Ryan's Law tells a different story—one that helps families nationwide. Ryan's Law aids autistic children in obtaining early and effective treatment and so they can become productive members of society.¹⁶⁹

Despite the success of Ryan's Law in South Carolina and autism mandates in other states, the Act suggests major concerns of increased insurance premiums for all Georgia families in order to provide the autism insurance mandate.¹⁷⁰ Although this concern is

162. *Id.*

163. *See* Barner, *supra* note 124, at 113.

164. 2009 S.C. Op. Att'y Gen. 5205408.

165. *Id.*

166. S.C. CODE ANN. § 38-71-280(A)(2) (West, Westlaw through 2015).

167. O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

168. Barner, *supra* note 124, at 127. State legislative mandates, like Ryan's Law and Ava's Law, are the most popular, but not the only way autism coverage has been brought into a state. *Id.* at 121. In Minnesota and New Jersey, lawsuits against insurance companies were decided in favor of providing coverage for autism spectrum disorders. *Id.* at 121–22.

169. *See* Hellerman, *supra* note 19; *see also* DATA & STATISTICS, *supra* note 151.

170. *See, e.g.*, O.C.G.A. § 33-24-59.10(b)(4)–(5) (Supp. 2015); O.C.G.A. § 33-24-59.10(d)–(e) (Supp. 2015); *see also* DATA & STATISTICS, *supra* note 151.

seen in the \$30,000 coverage limit for children six years or younger, subsection (e) of Code section 33-24-59.10 also provides a loophole for covered insurance plans.¹⁷¹ Subsection (e) allows covered insurance plans to be exempt from providing coverage for behavioral health treatment if an actuary submits to the Commissioner that (1) costs associated with coverage of behavioral health treatment exceeded 1% of the premiums charged, and (2) these same “costs solely would lead to an increase in average premiums charged of more than 1% for all insurance policies.”¹⁷² Although the actuary must submit this report annually, and the Commissioner must approve it, this loophole could allow covered insurance plans to decline providing treatment.¹⁷³

This loophole signifies one of the greatest lessons from Ryan’s Law: mandating autism coverage is cost-effective.¹⁷⁴ Ryan’s Law brought assistance to an estimated 400,000 individuals in 2010, and the direct impact on insurance premiums was only \$5 per year.¹⁷⁵ The impact on Georgia insurance premiums will likely be lower because of the State’s more conservative coverage and age limits. However, there is concern that families with children affected by autism living in states with no form of autism coverage will move to states with some form of autism insurance coverage and strain resources.¹⁷⁶

As Georgia begins implementing Ava’s Law, there is hope for the same positive effects Ryan’s Law brought to South Carolina families. Although Ryan’s Law is not perfect, it shows that autism mandated coverage is fiscally possible and benefits individuals facing an autism spectrum disorder. Further, should Section 2B become effective in 2017, Georgia will rival the coverage of Ryan’s Law and may become a model for other states.¹⁷⁷ If HR 808 is passed in the 2016 legislative session and the November 2016 general election, the

171. O.C.G.A. § 33-24-59.10(e) (Supp. 2015).

172. O.C.G.A. § 33-24-59.10(e)(1)(A) (Supp. 2015).

173. O.C.G.A. § 33-24-59.10(e)(1)(A)–(B) (Supp. 2015).

174. See Hellerman, *supra* note 19.

175. *Id.*

176. Barner, *supra* note 124, at 129–31.

177. See 2015 Ga. Laws 111, § 2B, at 115–16. HR 808 specifically provides: “100[%] of all funds collected from such .2[%] increase . . . received by the state the immediately preceding fiscal year, less the amount of refunds, rebates, and collection costs . . . shall be appropriated for the next fiscal year . . . for the treatment of autism spectrum disorder . . .” HR 808, as introduced, § 1, p. 1, ln. 14–18, 2015 Ga. Gen. Assem. See also O.C.G.A. § 33-24-59.10 (2013 & Supp. 2015).

General Assembly will be “authorized to increase the general state sales and use tax rate as set by general law on January 1, 2015, by an additional .2[%] to be used for treatment of autism spectrum disorder.”¹⁷⁸ Until then, we will have to wait and see the potential growth of autism insurance coverage in Georgia.

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178. HR 808, as introduced, § 1, p. 1, ln. 10–12, 2015 Ga. Gen. Assem.