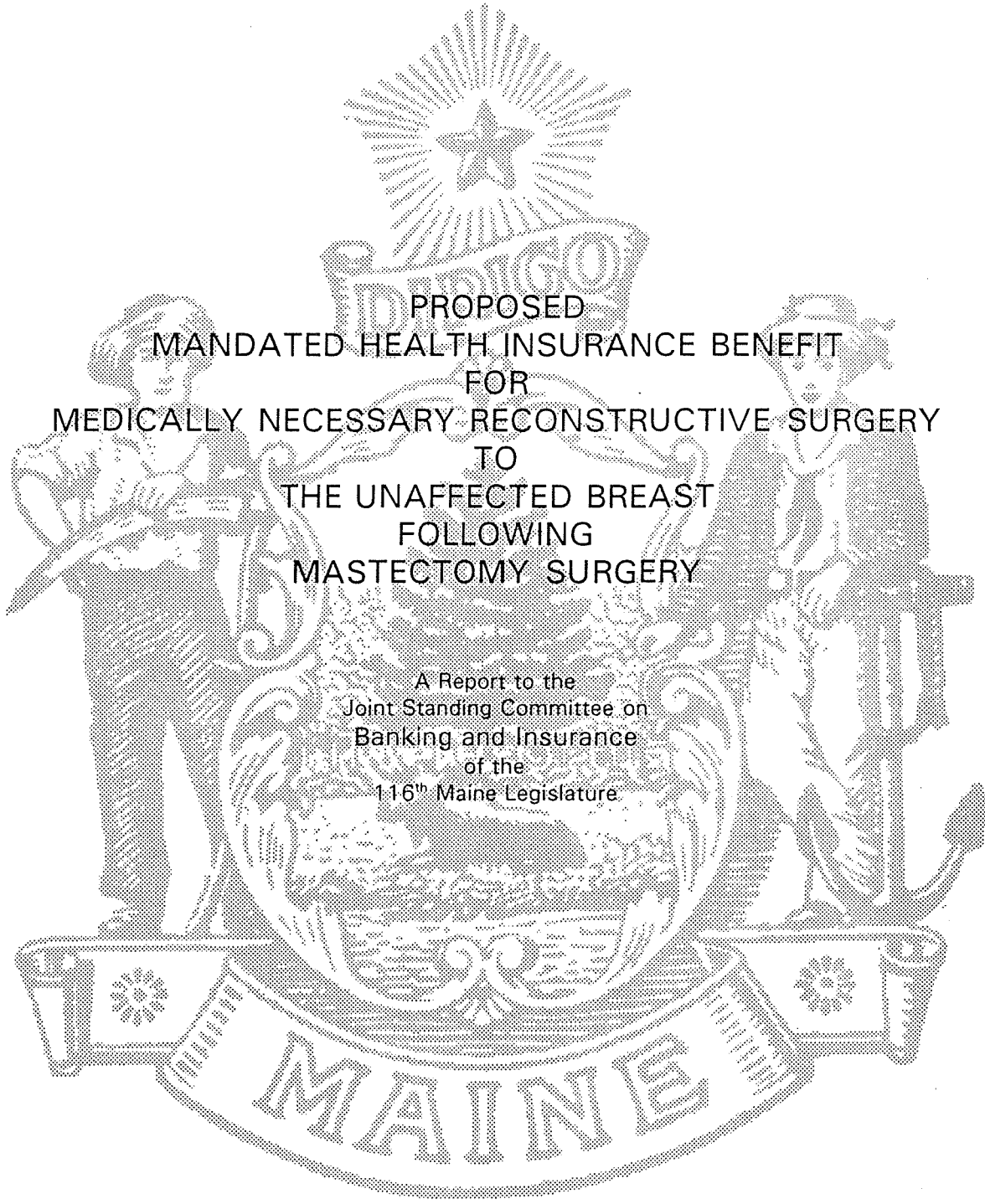


MAINE STATE LEGISLATURE

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The background of the page features a large, faded seal of the State of Maine. At the top is a star with radiating lines. Below it is a shield with a banner that reads "MAINE 1789". The shield is flanked by two female figures: Liberty on the left holding a scroll and a sword, and Justice on the right holding a scale. Below the shield is a banner with the word "MAINE".

PROPOSED
MANDATED HEALTH INSURANCE BENEFIT
FOR
MEDICALLY NECESSARY RECONSTRUCTIVE SURGERY
TO
THE UNAFFECTED BREAST
FOLLOWING
MASTECTOMY SURGERY

A Report to the
Joint Standing Committee on
Banking and Insurance
of the
116th Maine Legislature

Prepared by the
Bureau of Insurance
April, 1993

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EXECUTIVE SUMMARY

LD 78 would require health insurance coverage for medically necessary reconstructive surgery to the unaffected breast following mastectomy surgery. The bill does not specifically define medical necessity, so the question of physical need versus psychological need would have to be resolved. Currently, companies which base coverage on medical necessity seem to use only physical criteria for that determination.

Currently, some insurance companies cover surgical procedures to establish symmetry, while others cover only medically necessary surgery. Appendix B shows the results of a survey done by the Bureau of Insurance to determine practices of several insurance companies which solicit health insurance business in Maine.

LD 78 as written would not provide coverage for symmetry, but would require coverage only in instances where a definite medical need for the surgery could be proven.

BACKGROUND

The Joint Standing Committee on Banking and Insurance of the 116th Maine Legislature in March, 1993, directed the Bureau of Insurance to review LD 78 "An Act Concerning Medically Necessary Mastectomy Surgery." The review was to be conducted using the criteria outlined in 24-A M.R.S.A. § 2752 regarding the social and financial impact of the proposed mandate, and the medical efficacy of the procedure covered under the proposal.

LD 78 would provide health insurance coverage for medically necessary surgery to the unaffected breast in addition to reconstructive surgery to the affected breast after medically necessary mastectomy surgery. Current law requires reconstructive surgery only for the affected breast. Some companies voluntarily provide coverage for surgery to the unaffected breast to establish symmetry, and others provide coverage for this surgery if there is an underlying medical reason. The bill does not address the issue of physical versus psychological necessity; companies which currently provide coverage only for medically necessary reconstruction seem to use solely physical criteria to determine if coverage is to be provided.

The Bureau had already completed a survey of several insurance companies which actively solicit health insurance business in Maine, the results of which indicate that in the absence of a mandate, coverage may or may not be provided for reconstructive surgery to the unaffected breast.

RECONSTRUCTION

Reconstructive surgery on the affected breast following a mastectomy currently must be covered by health insurance in Maine.

However, coverage for surgery on the unaffected breast is not required.

Sometimes, there is a medical reason to remove tissue from the unaffected breast, such as chronic back pain or balance problems caused by the amount of tissue removed from the affected breast. Breast reduction surgery on the unaffected breast would be performed to reestablish balance and reduce stress on the spinal cord.

Another possible medical reason is high risk factors, such as having chronic benign breast problems (lumps, cysts, fibroadenomas -- leading to repeated biopsies) or having a mother or sibling who developed bilateral premenopausal breast cancer. In these instances, prophylactic subcutaneous mastectomy may be performed. This leaves the skin and nipple intact, but removes the underlying healthy tissue before it might develop cancer. Although the tissue can be replaced by an implant, it is becoming more common to use a procedure called flap reconstruction, in which a "flap" of skin and muscle is removed from another area and inserted into the chest to create a "breast mound" which approximates the contour of the removed breast tissue.

For those women who do not have the aforementioned conditions, reconstructive surgery to the unaffected breast is done to reestablish symmetry. While correcting the discrepancy in size may be a major issue, active women also find that reconstruction is a better alternative to special clothing such as mastectomy bathing suits and brassieres.

LD 78

As written, LD 78 would require coverage only in cases of proven medical necessity. This would not significantly increase coverage, since medically necessary treatment is usually covered by health insurance. The bill does not specifically define medical necessity, so the question of physical need versus psychological need would have to be resolved. Currently, companies which base coverage on medical necessity seem to use only physical criteria for that determination.

Eleven other states currently require coverage for reconstructive surgery after a mastectomy -- three of those also require coverage for surgery to the unaffected breast. In all three cases, coverage must be provided to establish symmetry, regardless of medical necessity.

Surgery to establish symmetry is viewed by some companies as cosmetic surgery, and is therefore specifically excluded from coverage under those policies. LD 78 would have no effect on such policies unless it were amended to include coverage for symmetry.

EVALUATION OF LD 78 BASED ON REQUIRED CRITERIA

SOCIAL IMPACT

A. The social impact of mandating the benefit which shall include:

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

Since reconstructive breast surgery is utilized only by women who have undergone a partial or total removal of one or both breasts, usually as part of a treatment process for breast cancer, this treatment would only be utilized by a small portion of the population.

2. The extent to which the treatment or service is available to the population;

Breast reconstructive surgery is available in most larger hospitals.

3. The extent to which insurance coverage for this treatment or service is already available;

Coverage is currently offered in Maine by Blue Cross and Blue Shield of Maine (when medically necessary), HMOs, and by some commercial insurance carriers (see survey results in Appendix B). Some commercial carriers provide coverage to establish symmetry, without regard to physical medical necessity.

4. If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;

No information available.

5. 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;

The cost of reconstructive surgery to the unaffected breast following mastectomy surgery can vary widely based upon the conditions. A recent Blue Cross preauthorization estimate was \$6,192. If this figure is representative of the cost, then lack of coverage would represent a significant barrier to those who desire this treatment.

6. The level of public demand and the level of demand from providers for the treatment or service;

This procedure is not a high demand item -- it is utilized only when women have undergone mastectomy surgery. The American Cancer Society estimates that 900 women in Maine will be diagnosed with breast cancer in 1993. Blue Cross estimates that they receive only 12-18 requests per year for coverage for this procedure.

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

No information available.

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

No information available.

9. The likelihood of achieving the objectives of meeting the consumer need as evidenced by the experience of other states;

Of the eleven states which require coverage for reconstructive surgery, three also require coverage for surgery to the unaffected breast. In all three cases, coverage must be provided to establish symmetry, regardless of medical necessity.

10. The 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 available.

11. The alternatives to meeting the identified need;

Two alternatives would be to forego treatment, or to purchase prosthetic devices.

12. Whether the benefit is a medical or a broader social need and whether it is consistent with the role of health insurance;

No information available.

13 The impact of any social stigma attached to the benefit upon the market;

There is no stigma attached to the benefit. There may be a stigma attached to nontreatment.

14 The impact of this benefit upon the availability of other benefits currently being offered; and

Little impact is likely since many companies already cover this benefit.

15. The impact of the benefit as it relates to employers shifting to self-insurance plans.

Little impact is likely since many companies already cover this benefit.

FINANCIAL IMPACT

B. The financial impact of mandating the benefit which shall include:

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

Since coverage is already provided by many companies, it seems unlikely that the proposed mandate would change the cost of this procedure.

2. The extent to which the proposed coverage might increase the appropriate or inappropriate use of the treatment or service over the next five years;

For women who do not currently have coverage, utilization would probably increase. For those whose insurance currently provides coverage, it seems unlikely that utilization patterns will change.

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

Prosthetics and nontreatment are two alternatives which are less expensive. When there is a physical condition which makes treatment necessary, we are aware of no alternative treatments available.

4. The methods which will be instituted to manage the utilization and costs of the proposed mandate;

Utilization would be limited by the precondition of mastectomy, and the requirement of medical necessity.

5. The extent to which the insurance coverage may affect the number and types of providers over the next five years;

Because reconstructive surgery to the unaffected breast is done only after medically necessary mastectomy and is performed by physicians, it appears unlikely that the number or types of providers would change significantly over the next five years.

6. The extent to which insurance coverage of the health care service or provider may be reasonably expected to increase or decrease the insurance premium and administrative expenses of policyholders;

Since this procedure is already covered on some policies, there would be no effect on costs of those policies. For those policies which do not currently provide coverage, there might be additional expenses incurred. However, because of the limited demand for this service, the impact should be small.

7. The impact of indirect costs, which are costs other than premiums and administrative costs, on the question of the costs and benefits of coverage;

No information available.

8. The impact of this coverage on the total cost of health care; and

Because surgery to establish symmetry after mastectomy is covered by many policies, mandating coverage for medically necessary surgery to the unaffected breast would have little impact on the total cost of health care.

9. The effects on the cost of health care to employers and employees, including the financial impact on small employers, medium-sized employers, and large employers.

There would be little change in costs, because the procedure is often covered when medically necessary.

MEDICAL EFFICACY

C. The medical efficacy of mandating the benefit which shall include:

1. 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; and

If a prophylactic subcutaneous mastectomy is done to the unaffected breast following mastectomy surgery, the chance of recurring breast cancer may be reduced. For women who would have chronic back and or balance problems, surgery to reduce the imbalance may ameliorate those problems.

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

Not applicable.

a. The results of any professionally acceptable research demonstrating the medical results achieved by the additional class of practitioners relative to those already covered; and

Not applicable.

b. The methods of the appropriate professional organization that assure clinical proficiency.

Not applicable.

BALANCING THE EFFECTS

D. The effects of balancing the social, economic, and medical efficacy considerations which shall include:

1. The extent to which the need for coverage outweighs the cost of mandating the benefit for all policyholders; and

Since many policies already cover surgery to establish symmetry, enactment of a proposed mandate to require coverage when medically necessary would have little impact.

2. The extent to which the problem of coverage may be solved by mandating the availability of the coverage as an option for policyholders.

Traditionally, group policyholders do not view mandated offerings as desirable unless they are pressured by their certificate holders. Therefore, only those groups which contain members who have a high probability of utilizing the service are likely to request coverage. This would lead to higher premiums for the coverage because the risk would not be spread over as many covered individuals, and those with coverage are more likely to utilize the service.

For individual coverage, it would seem that severe antiselection would make the premiums excessively high: that is, only those who are likely to need the service would purchase coverage.

APPENDIX A

LD 78



116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 78

S.P. 57

In Senate, January 21, 1993

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator FOSTER of Hancock

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-THREE

An Act Concerning Medically Necessary Mastectomy Surgery.

APPENDIX B

Bureau of Insurance Survey

Survey Results Summary



DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

(207) 582-8707
Telecopier (207) 582-8716

September 29, 1992

M.R.S.A. 24-A § 2731-A requires all health insurance contracts to include coverage for breast reconstruction as part of coverage for medically necessary mastectomy surgery. Some companies extend this coverage to include surgery on the unaffected breast in order to achieve symmetry. The survey which follows seeks to determine current practice of carriers in Maine and in the other eight states which require coverage for breast reconstruction but not for "symmetry."

Another question which has arisen recently concerns coverage for so-called "experimental" treatments. We are attempting to determine what standard is used in deciding if a treatment is experimental or not for insurance purposes.

Please send responses to: David Stetson
Bureau of Insurance
State House Station 34
Augusta, Maine 04333

Thank you for your cooperation. If you have any questions or require more information call me at (207) 582-8707, extension 48435.

Sincerely,

A handwritten signature in cursive script that reads "David Stetson".

David Stetson
Statistician

Maine Health Insurance Carriers
Survey

1. Do you currently provide coverage in Maine for reconstructive surgery to the unaffected breast to establish symmetry for women who have had breast reconstruction following a medically necessary mastectomy?

Yes No

For the following states, please indicate if you solicit health insurance business there and, if so, if you cover surgery to the unaffected breast to achieve symmetry.

State	Do you solicit business?	Do you cover "symmetry?"
Arizona		
Arkansas		
Delaware		
Illinois		
Michigan		
Minnesota		
New Jersey		
New York		

2. Does your company have a set definition for what is considered experimental treatment? If so, please send a copy of your definition

Yes No

3. Does your company cover autologous marrow transplants?

Yes No

Comments:

Please send responses to: David Stetson
 Bureau of Insurance
 State House Station 34
 Augusta, Maine 04333

Person Completing Form _____

Company _____

COMPANY	COVER SYMMETRY	SOLICIT BUSINESS IN OTHER STATES IN SURVEY
BANKERS LIFE	NO	YES
BLUE CROSS	NO	NO
FIDELITY SECURITY	NO	YES
MUTUAL OF OMAHA	YES	YES
NEW YORK LIFE	YES	YES
PHOENIX HOME LIFE	NO	YES
PIONEER LIFE	NO	YES
PRINCIPAL MUTUAL	YES	YES
PRUDENTIAL	YES	YES
SAFECO	YES	NO
TRAVELERS	YES	YES

This chart shows the results of the Bureau of Insurance survey sent out in September, 1992. The states included are those which require coverage for reconstructive surgery to the affected breast following mastectomy, but which do not require coverage for surgery to the unaffected breast. Of the eleven companies which responded, 6 provide coverage for symmetry in Maine and 5 do not. Those which cover symmetry in Maine also cover it in the other states in the survey.

APPENDIX C

**States With Mandates
(From NAIC Report)**

PROSTHESIS, RECONSTRUCTIVE SURGERY

State	Citation	Coverage
AZ mastectomy	§ 20-1402	If cover mastectomy, cover reconstructive surgery incidental to covered
CA	§ 10123.8	If cover mastectomy, cover prosthesis or reconstructive surgery to restore symmetry
CT	§ 38a-503 (individual) § 38a-542 (group)	If cover removal of tumors, cover reconstructive surgery or prosthesis
FL	§ 627.6417	If cover mastectomy, make available coverage for prosthetic device or reconstructive surgery incidental to mastectomy
IL	I.C. § 356g	If cover mastectomy, cover prosthetic device or reconstructive surgery incidental to mastectomy
ME	24-A § 2731-A	Mastectomy defined to include surgery to reconstruct breast on which surgery has been performed
MN	§ 62A.25	Cover reconstructive surgery following surgery or illness of the involved part
NV	§ 689A.041 § 689B.0375 (group) § 695B.191 (nonprofits)	Cover reconstructive breast surgery if cover mastectomy; includes surgery on one or both breasts to reestablish symmetry
NJ	§ 17B:27-46.1a (group) § 17:48-6b (nonprofits) § 17B:26-2.1a (individual)	Reconstructive breast surgery or prosthesis must be covered
OR	§ 743.706	Maxillofacial prosthetic devices included
WA	§ 48.20.395 § 48.21.230 (group)	Cover reconstructive breast surgery resulting from mastectomy, including breast reduction of nondiseased breast to make it equal in size after reconstructive surgery on diseased breast is performed

