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**DATE**: April 4, 1997

**HOUSE OF REPRESENTATIVES**
**COMMITTEE ON**
**HEALTH CARE SERVICES**
**BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #**: CS/HBs 453, 573, 689, & 781

**RELATING TO**: Insurance Coverage for Mastectomies

**SPONSOR(S)**: Committee on Health Care Services, Reps. Mackey, Murman, Wasserman Schultz, Peaden, & others

**STATUTE(S) AFFECTED**: Sections 627.6417, 627.651, 627.6515, 627.6612, 627.6699, 641.31, F.S.

**COMPANION BILL(S)**: SB 530, SB 848, SB 916, SB 1150

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**:
(1) HEALTH CARE SERVICES YEAS 10 NAYS 0
(2) GENERAL GOVERNMENT APPROPRIATIONS
(3)
(4)
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I. SUMMARY:

Current statute does not expressly address coverage for breast cancer treatment except with respect to optional coverage for surgical procedures incident to mastectomies. Under this bill in-state and out-of-state individual insurers; group, blanket, or franchise health insurers; multiple-employer welfare arrangements; health maintenance organizations; and the small group standard and basic health benefit plans will be:

- Expressly required to provide mastectomy coverage to the same extent such coverage is provided for illness or disease including prophylactic mastectomies;
- Prohibited from imposing time limitations on inpatient hospital care for mastectomies;
- Required to provide outpatient postsurgical mastectomy care;
- Required to provide coverage for prosthetic devices and reconstructive surgery incident to a mastectomy, including reconstructive surgery to reestablish symmetry between both breasts;
- Prohibited from classifying breast cancer followup care as a procedure for determining a pre-existing condition unless breast cancer is found.

In addition, individual insurers will be:

- Required to insure persons who have remained free from breast cancer for at least 5 years; and
- Prohibited from denying coverage to persons who has remained free from breast cancer for at least 2 years.

State and local government may experience a fiscal impact to the extent that this bill results in any increased costs associated with providing employee health insurance benefits.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Breast cancer is the most common form of cancer in women and the second highest cause of cancer mortality (after lung cancer) among women in the United States. Breast cancer accounts for approximately 30% of all newly diagnosed female cancers and 18% of all female cancer deaths. Over 10,000 women will be diagnosed with breast cancer in Florida this year, and in 1995 more than 2,800 died from the disease, and 20 men. Direct health care costs for the treatment of breast cancer in Florida exceed $160 million annually.

There isn't one standard treatment for breast cancer. It behaves differently depending upon the patient's age, the size of the tumor and its hormone receptor status, and whether or not the cancer has spread to the lymph nodes and, if so, how many lymph nodes are involved. If detected and treated early, the 5-year survival rate for patients whose cancer has not spread beyond the breast is 93%, according to the American Cancer Society.

**Postsurgical Mastectomy Care:** The most common treatment is surgery followed by chemotherapy and/or radiation to decrease the risk of recurrence. Depending upon the size of the lump, it can be removed with a lumpectomy or mastectomy. It has been estimated that only 10% of breast cancer patients need mastectomies. Lumpectomies are usually performed using a general anesthetic. The patient can usually be sent home the same or next day once the effects of the anesthetic have worn off. Mastectomies usually require 2 to 3 days in the hospital, although some women opt to go home as soon as the anesthesia wears off.

According to David Foster of HCIA Inc., a Baltimore research firm, about 7.6% of mastectomies performed on Medicare patients in 1995 were outpatient procedures, up from 1.6% in 1991. Florida data show a similar trend. According to discharge data collected by the Agency for Health Care Administration, there has been a 15% reduction in the number of mastectomies performed on an inpatient hospital basis between 1994 and 1995. Data available for outpatient mastectomies is limited to 1994 and the first two quarters of 1995. However, between the second quarter of 1994 and the second quarter of 1995, there was a 44% increase in the number of outpatient mastectomies performed. Comparisons may be misleading because all types of mastectomies are being considered together. No data is available on whether the quality of care or patient satisfaction has been affected.

Recently there has been widespread concern over the performance of outpatient mastectomies. The controversy began last August when some doctors in Connecticut complained of new guidelines that emphasized outpatient mastectomies developed by Milliman & Robertson, a Seattle-based actuarial firm that markets guidelines to insurers and health plans, and adopted by two Connecticut HMOs. In response, the 1,000 member American Association of Health Plans - which includes nearly all of the nation's HMOs - announced last November, that it will abide by recommendations against requiring mastectomies to be performed as an outpatient procedure.

Last month HHS Secretary Donna E. Shalala sent letters to 350 managed care plans contracting with Medicare prohibiting a plan from requiring outpatient mastectomies or

placing time limits on hospital stays for mastectomies. Medicare paid for more than 84,000 mastectomies in 1996, or about a third of all mastectomies in the U.S.

As of February of this year, more than 80 bills addressing outpatient mastectomies have been introduced in 32 states. There seems to be a difference of opinion on exactly how long women should be allowed to stay in the hospital after breast cancer surgery. While the majority of bills mandate a minimum of 48 hours the range runs from 24 hours to 96 hours. Others leave the decision to the physician or base it on medical necessity. In December New Jersey became the first state to require health insurers to provide minimum hospital stays of 72 hours following a mastectomy and 48 hours following a lymph node dissection. At the federal level, two bills have been filed: the “Breast Cancer Patient Protection Act of 1997," which guarantees a minimum stay of 48 hours for a mastectomy and 24 hours for lymph node removal, filed by Representative Rosa DeLauro (HR135) and Senator Tom Daschle (S143); and the “Women’s Health and Cancer Rights Act of 1997" by Rep. Molinari (HR616) and Senator Alfonse D’Amato (S249).

**Reconstructive Surgery Following Mastectomy:** Health insurance coverage for mastectomies may or may not cover prosthetic devices and reconstructive surgery. In Florida coverage for surgical procedures and devices incident to mastectomy is contained in s. 627.6417, F.S., for individual health insurance policies, and s. 627.6612, F.S., for group health insurance policies. The law requires that companies *offer* coverage for which they may charge an additional premium. It is up to the policyholder to select the additional coverage. As such, it is referred to as a “mandated option,” as opposed to a “mandated benefit.” A mandated benefit would require the insurance policy to automatically provide the coverage as a part of the overall premium.

The statute specifies that coverage for prosthetic devices and reconstructive surgery is subject to the deductible and coinsurance conditions applied to the mastectomy. If a mastectomy is performed and no evidence of malignancy is found, coverage is limited to the initial prosthetic device and reconstructive surgery within 2 years of the date of the mastectomy.

Reconstructive surgery following a mastectomy usually involves a breast implant. Women who have had breast implantation frequently experience local complications during subsequent years. A recent study in the *New England Journal of Medicine*, published this month studied 749 women who received a first breast implant between 1964 and 1991. During the follow-up period (on average 7.8 years) almost a third (28 %) underwent additional implant-related surgical procedures. The most frequent problem was capsular contraction (shrinking of scar tissue around the implant that can cause painful hardening of the breasts), followed by implant rupture, hematoma (circumscribed collection of blood in a tissue or organ caused by a break in a blood vessel), and wound infection. Complication rates were significantly lower among women with cosmetic implants than among those who received implants after mastectomy for breast cancer or prophylactic mastectomy.

Another issue of significant importance to many women involves surgical treatment of the remaining breast. After mastectomy, implantation, and reconstructive surgery, there is often a pronounced difference in the size and shape of the two breasts. Some state laws, such as California, Maine, Maryland, Nevada, Rhode Island, and Washington,

require insurance policies to cover the cost of treatment of the un-diseased breast in order to achieve symmetry. There is no such provision in Florida's law.

As of last month 17 states have bills filed to mandate coverage for reconstructive surgery. At the federal level, Rep. Molinari (HR616) and Senator Alfonse D'Amato (S249), and Representative Anna Eschoo (HR164), have filed bills which would require insurers to pay for reconstructive surgery.

B. EFFECT OF PROPOSED CHANGES:

Both in-state and out-of-state individual insurers; group, blanket, or franchise health insurers; multiple-employer welfare arrangements; health maintenance organizations; and the small group standard and basic health benefit plans will be:

- Expressly required to provide mastectomy coverage to the same extent such coverage is provided for illness or disease including prophylactic mastectomies;
- Prohibited from imposing time limitations on inpatient hospital care for mastectomies;
- Required to provide outpatient postsurgical mastectomy care;
- Required to provide coverage for prosthetic devices and reconstructive surgery incident to a mastectomy, including reconstructive surgery to reestablish symmetry between breasts, and restore the patient to her previous state;
- Prohibited from classifying breast cancer followup care as a procedure for determining a pre-existing condition unless breast cancer is found.

In addition, individual insurers will be:

- Required to insure persons who have remained free from breast cancer for at least 5 years; and
- Prohibited from denying coverage to persons who has remained free from breast cancer for at least 2 years.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the bill gives the Department of Insurance authority to enforce additional standards on health insurers and HMOs.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, health insurers and HMOs will be required to abide by new standards established in this bill.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes, if the legislation results in higher insurance premiums.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No, the bill increases government regulation of health insurance.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, the bill imposes additional standards on health insurers.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION REVIEW:

**Section 1.** Amends s. 627.6417, F.S., relating to optional individual insurance coverage for procedures incident to mastectomies, to:

(1) Require the policy to provide hospital, medical, or surgical coverage for mastectomies to the same extent that such coverage is provided for any illness or disease under the policy, and prohibit any time limitations on inpatient hospital care;
(2) Require coverage to include outpatient postsurgical care;
(3) Require mastectomy coverage to include devices and reconstructive surgery incident to the mastectomy, including reconstructive surgery to establish symmetry between the two breasts, and repeal a provision providing a two-year statute of limitation for coverage for care incident to a mastectomy in which no evidence of malignancy is found;
(4) Broaden the definition of mastectomy to include prophylactic mastectomies and lymph node dissections;
(5) Prohibit the insurer from creating incentives or obstacles which would result in the provision of fewer benefits to the insured;
(6) Provide caveat that provisions of section are not intended to affect reimbursement, rate or capitation agreements between the insurer and provider, or case management by the insurer; and
(7) Specify that provisions of section do not apply to specified disease policies other than cancer.

**Section 2.** Creates s. 627.64175, F.S., relating to individual insurance policy breast cancer coverage, to:

(1) Prohibit an insurer from refusing to provide health insurance to an applicant who has remained free of breast cancer for at least 5 years;

(2) Prohibit an insurer from excluding breast cancer coverage if an applicant has been free of breast cancer for at least 2 years; and
(3) Prohibit breast cancer followup care from being considered a procedure for determining a preexisting condition unless breast cancer is found.

**Section 3.** Amends s. 627.651, F.S., relating to group contracts and self-insurance plans, to require a multiple-employer welfare arrangement to comply with ss. 627.6612 and 627.6614, F.S.

**Section 4.** Amends s. 627.6515, F.S., relating to out-of-state groups, to require such groups to comply with ss. 627.6612 and 627.6614, F.S.

**Section 5.** Amends s. 627.6612, F.S., relating to group, blanket, or franchise insurance coverage for procedures incident to mastectomies, to:
(1) Require the policy to provide hospital, medical, or surgical coverage for mastectomies to the same extent that such coverage is provided for any illness or disease under the policy, and prohibit any time limitations on inpatient hospital care;
(2) Require coverage to include outpatient postsurgical care;
(3) Require mastectomy coverage to include devices and reconstructive surgery incident to the mastectomy, including reconstructive surgery to establish symmetry between the two breasts, and repeal a provision providing a two-year statute of limitation for coverage for care incident to a mastectomy in which no evidence of malignancy is found;
(4) Broaden the definition of mastectomy to include prophylactic mastectomies and lymph node dissections;
(5) Prohibit the insurer from creating incentives or obstacles which would result in the provision of fewer benefits to the insured; and
(6) Provide caveat that provisions of section are not intended to affect reimbursement, rate or capitation agreements between the insurer and provider, or case management by the insurer.

**Section 6.** Creates s. 627.6614, F.S., relating to group, blanket, or franchise coverage for breast cancer, to prohibit breast cancer followup care from being considered a procedure for determining a preexisting condition unless breast cancer is found.

**Section 7.** Amends s. 627.6699, F.S., relating to the Employee Health Care Access Act, to require the standard and basic health benefit plan applicable to small employers to include mastectomy coverage as mandated by s. 627.6612, F.S.

**Section 8.** Amends s. 641.31, F.S., relating to health maintenance contracts, to:
(1) Require the contract to provide hospital, medical, or surgical coverage for mastectomies to the same extent that such coverage is provided for any illness or disease under the policy, and prohibit any time limitations on inpatient hospital care;
(2) Require coverage to include outpatient postsurgical care;
(3) Require mastectomy coverage to include devices and reconstructive surgery incident to the mastectomy, including reconstructive surgery to establish symmetry between the two breasts, and repeal a provision providing a two-year statute of limitation for coverage for care incident to a mastectomy in which no evidence of malignancy is found;

(4) Broaden the definition of mastectomy to include prophylactic mastectomies and lymph node dissections;
(5) Prohibit the HMO from creating incentives or obstacles which would result in the provision of fewer benefits to the insured; and
(6) Provide caveat that provisions of section are not intended to affect reimbursement, rate or capitation agreements between the HMO and provider, or case management by the HMO.

**Section 9.** Creates s. 641.30198, F.S., relating to HMO coverage for breast cancer, to prohibit breast cancer followup care from being considered a procedure for determining a preexisting condition unless breast cancer is found.

**Section 10.** Provides a statement of "important state interest" for the purpose of satisfying constitutional requirements triggered by laws which impose an expenditure on local governments.

**Section 11.** Provides an effective date of October 1, 1997.

III. FISCAL & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

   Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   > With respect to the requirement that insurers and HMOs provide coverage for postsurgical mastectomy care - insurers and HMOs may experience additional costs, but they may also experience savings in terms of providing care which results in fewer costly complications.

   > With respect to the requirement that insurers and HMOs provide coverage for prosthetic devices and reconstructive surgery incident to the mastectomy, insurers will experience additional costs which they will pass on to the consumer in terms of increased premiums.

   > With respect to the requirement that insurers and HMOs provide health insurance and breast cancer coverage to persons who have remained cancer free for 2 years, insurers will experience additional costs which they will pass on to the consumer in terms of increased premiums.

2. Direct Private Sector Benefits:

   Prohibiting inpatient hospital time length of stay limits and guaranteeing outpatient postsurgical followup care coverage for mastectomies will benefit breast cancer patients and increase the medical options for both providers and patients.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None, since these requirements will have the same effect on all insurers and HMOs.

D. FISCAL COMMENTS:

   None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   The health insurance mandates of this bill would apply to local government health insurance plans that provide mastectomy coverage triggering the application of Article VII, s. 18. A law requiring such an expenditure is permissible if it is deemed to fulfill an important state interest and, as in this case, applies to all persons similarly situated including state and local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute to HBs 453, 573, 689, and 781, incorporates most of the provisions of all these four bills. The committee substitute differs from each of these bills in the following ways:

- HB 453 broadens optional coverage for prosthetic devices and reconstructive surgery for in-state individual insurance policies. The committee substitute mandates such coverage for all forms of health insurance and HMO policies, and also addresses time limits and coverage for postsurgical mastectomy care.
- HB 573 mandates coverage for prosthetic devices and reconstructive surgery for in-state individual policies, group policies and the small employer standard benefit plan. The committee substitute mandates such coverage for all forms of health insurance and HMO policies, and also addresses time limits and coverage for postsurgical mastectomy care.
- HB 689 prohibits time limits on inpatient hospital postsurgical mastectomy care and requires outpatient postsurgical mastectomy care for individual, group, and HMO policies. The committee substitute mandates coverage for prosthetic devices and reconstructive surgery.
- HB 781 imposes a 48 hour minimum inpatient hospital stay for mastectomy care and at least 1 home health visit on all forms of health insurance and HMO policies, and mandates coverage for prosthetic devices and reconstructive surgery. The committee substitute prohibits time limits on inpatient hospital postsurgical mastectomy care and requires outpatient postsurgical mastectomy care.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by: Legislative Research Director:

Meta Calder Mike Hansen