REPORT OF THE SPECIAL ADVISORY COMMISSION ON MANDATED HEALTH INSURANCE BENEFITS

MINIMUM HOSPITAL STAY FOR MASTECTOMY PATIENTS

(HOUSE BILL 2020, 1997)

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 31

COMMONWEALTH OF VIRGINIA
RICHMOND
1998

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

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December 12, 1997

To: The Honorable George Allen
Governor of Virginia
and
The General Assembly of Virginia

The report contained herein has been prepared pursuant to §§ 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 (Advisory Commission) to assess the social and financial impact and the medical efficacy of House Bill 2020, regarding mandatory coverage for minimum hospital stay for mastectomy patients.

This report is respectfully submitted on behalf of the remaining members of the Advisory Commission.

Member, Virginia House of Delegates
Special Advisory Commission on
Mandated Health Insurance Benefits

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INTRODUCTION

The House Committee on Corporations, Insurance and Banking referred House Bill 2020 to the Special Advisory Commission on Mandated Health Insurance Benefits (Advisory Commission) during the 1997 Session of the General Assembly. House Bill 2020 was patroned by Delegate Phillip Hamilton.

The Advisory Commission held a public hearing on June 17, 1997 in Richmond to receive comments. Three speakers addressed the proposal. In addition to the patron, a representative from the Virginia Chapter of the American Cancer Society (ACS) spoke in favor of the bill. Written testimony in favor of the bill was received from two physicians and nine interested parties. Representatives from the Virginia Association of Health Maintenance Organizations (VAHMO) spoke in opposition to the bill. Written testimony in opposition to the bill was received from VAHMO, the Virginia Manufacturers Association (VMA), the Virginia Hospital and Healthcare Association (VHHA), the Virginia Chamber of Commerce (VCC), and Trigon BlueCross BlueShield (Trigon).

The Advisory Commission concluded its review of House Bill 2020 on July 29, 1997.

SUMMARY OF PROPOSED LEGISLATION

House Bill 2020 adds § 38.2-3418.3 to the Code of Virginia in the chapter on accident and sickness insurance. The bill requires any insurer proposing to issue individual or group accident and sickness insurance on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization (HMO) providing a health care plan for health care services to provide coverage for a minimum stay in the hospital of not less than 48 hours for a patient following a mastectomy.

At the June 17 public hearing, Delegate Hamilton offered three amendments to the existing language of House Bill 2020 (See Appendix B). The amendments:

- expand coverage to include not less than 24 hours of inpatient care following a lymph node dissection for the treatment of breast cancer;

- include language stating that nothing in this section shall be construed as requiring the provision of inpatient coverage where the attending physician and patient determine that a shorter period of hospital stay is appropriate; and

- exclude policies or contracts designed for issuance to persons eligible for coverage under Medicare, or any other similar coverage under state or federal government plans.

The length of stay following lumpectomy surgery was briefly discussed at the June 17 public hearing. However, no formal amendment specifically requiring a minimum hospital stay following lumpectomy surgery was proposed. VAHMO submitted written comments that noted that women receive benefits for an average of 1.8 days (43.2 hours) following lumpectomy surgery. Advisory Commission staff found that lumpectomy surgery is generally performed on an outpatient basis.

Opponents to House Bill 2020 expressed concern that the bill does not define "mastectomy." VMA stated in written comments that the coding for mastectomy includes eighteen different procedures, ranging from a biopsy to a radical mastectomy. Trigon contended that the lack of a definition invites application of the mandate to a broad range of procedures.

MASTECTOMY SURGERY

According to the Virginia Cancer Registry (VCR) and the National Cancer Institute (NCI), there are several types of mastectomy surgery, depending upon the stage of the breast cancer. Lumpectomy is the removal of the tumor and a small amount of healthy tissue around the cancer. A breast cancer patient may undergo a partial mastectomy (removal of the tumor, some of the normal breast tissue around it, and the lining over the chest muscle below the tumor); a simple or total mastectomy (removal of the entire breast, including the nipple and areola, and the overlying skin); a lymph node dissection (removal of the lymph nodes on the affected side); a modified radical mastectomy (removal of the entire breast, the overlying skin, and the lymph nodes); or a radical mastectomy (removal of the entire breast, the overlying skin, the lymph nodes, as well as the pectoral muscles and other neighboring tissue). The VCR reported that the majority of patients whose breast cancer was treated with mastectomy surgery in 1992 underwent a modified radical mastectomy.

A November 19, 1996 article in *USA TODAY*, entitled "Drive-Through Mastectomies, the Next Target," noted that a mastectomy is performed under general anesthesia. Once a woman's breast tissue is removed, drains are installed, and the skin flaps are closed with sutures and steristrips. Patients are then monitored for the proper level of pain control, bleeding, and blood clotting in the drainage tubes. An oncological surgeon in New York noted in the article that the danger of post-operative hemorrhage is greatest during the first 24 hours.

An article in the February 24, 1997 *Newsweek*, entitled "A Surgeon's Challenge," stated that it is estimated that 70% of women with breast cancer are candidates for breast conservation techniques, such as lumpectomy with radiation. The article reports that only 30% of breast cancer patients need a radical mastectomy; however, seven out of ten women undergoing surgery for breast cancer receive mastectomies. The article's author, Dr. Susan Love of the Santa Barbara Breast Cancer Institute, explained that many unnecessary mastectomies are performed because some surgeons were trained at a time when total mastectomy was considered the best method of treating breast cancer. She contended that while less dramatic procedures are now available, some surgeons are resistant to change. The NCI reports that radical mastectomies were standard for years, but are seldom used now.

AVERAGE LENGTH OF STAY FOLLOWING A MASTECTOMY

The VHHA, a trade association that represents Virginia hospitals and health care organizations, reported that between January, 1995 and June, 1996, a total of 3,804 women in Virginia underwent mastectomy surgery. Patients remained in the hospital for an average of 2.5 days. Of the 3,804 women that underwent the surgery, 555 women were between the ages of 18 - 44 and remained in the hospital an average of 2.4 days; 1,624 women were between the ages of 45 - 64 and remained in the hospital an average of 2.3 days; and 1,625 women were 65 years of age or older and remained in the hospital for an average of 2.7 days. Patients who experienced complications were hospitalized an average of 3.1 days.

The average length of stay (ALOS) has steadily declined over the last few years. J. R. Johnson's article, "Caring for the Woman Who's Had a Mastectomy" (*American Journal of Nursing* 94(5), 25-31), reports that the ALOS following a mastectomy was one week in 1990. In 1994, the average ALOS following a modified radical mastectomy was three days.

Representatives from the Medical College of Virginia (MCV) explained by telephone that it is difficult to predetermine the minimum hospital stay needed following mastectomy surgery. MCV representatives noted that several factors, including complications and the patient's individual healing process, determine the necessary length of stay. MCV provided ALOS data based on mastectomy surgeries performed during fiscal year 1997 (ending June 30, 1997). Five women underwent simple mastectomy surgery and were hospitalized an average of 4.4 days. Twenty-six women underwent modified radical mastectomy surgery and were hospitalized for an average 2.9 days. One woman underwent radical mastectomy surgery and was hospitalized 4.0 days. One woman underwent bilateral mastectomy surgery and was hospitalized 20.0 days. Representatives from MCV also explained that figures associated with lumpectomy surgery were

not available because this procedure is generally performed on an outpatient basis.

The majority of VAHMO members indicated that they believe that lengths of stay following a mastectomy should be determined by the attending physician in consultation with the patient. The VAHMO survey found that the ALOS for all reported mastectomy procedures, including lumpectomy procedures, was slightly over 1.8 days. The average ALOS for mastectomy procedures, including ancillary lymph nodes, was over two days (2.26).

Three women who underwent mastectomy surgery provided written comments indicating that they were discharged within 24 hours after surgery. All three indicated that they had to be readmitted due to complications. The patients questioned the medical efficacy of early discharge following mastectomy surgery if the patient must return to treat avoidable complications. Other patients indicated that they were hospitalized for over 24 hours, but less than 48 hours. These patients described the physical and emotional difficulties that they experienced following their discharge. One patient who was discharged after 32 hours stated in written comments that being sent home so soon after such major surgery, with surgical drains and dressings, is a frightening experience. She further stated that most women who undergo this type of surgery do not have the necessary level of support at home for early discharge.

MEDICAL EFFICACY

The medical efficacy of mastectomy surgery is not challenged by insurers and other opponents. However, opponents of House Bill 2020 questioned the necessity of prolonged hospitalization following mastectomy surgery. The VHHA noted in written comments that technology has vastly improved all providers' ability to treat patients more efficiently while simultaneously assuring quality, appropriateness and effectiveness of care. The VMA contended in written comments that minimum hospital stay legislation fails to acknowledge advances in the progress in medical practice. The VMA further contended that improvements in medical procedures, technology or drugs may reduce the advisability of lengthy hospitalization, and what is legislated today may be obsolete in less than five years. The VCC stated in written comments that their organization believes that clinical matters, such as length of hospitalization, should be determined by medical practitioners, not by legislative bodies.

According to an article entitled "Critical Path Network: A Typical Pathway Sends Mastectomy Patients Home Early" (*Hospital Case Management*, 2(7), 117-120), women no longer need a two or three-day hospital stay following a mastectomy, thus a mastectomy can now be performed as outpatient surgery. The ALOS has steadily declined over the last few years. J. R. Johnson's article, "Caring for the Woman Who's Had a Mastectomy" (*American Journal of Nursing*

94(5), 25-31), reports that the ALOS following a mastectomy was one week in 1990. In 1994, the average ALOS following a modified radical mastectomy was three days.

Proponents of the bill argued that, while there is little evidence that mastectomy surgery is performed on an outpatient basis in Virginia, House Bill 2020 is a proactive step to ensure that patients will continue to receive coverage for necessary hospitalization following mastectomy surgery. An article in the *Home Healthcare Nurse*, 1997, contends that shortened ALOS does not allow adequate time for teaching women and their families postmastectomy care, such as incision care, drain care, activity restrictions, and care of the affected arm.

CURRENT INDUSTRY PRACTICES

The State Corporation Commission's Bureau of Insurance (Bureau) surveyed fifty of the top writers of accident and sickness insurance in Virginia regarding all seven bills to be reviewed by the Advisory Commission. Thirty-five companies responded by May 2, 1997. The Bureau asked insurers questions regarding the average number of inpatient days covered following various breast cancer treatments, the average number of outpatient visits immediately following various breast cancer treatments, and the percentage of "paid" claims mastectomy payments represent.

Five insurers indicated that they write little or no applicable health insurance policies in Virginia and could not provide the information requested. Of the thirty companies responding that they write accident and sickness insurance in Virginia, the majority were unable to provide the information requested. Insurers indicated that their computer systems did not specifically track information on the ALOS following a mastectomy. One insurer commented that its policy regarding length of stay is determined by the health care provider, in consultation with the patient, to determine what is medically necessary.

Average Number of Inpatient Days Covered

Staff surveyed insurers on the average number of inpatient days covered following a lumpectomy, a simple mastectomy, a modified simple mastectomy, a radical mastectomy, and bilateral mastectomy.

Lumpectomy

When asked the number of impatient days covered following a lumpectomy, five companies responded that individual policyholders were hospitalized between 1.0 and 1.1 inpatient days following a lumpectomy. Thirteen companies responded that group certificate holders were hospitalized between 0.10 and 2.65 inpatient days. One company reported that optional

coverage for both individual and group policyholders was provided for an average of 1.4 inpatient days. Five companies indicated that lumpectomies were performed as an outpatient procedure.

Simple Mastectomy

When asked the average number of inpatient days covered following an uncomplicated simple mastectomy, five companies responded that insureds covered under standard individual policies were hospitalized between 1.0 and 4.0 inpatient days. Sixteen companies responded that group certificate holders were hospitalized between 0.2 and 4.47 days. One company reported that optional coverage for both individual and group policyholders was provided for an average of 1.4 inpatient days.

Modified Radical Mastectomy

Five companies responded that policyholders covered under a standard individual policy were hospitalized between 2.0 and 3.0 inpatient days following an uncomplicated modified radical mastectomy. Fifteen companies provided information indicating that group certificate holders were hospitalized between 1.0 and 2.88 inpatient days following a modified radical mastectomy.

Of the twenty-nine companies responding to the Bureau survey, no company provided information regarding the number of inpatient days covered on an optional basis to their individual or group policyholders. One HMO indicated that they do not perform modified radical mastectomies and could not respond.

Radical Mastectomy

Five companies indicated that individual policyholders were hospitalized between 1.5 and 2.0 inpatient days following an uncomplicated radical mastectomy. Twelve companies responded that standard group policyholders were hospitalized between 1.0 and 4.0 days. One company reported that optional coverage for both individual and group policyholders was for an average of 1.5 inpatient days.

Bilateral Mastectomy

Four companies indicated that individual policyholders were hospitalized between 1.8 and 3.0 inpatient days following uncomplicated bilateral mastectomy surgery. Nine companies responded that standard group policyholders were hospitalized between 1.0 and 4.0 days of hospitalization. One company reported that optional coverage for both individual and group policyholders was available for an average of 1.8 inpatient days.

Lymph Node Dissection

The Bureau's survey of insurers did not address the ALOS following lymph node dissections because the amendment to include coverage for 24 hours of inpatient care was proposed after the completion of the survey.

FINANCIAL IMPACT

Respondents to the Bureau survey provided cost figures of $0.05 to $2.00 per month per individual policy and $0.01 to $1.04 per month per group certificate to provide the coverage specified in House Bill 2020. One insurer indicated that there would be no additional cost to its group certificate holders to provide not less than 48 hours of inpatient care for mastectomy patients. To provide optional coverage as specified in House Bill 2020, one respondent indicated that it would cost $0.05 per month per individual policy. Another insurer indicated that it would cost $23.01 per month per individual policy. To provide optional coverage to group certificate holders, respondents indicated that it would cost from less than $0.01 to $0.32 per month.

Respondents to the Bureau survey indicated that in 1996, mastectomy claims constituted 0.02% to 2.5% of the total paid accident and sickness claims for individual policies and less than 0.05% to 2.5% for group policies. Respondents also reported that in 1996, mastectomy coverage constituted less than 0.05% of claims for coverage provided on an optional basis for individual policies and group policies.

SIMILAR LEGISLATION IN OTHER STATES

As of June, 1997, the National Association of Insurance Commissioners, the National Insurance Law Service, and the *STATE CAPITALS Newsletters* (April 7, 1997, p. 4) reported that nine states mandate length of stay in the hospital following mastectomy surgery.

- Arkansas' statute prohibits any health insurer that provides for mastectomy surgery from restricting benefits for any hospital length of stay in connection with a mastectomy. The statute mandates coverage for no less than 48 hours of inpatient care unless the attending physician, in consultation with the patient, decides otherwise.

- Connecticut's statute requires all health insurers to cover 48 hours of inpatient care following a mastectomy or lymph node dissection. The statute also requires insurers to provide coverage for a longer period of inpatient care if recommended by the patient's treating physician in consultation with the patient.

- Florida's statute prohibits health insurers that provide coverage for breast cancer treatment from limiting the hospital length of stay or post-discharge outpatient treatment to any period of time less than that determined to be medically necessary by the physician.

- Illinois' statute requires health insurers to provide coverage for the length of stay following a mastectomy as determined by the physician in consultation with the patient.

- Maine's statute requires health insurers providing coverage for medical and surgical benefits to ensure that inpatient coverage for breast cancer is provided for a period of time determined by the attending physician, in consultation with the patient, to be medically appropriate following a mastectomy, lumpectomy or a lymph node dissection. The law becomes effective January 1, 1998.

- New Mexico's statute requires all health insurers to cover 48 hours of inpatient hospital care for mastectomy patients and 24 hours for lymph node dissection.

- New York's law requires every health insurance policy which provides coverage for inpatient hospital care to also provide inpatient hospital care coverage for such period as determined by the attending physician in consultation with the patient. The length of stay is to be medically appropriate for such covered person undergoing a lymph node dissection, lumpectomy for the treatment of breast cancer, or a mastectomy covered by the policy. The law becomes effective January 1, 1998.

- Rhode Island's statute requires every health insurer to provide coverage for a minimum 48-hour time period in a hospital after mastectomy surgery, and a minimum 24 hours after a lymph node dissection.

- Texas' statute requires health insurers to provide coverage for inpatient care for a minimum of (i) 48 hours following a mastectomy; and (ii) 24 hours following a lymph node dissection for the treatment of breast cancer, unless the attending physician determines that a shorter period of inpatient care is appropriate. The statute was effective September 1, 1997, and applies to a health benefit plan that is delivered on or after January 1, 1998.

Table 1 shows that in addition to the nine states that mandate minimum hospital stay following a mastectomy, eighteen states introduced legislation during 1996 and 1997 addressing hospital stay following a mastectomy.

Table 1 States That Introduced Legislation on Minimum Hospital Stay Following A Mastectomy in 1996 and 1997 (As of June, 1997)

Arkansas*	Maine*	Pennsylvania
Arizona (F)	Maryland (F)	Oregon
California	Michigan	Rhode Island*
Connecticut*	Minnesota	South Carolina
Florida*	New Jersey	Tennessee
Georgia (F)	New Mexico*	Texas*
Illinois*	New York*	Virginia
Iowa (F)	North Carolina	Washington (F)
Louisiana	Ohio	Wisconsin

* Indicates legislation passed
(F) Indicates the legislation failed

Several bills have been introduced in Congress on the issue; however, no legislation had been passed at the time of this report. According to a February 13, 1997 *Richmond Times-Dispatch* article, the Clinton Administration issued a warning to all managed care plans that serve Medicare patients not to arbitrarily limit hospital stays for women undergoing mastectomies. The Health Care Financing Administration recently banned doctors, hospitals and insurers (including HMOs) from requiring outpatient breast cancer surgeries or setting arbitrary limits on hospital stays for such treatment for Medicare patients. The United States Secretary of Health and Human Services stated that the decision on appropriate length of stay following breast cancer surgery should be made by a woman and her doctor.

REVIEW CRITERIA

SOCIAL IMPACT

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

The ACS estimates that 4,400 women will be diagnosed with breast cancer in Virginia in 1997. The VCR reports that in 1992, over 56% of the total breast cancer patients treated by surgical procedure in Virginia underwent some form of mastectomy surgery. The VHHA reported that between January, 1995 and June, 1996, a total of 3,804 women in Virginia underwent mastectomy surgery.

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

Of the 35 companies responding to the Bureau survey, the majority were unable to provide the information requested regarding the number of inpatient days and outpatient visits covered following various breast cancer treatment surgeries. Insurers indicated that their computer systems did not specifically track information on the ALOS following a mastectomy. One insurer commented that its policy regarding coverage for hospitalization following mastectomy surgery is determined by the health care provider, in consultation with the patient, to determine what is medically necessary.

The VHHA reported in written comments that the ALOS for mastectomy patients in Virginia currently exceeds the minimum two-day requirement proposed in House Bill 2020. The VHHA also notes that women receiving mastectomies remain in the hospital for 2.5 days on average.

In a recent survey of its members, the VAHMO found that Virginia HMOs have never required outpatient mastectomy surgery. The VAHMO survey found that the ALOS following all reported mastectomy procedures, as well as lymph node dissection, is 2.26 days. VAHMO members also reported the ALOS following a lumpectomy is 1.8 days.

Three breast cancer patients submitted written comments stating that they were discharged from the hospital within 24 hours following their mastectomy surgery. One woman stated that her mastectomy surgery was performed as Day Surgery, which is surgery performed on an outpatient basis. Another woman noted that she was admitted at 1:00 p.m. on the day of her surgery. She underwent mastectomy surgery at 2:30 p.m. and was discharged at approximately 8:30 the following morning.

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.*

Proponents contended that coverage is not consistent. Three proponents stated in written comments that they were discharged within 24 hours. As a result, they had to be readmitted because of complications associated with their mastectomy surgeries. Another proponent explained in written comments that she was hospitalized for 36 hours. However, she was not able to care for herself when discharged. Her sister temporarily moved in to care for her because her insurer denied coverage for home health care.

In oral comments, the ACS explained that House Bill 2020 would ensure that mastectomy patients continue to receive coverage for hospitalization of no less than 48 hours following mastectomy surgery and no less than 24 hours following lymph node dissection. An oncologist at MCV stated in written comments that, in some instances, a shorter stay is feasible for specific patients, but protection for a minimum of 48 hours seems appropriate since earlier discharge is often detrimental to both the short and long-term health of the mastectomy patient.

Opponents of the bill contended that coverage is currently available. In written comments, several opponents noted that mastectomy patients average a 2.5 day stay in the hospital following mastectomy surgery, which is greater than what is required by House Bill 2020. Trigon and its HMOs stated in written comments that they cover inpatient admission for mastectomy and do not require mastectomies on an outpatient basis. The ACS issued a statement indicating that as long as the physician determines that there are no complications following surgery, there is sufficient support in the home, and it is the desire of the patient to be released, then outpatient mastectomy surgery is appropriate.

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.*

Opponents contended that coverage exceeding that required by House Bill 2020 is currently available. Proponents contended that coverage is not always available and that without the mandate, insurers can retract their voluntary policy statement regarding length of stay at any time. Neither proponents nor opponents provided comments regarding unreasonable financial hardship on those persons needing treatment.

The Medical College of Virginia (MCV) provided data on the average cost for inpatient care for those patients who underwent mastectomy surgery at the hospital during fiscal year 1997. The average charge to the five patients who underwent simple mastectomy surgery was $18,663 for 4.4 days. The average charge to the twenty-six patients who underwent modified radical mastectomy surgery was $14,787 for 2.9 days. The charge to the patient who underwent a radical mastectomy was $22,469 for 4.0 days. The charge to the patient who underwent a bilateral mastectomy was $71,925 for 20 days. MCV did not provide cost data for lumpectomy patients because the procedure is generally performed on an outpatient basis.

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

The number of consumers asking for this coverage in Virginia was not presented during this review. Both opponents and proponents testified that there were few reported cases of early discharge following a mastectomy. The ACS estimates that 4,400 women will be diagnosed with breast cancer in Virginia in 1997. Information provided by the VCR reports that in 1992, over 56% of the total breast cancer patients treated by surgical procedure in Virginia underwent some form of mastectomy surgery.

In written comments, one opponent stated that her organization was not aware of a problem in Virginia in which mastectomy patients have been discharged from hospitals over the objections of the treating physician. Opponents further noted that information indicated that mastectomy patients in Virginia have an average 2.5 day stay in the hospital, which is greater than the proposed legislation.

A representative with the ACS stated in oral comments that it took 100 to 1,000 "drive-by deliveries" to get legislation passed so that a woman would have the option to stay in the hospital following childbirth. She explained that proponents would like to enact legislation in this state to ensure that mastectomy patients have similar protection.

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

A surgical oncologist at MCV, with the support of the Massey Cancer Center, stated in written comments that patients undergoing mastectomy have both significant physical and psychological problems associated with this treatment intervention, and they deserve insurance protection from premature discharge from inpatient medical facilities. Another oncologist stated in written comments that House Bill 2020 is a necessary step to prevent insurers from dictating how doctors manage those patients undergoing the surgical treatment of newly diagnosed breast cancer.

VAHMO noted that its members report that average length of stay following mastectomy procedures for women covered by HMOs in Virginia is within an expected and appropriate range. In written comments, the VHHA provided data indicating that approximately 43% of mastectomy patients (for calendar year 1995 and January through June 1996) in the Commonwealth were Medicare beneficiaries who would not benefit from this mandate. The VHHA questioned what percentage of the remaining 57% would benefit from House Bill 2020 when Medicaid patients, members of self-insured health plans, and the uninsured were removed from the total number of those receiving mastectomies.

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

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

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.*

No information or relevant findings of the state health planning agency or the appropriate health system agency relating to the social impact of this mandated benefit was presented during this review.

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.*

No information was provided by either proponents or opponents that would suggest that enactment of House Bill 2020 would either increase or decrease the cost of inpatient hospital care over the next five years. The VCC and VAHMO contend that mandated treatments and services beyond those which may be clinically indicated drive up health insurance costs and increase the ranks of the uninsured.

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

Opponents argued that enactment of House Bill 2020 would increase the inappropriate practice of lengthy and unnecessary hospitalization following mastectomy surgery. One opponent noted that medical technology is rapidly enhancing a physician's ability to provide high quality health care services to patient populations. The opponent further noted that technology has vastly improved all providers' ability to treat patients more efficiently while simultaneously assuring quality, appropriateness and effectiveness of care.

Proponents contended that House Bill 2020 would ensure appropriate coverage for inpatient care for those women who must undergo surgery to fight a potentially fatal disease. One oncologist stated in written comments that in

some instances, a shorter stay is feasible for specific patients, but protection for a minimum of 48 hours seems appropriate, since earlier discharge is often detrimental to both the short and long term health of mastectomy patients.

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

There is a difference in the cost of inpatient care following a mastectomy and mastectomies performed on an outpatient basis. A November, 1996 *USA TODAY* article stated that a mastectomy with a customary three-day hospital stay costs an average $6,282, while an outpatient mastectomy costs an average $1,572, a difference of $4,710 in the cost of the alternative.

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.*

The number and type of providers of the mandated service are not expected to increase over the next five years as a result of this bill.

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.*

An increase in the administrative expenses of insurance companies and the premiums and administrative expenses for policyholders is anticipated because of the expenses associated with such things as policy redesign, form filing, claims processing systems and marketing, and other administrative requirements. However, this increase would be negligible because insurers indicated that coverage for mastectomy patients in Virginia currently exceeds that which would be required if House Bill 2020 was enacted.

Respondents to the Bureau survey provided cost figures of $0.05 to $2.00 per month per individual policy and $0.01 to $1.04 per month per group policy to provide the coverage specified in House Bill 2020. One insurer indicated that there would be no additional cost to its group certificate holders to provide not less than 48 hours of inpatient care for mastectomy patients. To provide optional coverage as specified in House Bill 2020, one respondent indicated that it would cost $0.05 per month per individual policy. Another insurer indicated that it would cost $23.01 per month per individual policy. To provide optional coverage to group certificate holders, respondents indicated that it would cost from less than $0.01 to $0.32 per month.

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

The total cost of health care is not expected to be significantly affected. In written comments, VAHMO opposed the over-prescription of additional benefits which could have the unintended consequence of making health care too costly for those populations and small businesses least able to afford it.

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.

The medical efficacy of mastectomy surgery is not questioned by opponents to the bill. Opponents expressed concern that legislating the length of stay was inappropriate because improvements in medical procedures, technology or drugs may further reduce the advisability of lengthy hospitalization. The VCC stated that medical advances continue to alter treatment protocols. The VMA stated in written comments that House Bill 2020 fails to acknowledge progress in medical practices. The VMA also noted that what is legislated today may be obsolete in less than five years.

Several insurers stated that the length of stay following mastectomy surgery should be determined by the attending physician and the patient and not by a legislative mandate. Insurers also stated that length of stay should be determined on a case-by-case basis instead of imposing a blanket standard for everyone.

Opponents cited a program developed at Johns Hopkins Hospital in Maryland in which patients undergo a mastectomy as outpatient surgery, followed by properly supported home follow-up. According to Johns Hopkins' Director of Performance Improvement and Utilization Management, 65% of mastectomies at the hospital are performed on an outpatient basis. The hospital reported that it began performing outpatient mastectomies because the hospital believed that this would result in better quality of care. Johns Hopkins believes that outpatient mastectomy surgery, in addition to a comprehensive patient education program beginning at diagnosis, family involvement, and patient participation in the decisions of treatment options and care, benefits the patient physically and emotionally in the short and long term.

A proponent who underwent a double mastectomy noted that she

underwent mastectomy surgery on one breast as outpatient surgery. Surgery to remove the second breast was performed as inpatient surgery. The proponent contended in written comments that she supports inpatient surgery because she felt stronger and experienced fewer complications upon discharge. She further contended that sending a patient home too early adds unnecessary stress to the situation.

A surgical oncologist at MCV stated in written comments that patients undergoing mastectomy have both significant physical and psychological problems associated with treatment for breast cancer. He contended that in some instances, a shorter stay is feasible for specific patients, but patients deserve protection from premature discharge from inpatient medical facilities. He further noted that protection for a minimum of 48 hours seems appropriate because earlier discharge is often deleterious to both the short and long term health of these patients.

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.*

Not applicable.

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

Not applicable.

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.*

Proponents argued that the coverage is consistent with the role of health insurance and addresses a medical and social need. Noting recently passed legislation that mandated minimum hospital stay following childbirth, the bill's patron encouraged the Advisory Commission to proactively support legislation that would protect women from premature discharge following surgery. Delegate Hamilton argued that House Bill 2020 is also consistent with federal legislation

introduced to respond to the problem of outpatient mastectomies in the United States.

Opponents of the bill argued that this coverage is not consistent with the role of health insurance and overlooks the advancements in medical technology. The VHHA noted that technology has vastly improved all providers' ability to treat patients more efficiently while simultaneously assuring quality, appropriateness, and effectiveness of care. The VHHA also noted that legislative mandates, such as House Bill 2020, serve only to interfere in the physician/patient relationship by arbitrarily preempting physicians' clinical decision-making ability. In oral comments, a representative from the VAHMO indicated that House Bill 2020 is not consistent with the role of health insurance because physicians, not mandates, should make all medical treatment decisions based on the best available scientific information and the unique characteristics of each patient.

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

Opponents to House Bill 2020 questioned whether there was a need for the type of coverage proposed in the bill. In both oral and written comments, opponents to the bill stated that they were unaware of mastectomy patients in Virginia being discharged prematurely from hospitals over the objections of the treating physicians. Opponents reported that their studies showed that mastectomy patients in Virginia are hospitalized for an average of 2.5 days, which is greater than what is proposed by the legislation.

An oncologist at the University of Virginia Medical Center stated in written comments that House Bill 2020 is a necessary step in order to prevent insurers from dictating how physicians manage those patients undergoing the surgical treatment of newly diagnosed breast cancer. One patient contended by telephone that if insurers currently provide the coverage as specified in House Bill 2020, then there should not be an increase in premiums to policyholders. However, the need to provide adequate inpatient care after a mastectomy, in all instances, is crucial.

Respondents to the Bureau survey provided cost figures of $0.05 to $2.00 per month per individual policy and $0.01 to $1.04 per month per group certificate to provide the coverage specified in House Bill 2020. One insurer indicated that there would be no additional cost to its group certificate holders to provide not less than 48 hours of inpatient care for mastectomy patients.

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

It is expected that the cost of a mandated offer of coverage would be higher than a mandate of coverage because of adverse selection by women who have strong family histories of breast cancer. In the case of group coverage, the decision as to whether or not to select the optional coverage would lie with the master contract holder and not the individual insureds. Therefore, it is possible that many women would not benefit from such a mandate.

RECOMMENDATION

The Advisory Commission voted on July 29, 1997 to recommend that House Bill 2020 be enacted, as amended (Yes - 5, No - 4).

CONCLUSION

Neither proponents nor opponents provided the Advisory Commission with information showing a significant number of incidents of women in Virginia being discharged within 24 hours following mastectomy surgery. Three proponents provided the Advisory Commission with written comments indicating that they had been discharged in less than 24 hours. Proponents contended that women who undergo mastectomy surgery are often discharged without sufficient support at home. Opponents reported that in general, insurers provide coverage that exceeded that required by House Bill 2020.

The Advisory Commission noted that, although little evidence of women being discharged within 24 hours following mastectomy surgery was presented, a mandate is necessary to ensure that the women of Virginia are consistently covered for at least 48 hours of inpatient care following a mastectomy and at least 24 hours of inpatient care following a lymph node dissection. The Advisory Commission concluded that House Bill 2020 should be recommended with the amendments offered by Delegate Hamilton.

974826264

HOUSE BILL NO. 2020

Offered January 13, 1997

A BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3418.3, relating to accident and sickness insurance; minimum hospital stay for mastectomy patients.

Patrons—Hamilton, Callahan, Christian, Cooper, Crittenden, Darner, Diamonstein, Drake, Forbes, Keating, Parrish, Purkey and Tata; Senators: Maxwell and Williams

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Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3418.3 as follows:

§ 38.2-3418.3. Minimum hospital stay for mastectomy patients.

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage providing a minimum stay in the hospital of not less than forty-eight hours for a patient following a mastectomy. Such provision shall be included under any policy, contract or plan delivered, issued for delivery or renewed in this Commonwealth on and after July 1, 1997.

B. The provisions of this section shall not apply to short-term travel, accident only, limited or specified disease policies, or to short-term nonrenewable policies of not more than six months' duration.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1057, 38.2-1306.2 through 38.2-1309, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6, 38.2-3407.9, 38.2-3407.10, 38.2-3407.11, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1, 38.2-3418.1:1, 38.2-3418.1:2, 38.2-3418.2, *38.2-3418.3*, 38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3433, 38.2-3500, 38.2-3514.1, 38.2-3514.2, 38.2-3525, 38.2-3542, Chapter 53 (§ 38.2-5300 et seq.) and Chapter 54 (§ 38.2-5400 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

Delegate Hamilton's amendments to the proposed legislation appear in bold print.

38.2-4318.3 Minimum hospital stay for mastectomy patients.

A. Notwithstanding the provisions of 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage providing a minimum stay in the hospital of not less than forty-eight hours for a patient following a mastectomy **and not less than twenty-four hours of inpatient care following a lymph node disection for the treatment of breast cancer. Nothing in this section shall be construed as requiring the provision of inpatient coverage where the attending physician and patient determine that a shorter period of hospital stay is appropriate.** Such provision shall be included under any policy, contract or plan delivered, issued for delivery or renewed in this Commonwealth on and after July 1, 1997.

B. The provision of this section shall not apply to short-term travel, accident only, limited or specified disease policies, **policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans,** or to short-term nonrenewable policies of not more than six months' duration.