

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Banking and Insurance Committee

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BILL: SB 1172

INTRODUCER: Senator Joyner

SUBJECT: Breast Cancer Treatment

DATE: March 11, 2007

REVISED: 03/13/07

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	<u></u>	<u></u>	<u>HP</u>	<u></u>
3.	<u></u>	<u></u>	<u>GA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

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**I. Summary:**

The bill requires that if an insurance policy or health maintenance organization (HMO) contract provides coverage for breast cancer treatment, the inpatient hospital coverage for *lymph node dissections* must be for the time period determined to be medically necessary by the treating physician. The bill also requires the policy or contract providing such breast cancer treatment to provide outpatient follow-up care for a lymph node dissection consistent with prevailing medical standards. Also, the bill specifies that these provisions do not require an insured patient to have a lymph node dissection in the hospital or stay in the hospital for any fixed period of time following a lymph node dissection.

The provisions of this bill would apply to individual, small group (except for standard, basic, and limited plans), large group (50 or more employees), out-of-state policies and HMO contracts.

This bill substantially amends the following sections of the Florida Statutes: 627.64171, 627.6612, and 641.31.

**II. Present Situation:**

According to the Centers for Disease Control, cancer is the second major cause of death in women, with heart disease being the first. For 2007, the National Cancer Institute estimates that there will be 180,000 new cases of breast cancer diagnosed in the United States. In Florida alone, it is estimated that 13,430 new cases of breast cancer will be diagnosed in women this year and that 2,570 will die of this disease.<sup>1</sup> Of the total cancer deaths, only lung cancer deaths exceed

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<sup>1</sup> The Florida Breast Cancer Coalition Research Foundation - <http://www.fbccrf.org/>

breast cancer deaths for women in Florida.<sup>2</sup> According to the American Cancer Society, the incidence rate, for the period of 1998 – 2002, for white women (128.8 cases per 100,000 population) was slightly higher than African American women (102.4 cases per 100,000 population).<sup>3</sup>

The risk for breast cancer increases with age. By age 50, 1 out of 50 women (2 percent) will have breast cancer. By age 80, 5 out of 50 women (10 percent) will have breast cancer.<sup>4</sup> This disease causes more deaths than any form of cancer in women under age 55.<sup>5</sup> The risk is somewhat higher for women whose close female relatives, such as mothers and sisters, have had the disease. The risk is also higher for women who have never had children or had their first child after age 30. Men are also at risk for breast cancer.

The best defenses against breast cancer are early detection and prompt treatment. The 5-year survival rate for breast cancer is 97 percent if the cancer has not spread. The American Cancer Society has developed recommendations for early detection such as regular mammograms every year beginning at age 40 and annual clinical breast examinations. A mammogram is a low-dose x-ray procedure that depicts the internal structure of the breast.

Women with breast cancer have many treatment options contingent upon the stage of the disease. These options include surgery, radiation therapy, chemotherapy, hormone therapy, and biological therapy.<sup>6</sup> Surgery is the most common treatment for breast cancer. Surgical procedures may include a lumpectomy or mastectomy. When a lumpectomy is performed, the cancer is removed but not the entire breast. The surgeon often removes the underarm lymph nodes as well in a separate incision (axillary lymph node dissection) to determine whether the nodes contain cancer. A mastectomy is an operation to remove the breast, or as much breast tissue as possible, and in most cases the lymph nodes under the arm. For a regional lymph node dissection, some of the lymph nodes in the tumor area are removed; for a radical lymph node dissection, most or all of the lymph nodes in the tumor area are removed. A sentinel lymph node biopsy is a relatively new method for checking for cancer cells in the lymph nodes which requires the removal of fewer lymph nodes and causes fewer side effects. The presence of any cancer cells in the lymph nodes will help the physician determine the need for and course of subsequent therapy.

### **Breast Treatment Coverage in Florida**

The Florida Legislature has worked for several years to support the prevention and treatment of breast cancer. For example, ss. 627.6418, 627.6613, and 641.3105, F.S., require individual and group health policies and HMO contracts to provide coverage for regular mammograms in accordance with recommendations of the American Cancer Society.

In 1997, the Legislature enacted legislation which provides that if a policy or contract provides coverage for breast cancer treatment, the policy or contract may not limit inpatient coverage for a *mastectomy* to any period of time that is less than that determined by the treating physician to be medically necessary in accordance with prevailing medical standards. This law also required that a policy or contract that provides coverage for a mastectomy must also provide coverage for

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<sup>2</sup> The Florida Department of Health website, <http://www.doh.state.fl.us>.

<sup>3</sup> American Cancer Society, *Breast Cancer Facts and Figures 2006-2006*. Atlanta: American Cancer Society, 2005.

<sup>4</sup> Florida Department of Health, <http://www.doh.state.fl.us/Family/bcc/breastcancer.html>

<sup>5</sup> Shands Health Care, [www.shands.org](http://www.shands.org).

<sup>6</sup> National Cancer Institute of the U.S. Institutes of Health, <http://www.cancer.gov>.

outpatient postsurgical follow-up care in keeping with prevailing medical standards by a licensed health care professional qualified to provide such care.<sup>7</sup> The law also provides that routine follow-up care to determine the presence of breast cancer must not be considered medical treatment for a preexisting condition unless breast cancer is found.

### **Breast Cancer Coverage in Other States**

According to the National Cancer Institute, 12 states have passed legislation requiring insurance coverage for inpatient care following a lymph node dissection. In five states, California, Georgia, Maine, Montana, and New York, the minimum length of stay is determined by the physician. In the remaining seven states, six states (New Mexico, Oklahoma, Rhode Island, Texas, Virginia, and West Virginia) provide a minimum stay of at least 24 hours following a lymph node dissection. The remaining state, Connecticut, provides a minimum length of stay of at least 48 hours following such a procedure. In addition, 21 states currently require insurers to provide inpatient care following a mastectomy.<sup>8</sup>

### **III. Effect of Proposed Changes:**

**Section 1** provides that this act may be cited as the “Mary B. Hook Act.

**Sections 2, 3 and 4** amends ss. 627.64171 (individual health policies), 627.66121 (group health policies), and 641.31 (HMO contracts), F.S., relating to coverage for breast cancer treatment. The bill requires that if an insurance policy or HMO contract provides coverage for breast cancer treatment, the policy or contract may not limit inpatient hospital coverage for *lymph node dissections* to any period of time that is less than that determined by the treating physician to be medically necessary in accordance with prevailing medical standards. The bill also requires that such policies or contracts provide outpatient follow-up care for a lymph node dissection consistent with prevailing medical standards. The bill specifies that these provisions do not require an insured patient to have a lymph node dissection in the hospital or stay in the hospital for any fixed period of time following a lymph node dissection.

This mandated coverage would apply to individual and group health insurance policies and HMO contracts. The bill applies to small group policies, except for the standard, basic, and limited plans which are exempt from mandated benefit laws unless the law is made expressly applicable to such policies.<sup>9</sup> This mandated coverage would apply to Florida residents covered under group policies issued outside of Florida, due to the cross-reference in the out-of-state-group statute<sup>10</sup> to a section amended by this bill (s. 627.66121, F.S.)

In summary, this bill applies the same requirements for coverage for a lymph node dissection that currently apply to coverage for a mastectomy.

**Section 5** provides that this act will take effect July 1, 2007.

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<sup>7</sup> Ch. 97-48, L.O.F.

<sup>8</sup> *National Cancer Institute, State Cancer Legislative Database Program*. Bethesda: National Cancer Institute, June 30, 2005.

<sup>9</sup> Section 627.6699(16), F.S.

<sup>10</sup> Section 627.651(4), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The health insurance benefit required by this bill would apply to local government health insurance plans. To the extent this bill requires state and local governments to incur expenses, i.e., to pay additional health insurance costs, the bill falls within the purview of Article VII, Section 18 of the Florida Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or to take an action which requires the expenditure of funds unless certain specified exemptions or exceptions are met. The bill may be subject to the exemption that applies to a law that has an insignificant fiscal impact.

However, an exemption would apply if a legislative determination is made that the bill fulfills an important state interest. The bill does not provide an express statement to this effect.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Since lymph node dissections are an important part of staging and determining breast cancer treatments and outcomes, patients incurring out-of-pocket expenses associated with limited inpatient or outpatient care would benefit from the implementation of this bill. This mandate would apply to individual, small group (except for standard, basic, and limited plans), large group, and out-of state policies and HMO contracts.

Since lymph node dissections assist the physician in determining the need for and course of subsequent therapy, based upon whether the cancer has spread beyond the breast, the inpatient and outpatient care is likely to already be covered or provided by an insurer or HMO.

To the extent an insurer or HMO limits such coverage; this mandate would cause an indeterminate increase in premiums. An estimated 50 percent of all employers in the U.S. are self-insured and are thus exempt under ERISA (federal Employee Retirement Income Security Act of 1974, which regulates such plans) from providing state mandated

benefits, as required by this bill. Also, the bill would not apply to a standard, basic, or limited benefit policy issued in the small group market since these policies are not subject to a mandated benefit without a specific reference to such small group policies in the law. However, the standard, basic, and limited benefit plans represent an estimated 10 percent or less of the small group market.

If such coverage is not currently provided, insurers and HMOs would be required to make new form and rate filings for all affected policy forms and rates with the Office of Insurance Regulation (OIR) to comply with the provisions of the bill. The associated administrative costs for filing the forms and rates are indeterminate.

**C. Government Sector Impact:**

The bill does not have a direct impact on the Office of Insurance Regulation, which regulates rates, forms, policies, and contracts.

The fiscal impact related to the mandated coverage in the bill on the Division of State Group Health Insurance of the Department of Management Services is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 624.215, F.S., requires proponents of any proposal for legislation that mandates a health benefit must submit a report to the Agency for Health Care Administration and the legislative committee having jurisdiction, which assesses the social and financial impact of the proposed coverage. No such report was received by the Banking and Insurance staff.



## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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