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INSURANCE Insurance Generally: Women's Access to Health Care; Health Insurance; Require Health Insurers to Provide Coverage for Any Prescription Drug or Device Approved for Use as a Contraceptive; Provide for Certain Terms and Conditions of Such Coverage; Prohibit Certain Constructions; Provide for Regulations and Notice to Policyholders

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INSURANCE

Insurance Generally: Women's Access to Health Care; Health Insurance; Require Health Insurers to Provide Coverage for Any Prescription Drug or Device Approved for Use as a Contraceptive; Provide for Certain Terms and Conditions of Such Coverage; Prohibit Certain Constructions; Provide for Regulations and Notice to Policyholders

CODE SECTION:	O.C.G.A. § 33-24-59.6 (new)
BILL NUMBER:	HB 374
ACT NUMBER:	269
GEORGIA LAWS:	1999 Ga. Laws 317
SUMMARY:	The Act provides legislative findings regarding women's health and insurance coverage relating to contraceptives. It requires that health insurers provide coverage for any prescription drug or device approved for use as a contraceptive. The Act provides definitions of terms and conditions of coverage. The Act provides for regulation and notice to policyholders.
EFFECTIVE DATE:	July 1, 1999

History

The Georgia General Assembly made several findings of fact regarding women's and children's health issues in connection with this bill. The General Assembly found that when women have access to contraceptives to prevent unintended pregnancies, mothers' and infants' health improve.[1] Further, because many Americans have only two or three children many women spend most of their reproductive years trying to prevent pregnancy.[2] According to research cited by the General Assembly, forty-nine percent of large insurance providers

1. *See* O.C.G.A. § 33-24-59.6(a)(1) (Supp. 1999). The Act originally placed this Code section at 33-24-59.1; however, the Code Commission redesignated it as Code section 33-24-59.6. *See id.* § 33-24-59.6. (Code commission notes).
2. *See id.* § 33-24-59.6(a)(2).

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generally do not cover the cost of contraceptives; however, virtually all providers cover regular prescription drugs.[3]

Thus, "women spend 68 percent more in out-of-pocket expenses for health care than men."[4] Therefore, the General Assembly found that requiring insurance providers who cover regular prescription drugs to cover contraceptives would improve family health care and make health insurance coverage more fair.[5]

HB 374

Introduction

Representative Nan Orrock of the 56th District originally introduced the bill during the 1998 legislative session.[6] Then-Representative Roy Barnes co-sponsored that bill as an author.[7] However, the 1998 version of the bill was weaker than the 1999 version and did not pass the Rules Committee.[8]

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3. *See id.* § 33-24-59.6(a)(3). Co-sponsor, Representative Nan Grogan Orrock, believes that insurance companies that provide greater coverage for prescription drugs used by men are discriminating against women by not providing coverage for prescription contraceptives. *See* Telephone Interview with Rep. Nan Grogan Orrock, House District No. 56 (June 16, 1999) [hereinafter Orrock Interview]. As an example, Rep. Orrock compared insurance companies' reactions to Viagra, a prescription drug for men, to the industry's reaction to birth control pills. *See id.* Representative Orrock noted that within one week of Viagra becoming available on the market between 35% and 40% of insurance companies covered Viagra. *See id.* However, only 5% of insurance companies currently cover contraceptive devices that are used by women. *See id.* Interestingly, Representative Orrock stated that 90% of managed care insurance companies currently cover prescription contraceptives. *See id.*

4. O.C.G.A. § 33-24-59.6(a)(3) (Supp. 1999).

5. *See id.* § 33-24-59.6(a)(4). Many groups supported the bill because of the great benefits it provides to women's, infants', and children's health. *See* Orrock Interview, *supra* note 3. Planned Parenthood, the Women's Policy Group, National Organization for Women (NOW), the Academy of Pediatricians, the Legislative Women's Caucus, and various groups of Pharmacists and Ob/Gyns supported the bill. *See id.* Pediatricians favor greater availability of contraceptives because it causes a decline in unintended pregnancies, which in return, results in healthier infants. *See id.* Additionally, when a family spaces out the birth of children, the children tend to be healthier than children whose births are not spaced apart. *See id.* Gynecologists supported the bill because contraceptives are useful to treat a variety of women's healthcare needs. *See id.*

6. *See* Orrock Interview, *supra* note 3.

7. *See id.*

8. *See id.* Representative Orrock believed that the late introduction and the weak language of the 1998 bill contributed to the failure of this version during the 1998 session. *See id.*

Representative Orrock introduced the bill early in the 1999 legislative session.[9] The bill went through three revisions; the House Insurance Committee offered a substitute, which the House later adopted.[10] The final version incorporated the Committee substitute and a floor amendment.[11]

Consideration by House Insurance Committee

The House Insurance Committee made three changes to the bill. The first change expanded the definition of "Health Benefit Policy" under subsection (b) by including "provider sponsored health care corporation."[12] The second change provided that the Act would not apply to limited benefit policies as expressed within Code section 33-30-12(e)(4).[13] Finally, the Committee deleted language that would have exempted the federal Employee's Retirement Income Security Act from the bill; the Committee also deleted language that would have required insurers to notify their policyholders about the bill.[14]

From House Committee Amendment to House Floor Amendment and Committee Amendment

When the Committee substitute reached the House floor, the House passed an amended version of the bill.[15] As amended, the new version did not require any insurance company to provide coverage for abortion.[16]

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9. *See id.*
10. *See* State of Georgia Final Composite Status Sheet, May 3, 1999. Additionally, Senators proposed three floor amendments during the Senate floor debate; however, all of the amendments failed, and the bill passed without a Senate floor amendment. *See infra* notes 25-32 and accompanying text.
11. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
12. *Compare* HB 374, as introduced, 1999 Ga. Gen. Assem., *with* HB 374 (HCA), 1999 Ga. Gen. Assem.
13. *Compare* HB 374, as introduced, 1999 Ga. Gen. Assem., *with* HB 374 (HCA), 1999 Ga. Gen. Assem.
14. *Compare* HB 374, as introduced, 1999 Ga. Gen. Assem., *with* HB 374 (HCA), 1999 Ga. Gen. Assem.
15. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
16. *Compare* HB 374 (HCS), 1999 Ga. Gen. Assem., *with* HB 374 (HCSFA), 1999 Ga. Gen. Assem.

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The Act

The Act requires private insurance providers to cover the costs of certain prescription contraceptives.[17] In addition, the Act lists several findings of legislative fact that support the bill.[18]

The Act also provides for certain definitions for courts to use when they construe and apply the bill.[19] Under the Act, a "Health Benefit Plan" includes all individual and group plans, policies, or contracts for health services that insurers issue, renew, or deliver in Georgia.[20] The term also applies to plans for state employees.[21] The Act defines an "Insurer" as any accident or sickness insurer, including fraternal societies, hospital service corporations, medical service corporations, health care corporations, health maintenance organizations, or any other entity that issues contracts to which the Act applies.[22]

Under the Act, insurers may not charge fees or co-payments against anyone who receives a prescription for contraceptives, unless the insurer also imposes the same fee upon all other individuals within the same benefit category.[23] Additionally, insurers may not reduce the allowable reimbursement for prescription drug benefits on contraceptive prescriptions.[24]

Finally, the Act provides that courts should not construe the Act to require insurers to cover prescription contraceptives if they do not cover other prescription drugs; furthermore, the Act shall not preclude the use of closed formularies if the formularies include oral, implant, and injectable contraceptive drugs, intrauterine devices, and prescription barrier methods.[25]

Opposition to HB 374

Opposition to the Act came primarily from the business community, which expressed concern about increasing administrative costs for small business owners.[26] Senator Harold Ragan of the 11th District

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17. *See* O.C.G.A. § 33-24-59.6 (Supp. 1999).
18. *See id.* § 33-24-59.6(a); *see also supra* notes 1-4 and accompanying text.
19. *See* O.C.G.A. § 33-24-59.6(b) (Supp. 1999).
20. *See id.* § 33-24-59.6(b)(1).
21. *See id.*
22. *See id.* § 33-24-59.6(b)(2).
23. *See id.* § 33-24-59.6(d)(1).
24. *See id.* § 33-24-59.6(d)(2).
25. *See id.* § 33-24-59.6(e).
26. *See* Record of Proceedings in the State Senate Floor Debates (Mar. 18, 1999) [hereinafter Senate Floor Debate] (remarks by Sen. Susan W. Cable) (available in

noted that Medicaid covers the costs of contraceptives and that non-Medicaid patients can afford contraceptives.[27] However, Representative Orrock commented that contraceptives represented a significant cost to the consumer, whereas insurance coverage of contraceptives only minimally increased the insurance cost to small business owners.[28] In fact, according to Representative Orrock, the increase in cost to most businesses would be slightly more than one percent.[29]

Senator Susan Cable of the 27th District proposed an amendment to help small business owners who employ the working poor.[30] Her amendment would have altered the language in subsection (c) to state that small businesses "shall offer," rather than "shall provide," coverage for contraceptives to grant flexibility to small business owners.[31] In support of her amendment, Senator Cable stated that most women with unexpected pregnancies fall 100% below the poverty line and already have contraceptive coverage.[32] However, the amendment failed, and the Act passed without further floor amendments.[33]

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Georgia State University College of Law Library); Orrock Interview, *supra* note 3.

27. *See* Senate Floor Debate, *supra* note 25.
28. *See* Orrock Interview, *supra* note 3.
29. *See id.*
30. *See* Senate Floor Debate, *supra* note 25.
31. *Id.*
32. *See id.*
33. *See* Georgia Senate Voting Record, HB 374 (Mar. 18, 1999); State of Georgia Final Composite Status Sheet, May 3, 1999.

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