

**REPORT OF THE
SPECIAL ADVISORY COMMISSION ON
MANDATED HEALTH INSURANCE BENEFITS ON**

**Section 38.2-3418 of
the Code of Virginia:
Coverage for Victims
of Rape or Incest**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 19

**COMMONWEALTH OF VIRGINIA
RICHMOND
1992**

COMMONWEALTH OF VIRGINIA



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December 30, 1991

To: The Honorable L. Douglas Wilder
Governor of Virginia
and
The General Assembly of Virginia

The report contained herein has been prepared pursuant to Sections 9-298 and 9-299 of the Code of Virginia.

This report documents a study conducted by the Special Advisory Commission on Mandated Health Insurance Benefits to assess the social and financial impact and the medical efficacy of Section 38.2-3418 of the Code of Virginia regarding health insurance coverage for victims of rape or incest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clarence A. Holland".

Clarence A. Holland, Chairman
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SECTION 38.2-3418 OF THE CODE OF VIRGINIA

§ 38.2-3418. Coverage for victims of rape or incest. - Each hospital expense, medical-surgical expense, major medical expense or hospital confinement indemnity insurance policy issued by an insurer, each individual and group subscription contract providing hospital, medical, or surgical benefits issued by a corporation, and each contract issued by a health maintenance organization which provide benefits as a result of "accident" or "accidental injury" shall be construed to include benefits for pregnancy following an act of rape of an insured or subscriber which was reported to the police within seven days following its occurrence, to the same extent as any other covered accident. The 7-day requirement shall be extended to 180 days in the case of an act of rape or incest of a female under 13 years of age. (1981, c. 42, § 38.1-348.13; 1986, c. 562.)

INTRODUCTION

The Special Advisory Commission on Mandated Health Insurance Benefits (Advisory Commission) conducted a review of §38.2-3418 of the Code of Virginia, as part of its evaluation of existing mandated benefits and providers pursuant to §§9-297 through 9-300.

As part of its review, the Advisory Commission held a public hearing to receive comments from all interested parties regarding §38.2-3418 during a meeting held on October 7, 1991 at 10:30 a.m. in Senate Room B of the General Assembly Building in Richmond, Virginia. The Advisory Commission received the comments and recommendations of one interested party in support of §38.2-3418 prior to the public hearing. No other interested parties offered comments during the course of the Advisory Commission's review although information was obtained from state agencies.

SUMMARY OF §38.2-3418

Section 38.2-3418 of the Code of Virginia requires that all health insurance, subscription, and health maintenance organization contracts issued in the Commonwealth of Virginia that provide benefits for accidents contain coverage for pregnancy resulting from an act of rape to the same extent as any other covered accident. The statute limits coverage to those situations in which the act of rape of the insured or subscriber is reported to the police within 7 days. For females under the age of 13, the notification period is extended to 180 days.

SIMILAR LEGISLATION IN OTHER STATES

Based on researched conducted by the Advisory Commission's staff, the pregnancy due to rape or incest mandate is unique to Virginia. The state of Illinois requires coverage for the examination of criminal sexual assault victims and the treatment of injuries and trauma sustained as a result of such an offense. The Illinois statute, however, does not address pregnancy benefits.

INCIDENCE OF REPORTED RAPES IN VIRGINIA

According to statistics presented in the Uniform Crime Reports for the United States-1990 of the U. S. Department of Justice, 1,915 cases of forcible rape were reported in the Commonwealth of Virginia during calendar year 1990. The Department of Justice defines forcible rape as:

...the carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape

by force or threat of force are also included; however, statutory rape (without force) and other sex offenses are excluded. (p. 15)

According to information obtained from the Office of Health Education and Information of the Virginia Department of Health, 4,680 sexual assaults including rape were reported to local health departments through sexual assault crisis centers in 1990. Incest is a subcategory of rape for which statistics were unavailable during the Advisory Commission's review of this topic.

In its written comments filed with the Advisory Commission, Virginians Aligned Against Sexual Assault (VAASA) stated that although rape crisis centers do not collect information on pregnancy,

Experience tells us that of those women assaulted, probably 50 to 100 reported becoming pregnant following a rape. Of those women, the majority are likely to make use of their own resources, hence avoiding any potential disclosure of their having been raped. Only those women with no other resources, probably less than 20 per year, are likely to make use of the provisions in §38.2-3418.

In order to make the provisions of §38.2-3418 applicable to more victims of rape, VAASA made two recommendations for expansion of the existing mandate. In recognition of the fact that many victims of rape are reluctant to report to the police, VAASA recommended that the reporting requirement contained in §38.2-3418 be expanded to include reports to local Health Departments and licensed therapists. VAASA also recommended that the reporting period be expanded from seven days to either 10 or 30 days. A 10-day reporting period would be consistent with the statute of limitations for marital sexual assault contained in §18.2-61, *et. seq.*

COSTS ASSOCIATED WITH §38.2-3418

The 1989 report of the State Corporation Commission's Bureau of Insurance entitled The Financial and Social Impact of Mandated Benefits and Mandated Providers and issued pursuant to 1989 Senate Joint Resolution 215 contains limited financial impact data on this mandate. Based on the data obtained through the initial and revised surveys, on average less than 0.5% of health insurance premiums were attributed to pregnancy due to rape or incest mandate. In addition, 79% of the companies responding to the initial survey indicated that they provided the coverage required by §38.2-3418 prior to its enactment in 1981. Insurers have generally indicated that they do not know how many claims, if any, they have received or paid as a result of this mandate. Insurers have generally acknowledged that this coverage is inexpensive based on the relatively infrequent occurrence of qualifying circumstances.

The Blue Cross and Blue Shield of Virginia Mandated Benefits Study of 1989 reports that no claims could be identified for obstetrical services for rape or incest victims during the period of study (1986 through the first quarter of 1989).

REVIEW CRITERIA

Social Impact

- a. **The extent to which the treatment or service is generally utilized by a significant portion of the population.**

A relatively small portion of the female population of Virginia incur pregnancy expenses as the result of rape or incest. In 1990, 1,915 cases of forcible rape were reported to police in Virginia. In 1990, 4,680 sexual assaults including rape were reported to the Department of Health through local sexual assault crisis centers. It is generally acknowledged that the number of reported sexual assaults is a conservative measure of incidence. Section 38.2-3418 only requires coverage in cases in which the act of rape has been reported to the police within 7 days, or 180 days if the insured or subscriber is under 13 years of age.

- b. **The extent to which insurance coverage for the treatment or service is already available.**

The insurance coverage for pregnancy due to rape or incest is currently required in Virginia by §38.2-3418. The 1989 State Corporation Commission study found that 79% of insurers responding to the initial survey indicated that they provided this coverage prior to the enactment of this mandate.

- c. **If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatments.**

Coverage is universally available. However, if it were not, the expense of an unexpected pregnancy to a victim of rape could contribute to inadequate use of necessary health care treatment.

- d. **If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment.**

Coverage is universally available. However, if it were not, the financial hardship of an unexpected pregnancy due to rape or incest could be significant.

e. The level of public demand for the treatment or service.

The level of public demand for health care for a pregnancy due to rape or incest is relatively low. This statement is supported by the statistics on reported rapes for 1990 in Virginia and the recognition of the fact that relatively few victims become pregnant as a result of an act of rape.

f. The level of public demand and the level of demand from providers for individual and group insurance coverage of the treatment or service.

The level of demand for this type of insurance coverage is difficult to measure especially because it is already available. It could be argued that the average health insurance consumer would expect their coverage to include benefits for pregnancy due to rape or incest.

g. The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts.

The Advisory Commission received no information regarding this criterion.

h. Any relevant findings of the state health planning agency or the appropriate health system agency relating to the social impact of the mandated benefit.

The Advisory Commission received no information regarding this criterion.

Financial Impact

a. The extent to which the proposed insurance coverage would increase or decrease the cost of treatment or service over the next five years.

The cost of treatment should not be affected by this mandate. The cost of coverage associated with the existing mandate for pregnancy due to rape or incest is relatively low. The State Corporation Commission's 1989 study indicated that insurers attribute less than 0.5% of premiums to the cost of this mandate on average. Many insurers, including BCBSVA have indicated that they are unable to determine the number of claims attributed to this mandate.

- b. **The extent to which the proposed insurance coverage might increase the appropriate or inappropriate use of the treatment or service.**

It has not been demonstrated that the availability of coverage has an impact on either the inappropriate or appropriate use of pregnancy related health care services.

- c. **The extent to which the mandated treatment or service might serve as an alternative for more expensive or less expensive treatment or service.**

This criterion is not applicable to this statute.

- d. **The extent to which the insurance coverage may affect the number and types of providers of the mandated treatment or service over the next five years.**

Because of the relatively low number of individuals which qualify for coverage under this mandate, it can be argued that this kind of insurance coverage has little affect on the number and types of providers of the specified treatments and services.

- e. **The extent to which insurance coverage might be expected to increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.**

No evidence has been presented by insurers or other parties which identifies an administrative cost associated with this existing mandate.

- f. **The impact of coverage on the total cost of health care.**

No evidence has been presented which would indicate that this mandate has had any impact on the total cost of health care.

Medical Efficacy

- a. **The contribution of the benefit to the quality of patient care and the health status of the population, including the results of any research demonstrating the medical efficacy of the treatment or service compared to alternatives or not providing the treatment or service.**

Access to appropriate prenatal care can increase the chances of the birth of a healthy child and reduce or eliminate medical costs attributed to complications of pregnancy.

b. If the legislation seeks to mandate coverage of an additional class of practitioners:

- 1) The results of any professionally acceptable research demonstrating the medical results achieved by the additional class of practitioners relative to those already covered.**

This criterion is not applicable to this statute.

- 2) The methods of the appropriate professional organization that assure clinical proficiency.**

This criterion is not applicable to this statute.

Effects of Balancing the Social, Financial and Medical Efficacy Considerations

- a. The extent to which the benefit addresses a medical or a broader social need and whether it is consistent with the role of health insurance.**

This benefit addresses both a medical and a social need. The victim of rape has incurred medical expenses as a result of an act not under her control. It is socially desirable for the victim and the unborn child to receive necessary health care treatment.

- b. The extent to which the need for coverage outweighs the costs of mandating the benefit for all policyholders.**

The costs associated with this mandate have been reported as relatively low by insurers. This coverage meets an identifiable need to extend coverage to certain individuals who are the victims of a particular type of violent crime.

- c. The extent to which the need for coverage may be solved by mandating the availability of the coverage as an option for policyholders.**

Mandating the availability of this coverage would place the decision of coverage with employers and other group policyholders. Individuals who rely on group policies for coverage would not have the option to elect such coverage. No evidence has been presented that indicates that the mandated availability of this coverage would meet the identified need.

RECOMMENDATIONS

As a result of the evaluation documented in this report, the Special Advisory Commission on Mandated Health Insurance Benefits recommends to the General Assembly of Virginia the following amendments to expand §38.2-3418: (1) allow the reporting requirement to be satisfied by a report to the police, the local Department of Health or a licensed therapist; and (2) expand the required reporting period from seven to 10 days while retaining the 180-day notice requirement for victims under the age of 13.

CONCLUSION

The Advisory Commission has found that the benefits of §38.2-3418 outweigh the identifiable costs associated with it and that the extension of coverage for pregnancy benefits to victims of rape is socially desirable. In light of the fact that insurers attribute a relatively small cost to this mandate and that it has been estimated that less than 20 individuals per year utilize the provisions of §38.2-3418, the Advisory Commission has found that an expansion of the eligibility criteria contained in this statute is justified.

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