

The Florida Senate  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 170

INTRODUCER: Senator Joyner

SUBJECT: Breast Cancer Treatment

DATE: March 4, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	Fav/CS
2.			HR	
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This Senate bill applies the same requirements for coverage of a lymph node dissection that currently apply to coverage for a mastectomy. Specifically, 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 in accordance with prevailing medical standards. 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. In addition, 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 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), and out-of-state policies and HMO contracts.

The bill has a fiscal impact on the Division of State Group Health Insurance of the Department of Management Services for the mandated coverage in the bill; the amount is indeterminate at this time.

This bill amends the following sections of the Florida Statutes: 627.64171, 627.66121, and 641.31.

## II. Present Situation:

According to the Center for Disease Control and Prevention, cancer is the second leading cause of death in women, with heart disease being the first.<sup>1</sup> For 2008, the National Cancer Institute estimated that there would be 182,460 new cases of breast cancer diagnosed in women and 1,990 in men in the United States.<sup>2</sup> In Florida alone, an estimated 12,000 new cases of breast cancer were diagnosed in women in 2008 and an estimated 2,700 Florida women died as a result.<sup>3</sup> Of the total cancer deaths, only lung cancer deaths exceed breast cancer deaths for women in Florida.<sup>4</sup>

The risk for breast cancer increases with age. By age 50, one out of 50 women (two percent) will have breast cancer. By age 80, 10 ten percent of women will have breast cancer.<sup>5</sup> This disease causes more deaths than any other form of cancer in women under age 55.<sup>6</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 who 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 five-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>7</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

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<sup>1</sup> Centers for Disease Control and Prevention. Found at: [http://www.cdc.gov/nchs/data/hestat/leadingdeaths03\\_tables.pdf#2](http://www.cdc.gov/nchs/data/hestat/leadingdeaths03_tables.pdf#2) (Last visited January 6, 2009).

<sup>2</sup> National Cancer Institute. Found at: <http://www.cancer.gov/cancertopics/types/breast> (Last visited January 6, 2009).

<sup>3</sup> Florida Department of Health website, <http://www.doh.state.fl.us/Family/bcc/breastcancer.html> (Last visited January 6, 2009).

<sup>4</sup> Florida Department of Health website, <http://www.doh.state.fl.us/Family/bcc/breastcancer.html> (Last visited January 6, 2009).

<sup>5</sup> Florida Department of Health website, <http://www.doh.state.fl.us/Family/bcc/breastcancer.html> (Last visited January 6, 2009).

<sup>6</sup> Shands Health Care <http://www.shands.org/hospitals/UF/service/Cancer/breastCancer.asp> (Last visited January 6, 2009).

<sup>7</sup> National Cancer Institute of the U.S. Institutes of Health, <http://www.cancer.gov/cancertopics/pdq/treatment/breast/Patient/page5> (Last visited January 6, 2009).

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 requires that a policy or contract that provides coverage for a mastectomy must also provide coverage for outpatient post-surgical follow-up care in keeping with prevailing medical standards by a licensed health care professional qualified to provide such care.<sup>8</sup> The law also provides that, unless breast cancer is found, routine follow-up care to determine the presence of breast cancer is not considered medical treatment for a preexisting condition.

The Florida Division of the American Cancer Society has indicated that they are unaware of any specific insurance company currently not providing lymph node coverage.<sup>9</sup> Additionally, they have stated that coverage for lymph node dissections and follow-up care appears to be generally available; the intent of the bill is to enact legislation to ensure that all companies provide such coverage.

### **Breast Treatment 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 physician determines the minimum length of stay. 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>10</sup>

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<sup>8</sup> Chapter 97-48, L.O.F.

<sup>9</sup> *Proposed Lymph Node Dissection Statute, Report to the agency for Health Care Administration and Legislative Committees of Substantive Jurisdiction*, American Cancer Society, Florida Division, March 18, 2008.

<sup>10</sup> *National Cancer Institute, State Cancer Legislative Database Program*. Bethesda: National Cancer Institute, [http://www.sclcd-nci.net/factsheets/pdf/breast\\_cancer\\_apr06.pdf](http://www.sclcd-nci.net/factsheets/pdf/breast_cancer_apr06.pdf) (Last visited March 2, 2009).

### III. Effect of Proposed Changes:

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

**Sections 2, 3, and 4** amend ss. 627.64171 (individual health policies), 627.66121 (group health policies), and 641.31, F.S., (HMO contracts), relating to coverage for breast cancer treatment. These sections require 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 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>11</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>12</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 January 1, 2010.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions :

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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<sup>11</sup> Section 627.6699(16) F.S.

<sup>12</sup> Section 627.651(4) F.S.

**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 be already 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 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. In addition, the bill does 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 ten percent or less of the small group market.

If such coverage were 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, in order 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 OIR, which regulates rates, forms, policies, and contracts.

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 624.215, F.S., requires proponents of legislative proposals mandating health coverage to submit a report to the agency for Health Care Administration and the legislative committee having jurisdiction that assesses the social and financial impacts of the proposed coverage. The Florida Division of the American Cancer Society submitted a report.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

This committee substitute differs from the original bill only in that the effective date has been changed from July 1, 2010 to January 1, 2010. This change in effective date will eliminate the fiscal impact to the Division of State Group Health Insurance.

- B. **Amendments:**

None.