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GA SUPREME COURT STRIKES DOWN MALPRACTICE CAP, STRENGTHENS PATIENT RIGHTS



This past March, the Georgia Supreme Court ruled unanimously that limits on jury awards in medical malpractice cases are unconstitutional.

"The very existence of the caps, in any amount, is violative of the right to trial by jury," wrote Chief Justice Carol Hunstein. "[The cap] clearly nullifies the jury's findings of fact regarding damages and thereby undermines the jury's basic function."

The ruling effectively strikes down the

centerpiece of Georgia's sweeping 2005 tort reform law, Senate Bill 3, which capped noneconomic awards - including those for pain and suffering - at \$350,000.

At the time SB 3 passed, supporters said it would reduce medical malpractice insurance premiums and attract doctors from across the country. However, between 2005 and 2008, premiums fell only 7 percent and the number of physicians per capita remained

essentially the same.

"In simplest terms, SB3 limited accountability for medical negligence and padded the profit margins of large insurers," said Georgia Watch executive director Angela Speir Phelps. "This ruling stops the government from trampling on the rights of malpractice victims and our citizen juries."

The court's decision upholds a \$1.265 million jury award to Betty Nestlehatt, a Marietta real estate agent. Nestlehatt, now 75, was left permanently disfigured after a plastic surgeon with Atlanta Oculoplastic Surgery botched what should have been a routine face-lift procedure. Nestlehatt was so severely injured that her lawyer, Adam Malone, said she had trouble leaving her house.

Nestlehatt was awarded \$900,000 for pain and suffering by a Fulton County jury. Atlanta Oculoplastic Surgery appealed that amount on grounds that it violated SB 3. The trial judge sided with the jury award and declared the \$350,000 cap unconstitutional, setting the stage for the high court ruling.

Georgia Watch deputy director Danny Orrock says the Supreme Court decision

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ENERGY TIPS FROM GEORGIA WATCH BOARD MEMBER CLARK HOWARD

- Replace incandescent bulbs with compact fluorescents or LEDs.
- At home, use window curtains and shades to block sunlight. The more sunlight in your home, the harder your air conditioner has to work.
- Air dry dishes instead of using your dishwasher's drying cycle.
- Use a microwave oven instead of a

- conventional electric range or oven.
- Turn off your computer and monitor when not in use.
- Plug home electronics, such as TVs and VCRs, into power strips and turn power strips off when equipment is not in use.
- Lower the thermostat on your hot water heater. 115 degrees is comfortable for most uses.



- Regularly replace air filters in air conditioners.

GEORGIA WATCH RELEASES HAP REPORT

By Holly Lang

Georgia Watch recently released a report examining the challenges uninsured, underinsured and low-income metropolitan Atlanta consumers face when trying to access affordable healthcare. These issues include high mark-ups on hospital charges, a lack of clear information about available financial assistance at hospitals, and transportation, language, and specialty care needs.

For this report, we surveyed approximately 900 consumers and evaluated 34 hospitals located within the 21-county metro area. We also visited each of the metropolitan Atlanta hospitals examined in the project to determine whether signage and materials regarding financial assistance options were visible and available to the general public. All additional information in the report was either culled from publicly available documents or provided by the hospitals.

In this research we found:

- In 2008, metropolitan Atlanta hospitals marked up their costs an average of 235 percent, though mark-ups at some facilities were as high as 714 percent.
- That year, the two most expensive hospitals in the metropolitan area were North Fulton Medical Center and Cartersville Medical Center, and the two most affordable were Walton Regional Medical Center and Grady Memorial Hospital.
- Metropolitan Atlanta hospitals provided a total of \$293.7 million at cost in uncompensated care in 2008, a small percentage (2.17 percent) of their collective annual adjusted gross revenue.
- Grady Memorial Hospital and Barrow Regional Medical Center provided the highest level of free care for poor people, while Piedmont Hospital and North Fulton Medical Center were among those who provided the least.

- Only about one-third of the 34 hospitals examined had clear signage placed at some part of the hospital advertising the availability of free or reduced-cost care for uninsured and/or low-income persons.
- Eighty percent of the approximately 900 consumers surveyed for this project said they had no form of insurance, and two-thirds of those individuals said they had no regular source of care.
- 72 percent of the consumers surveyed who identified themselves as underinsured said they often delay preventive and other care due to the fear of the cost, as they are uncertain whether they can pay their part of a hospital bill.
- The amount of uncompensated care rendered varies greatly from hospital to hospital, even in a shared service area. For example, Grady Memorial Hospital provided about 62 percent of all uncompensated care in Fulton County, though it is only one of ten acute care facilities.

As key health care providers that offer a wide range of services, hospitals have a unique opportunity to help reduce access disparities for low-income, uninsured and underinsured populations. By advertising the availability of financial assistance and providing copies of their financial assistance policies, hospitals give consumers the opportunity to be fully aware of their fiscal options before care begins. By enacting programs that help reduce barriers to health care access, such as screenings with appropriate follow-up care and health education, hospitals can boost the overall fiscal and physical health of the communities they serve.

For more information, call Holly Lang at (404) 525-1085 ext. 11 or email her at hlang@georgiawatch.org

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protects patients and their constitutional rights.

"It restores the promise of justice for all and the rights of all Georgians - young and old, rich and poor - to access the courts," says Orrock.

The Nestlehutt decision likely means legislators will renew efforts to impose restrictions on malpractice victims. Lawmakers are already discussing the possibility of a constitutional amendment addressing caps on damages, similar to one Texas passed in 2003.

In any case, much of SB 3 remains intact. The Supreme Court has recently upheld two key provisions of the law. The first

Medical errors kill roughly 98,000 people in America each year. Simple measures - such as modernizing patient record systems and requiring doctors to utilize checklists during procedures - can reduce preventable harm.

makes it nearly impossible for patients to recover damages in cases involving emergency room care by requiring that no physician or health care provider shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence. The second forces the losing side in a lawsuit to pay the other side's legal fees, a practice that can discourage victims from bringing legitimate claims to court.

Georgia Watch remains strongly opposed to any legislation that impedes access to the courts, including measures that limit the amount an attorney can collect from a settlement.

We remain firmly committed to protecting malpractice victims and fighting for greater access to the courts.

LAWSUIT AGAINST GAS SURCHARGE DISMISSED ON TECHNICALITY

A Fulton County judge has dismissed a lawsuit against Atlanta Gas Light alleging it increased customer rates by up to \$400 million without facing the regulatory scrutiny required by law.

The seniors' advocacy group AARP sued on grounds that it was denied discovery rights during AGL's request proceeding before the Public Service Commission. AGL argued - and the PSC ultimately agreed - that it had no legal obligation to provide discovery, since AGL was seeking approval of a surcharge, rather than a formal rate increase.



Georgia Watch and Common Cause, in support of AARP's appeal, jointly filed an amicus brief arguing the request for the new surcharge was tantamount to a rate increase.

"Denial of discovery puts consumers at risk for unjust rate increases," said Georgia Watch executive director Angela Speir Phelps. "If you can't get behind the numbers to question the legitimacy of the utility's request through discovery - then ratepayers are greatly disadvantaged."

Fulton Judge T. Jackson Bedford admitted the PSC approval process might be flawed, but threw out AARP's lawsuit on technical grounds.

The PSC-approved surcharge means 1.5 million AGL customers will pay an additional \$200-\$400 million on their utility bills over the next 15 years.

The rate increase stems from a 2009 decision by the Public Service Commission that allowed AGL to extend and repurpose its pipeline replacement

program (PRP) surcharge.

Originally implemented to repair corroded pipeline in 1998, the PRP surcharge was scheduled to expire in 2013. The PSC, however, allowed AGL to push back that date to 2025, repurpose the funds to brand new capital projects, and impose an entirely new surcharge.

Because the process involved a surcharge, as opposed to a formal rate increase, AGL was able to sidestep much of the oversight required by law. During the PSC hearings, AARP repeatedly requested consumer-minded cost breakdowns, but AGL simply denied access to the necessary documents.

Making matters worse, the Consumers' Utility Counsel, the state agency charged with advocating for residential ratepayers in cases before the PSC, was defunded in September 2008 due to budget cuts.

Speir Phelps said the entire approval process lacked fairness and transparency.

"The elimination of the Consumers' Utility Counsel and the denial of discovery rights at the PSC undoubtedly created an unlevel playing field for the average citizen," said Speir Phelps. "The most frustrating part is that AGL still claims it hasn't technically raised rates...which is absolutely disingenuous."

To add insult to injury, AGL is currently seeking approval of an additional rate increase of \$54 million per year. If approved by the PSC, the rate hike would take effect this fall.

For more on the AGL rate case, jump to page 4

For questions about utility rates and cases coming before the Public Service Commission, call Clare McGuire at (404) 525-1085 ext. 14 or email her at cmcguire@georgiawatch.org

MEET OUR NEW COMMUNICATIONS DIRECTOR



Georgia Watch welcomes a new addition to its watchdog team.

Jonathan Shapiro joins the organization as communications director, bringing with him valuable experience as a radio, web, and newspaper reporter.

Shapiro most recently worked as Morning Edition producer for WABE, Atlanta's NPR station. He reported on a range of topics, including transportation, homelessness, immigration, and the state Supreme Court.

"Jonathan's genuine concern about consumer issues makes him a perfect fit for our organization," Georgia Watch executive director Angela Speir Phelps said. "We have important issues ahead of us on energy, healthcare, and mortgage reform that will impact all Georgians. He will no doubt play a critical role in helping us."

Shapiro began his journalism career in Portland, Oregon, helping produce a public affairs program for Oregon Public Broadcasting and writing pieces for The Portland Mercury. Later he worked for a daily newspaper in north New Jersey, covering city politics, education, and crime.

"Georgia Watch had always been on my radar as a reporter," Shapiro said. "It's an organization that cares deeply about protecting the interests of Georgians. They focus on every day issues that impact people in a serious way. I'm excited to be part of the team."

Before becoming a journalist, Jonathan taught social studies in New York City and worked at the Manhattan District Attorney's Office. A native Floridian, Shapiro graduated from Emory University with a B.A. in political science.

Illinois Supreme Court: Treat the Poor or Lose Tax-Exempt Status

By Holly Lang

In a March ruling that could hold implications for all nonprofit hospitals, the Illinois Supreme Court stripped not-for-

profit Provena Covenant Medical Center of its exemption from property tax, stating that the hospital did not provide enough charity care to justify that exemption.

Theoretically, a hospital is granted tax-exempt status in exchange for the benefits it provides to the community it serves. Free or reduced-cost care for those eligible for such assistance comprises the bulk of such indigent or

charity care.

As it stands, IRS regulations for providing this care are vague; there are no specific guidelines as to what a hospital is to provide in terms of community benefits, nor is there a requirement that this should include free care.

But through its denial of Provena's property tax exemption, the Illinois Supreme Court reasoned that providing free care is a key component of a nonprofit hospital's obligation to earn its tax-exempt status, as is the hospital's obligation to make clear to the public that financial assistance exists.

"The record showed that during the period in question here, Provena did not advertise the availability of charity care," Justice Lloyd Karmeier wrote

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Consumer Energy Update

By Clare McGuire

IRP update - On May 19th, Georgia Watch witness Jay Hakes testified before the Georgia Public Service Commission (PSC) regarding Georgia Power Company's 2010 Integrated Resource Plan filing.

Hakes said that Georgia Power's residential and commercial energy efficiency programs were inadequate. He characterized the company's new homes program as suffering from "piddling incentives."

His testimony also included a recommendation that the Commission adopt a standard included in the Energy Independence and Security Act of 2007, which provides that, with respect to long-term planning, each electric utility must "adopt policies establishing cost-effective energy efficiency as a priority resource."

From 1993-2000, Hakes was the presidentially-appointed Administrator of the Energy Information Administration, the independent

statistical and analytical branch of the U.S. Department of Energy. In 2008, Hakes' book, "A Declaration of Energy Independence," which identifies strategies for improving national security, the economy, and the environment, was published by John Wiley & Sons.

The PSC will render a decision in the IRP proceeding at its regularly scheduled Administrative Session on July 6, 2010.

AGL rate case - On May 3rd, Atlanta Gas Light Company (AGL) filed a request for a \$54 million dollar rate increase with the PSC. Georgia Watch plans to intervene in this case, so that it may fully participate in the hearings, which will be held in August, September and October of this year.

AGL is a "pipes only" natural gas distribution company which serves more than 1.5 million customers throughout Georgia. Natural gas marketers approved to operate in the state include AGL's "base charges" on the bills the marketers issue to their customers. AGL's request, if approved, would increase the typical

residential customer's natural gas bill by approximately three percent annually (approximately \$3 dollars per month).

Georgia Power rate case

- Georgia Power Company will file a rate case on July 1st. PSC Staff estimates that the company's requested increase will be at least \$800 million dollars, although the actual amount will not be known until the company files its requested increase and supporting testimony on July 1. Georgia Watch will intervene in the Georgia Power rate case, which will be heard before the PSC in three phases in October, November and December of this year. Updates regarding these cases will appear in our next Georgia Watch newsletter.

Hired earlier this year, Clare is Georgia Watch's senior counsel on rate cases before the Public Service Commission. She is a former PSC staff attorney and has spent nearly two decades working on consumer issues. Clare's presence at rate case hearings will undoubtedly mean more transparency and accountability at the commission.

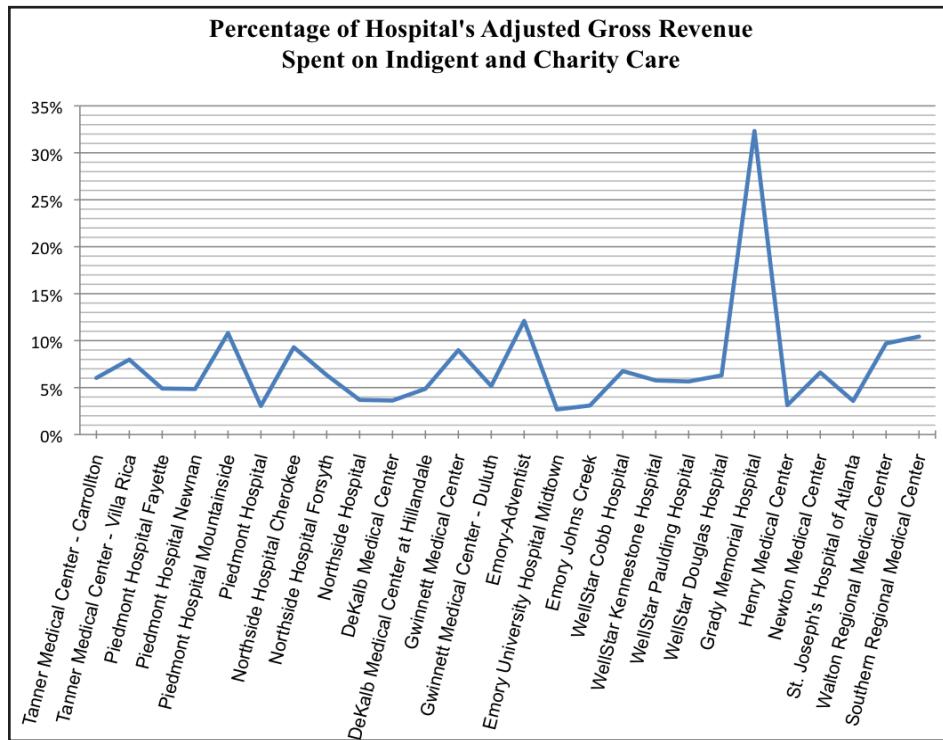
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for the majority. "Patients were billed as a matter of course and unpaid bills were automatically referred to collection agencies."

By definition, a nonprofit hospital is not only to have a charitable mission that benefits its community but also to render itself transparent and accountable to that community. Noting Provena's failure to provide either an adequate amount of charity care or sufficient information this care even exists, the Court effectively

it. For example, in 2008, one of the state's largest hospitals held a CON that required 3.15 percent of its AGR as uncompensated care. It provided only 3.2 percent – just one twentieth of a percentage point above its required amount.

But outside of CON regulations, there are no minimum free care requirements for tax-exempt hospitals, nor are there any efforts to even establish the value of a hospital's tax-exempt status so that



gave legal backbone to a growing concern expressed by healthcare advocates throughout the US: Are nonprofit hospitals providing a sufficient level of community benefits in exchange for the tax-exempt status they have been granted?

As it stands, Georgia does not set forth any minimum percentage of charity care which must be rendered, except as established through the Certificate of Need, or CON, program, which applies to both nonprofit and for profit hospitals. Hospitals with an active CON are required to provide a set percentage of their annual adjusted gross revenue, or AGR, as uncompensated care to eligible patients – generally between 3 percent and 3.5 percent.

But some hospitals barely hit that required amount, much less surpass

we are able to receive the accountability and transparency promised through their nonprofit designation. With that information, we would be better able to understand exactly how much money we're forgoing in needed tax revenue to help pay for our roads, schools, libraries, and police and fire services, and to see if we're receiving back the proper benefit.

In a time when our communities are in serious fiscal distress, it seems only fair that we are able to carefully examine the "return" to the community on tax breaks given to nonprofit hospitals. Successful businesses keep a close eye on yields on investment, and so should Georgia. Our lawmakers, hospital administrators, and community leaders should consider ways to help ensure we're getting the biggest bang for our buck.

FACT BOX

HOW PATIENTS CAN ENSURE APPROPRIATE AND AFFORDABLE CARE

•Seek appropriate care. Avoid using the emergency room for non-emergency medical care. When possible, seek out affordable alternatives, such as local clinics serving your area. Go to GFCN.org to see what choices you have in your county.

•Ask about financial assistance. Inquire about financial assistance as soon as you enter the hospital, if possible, and ask to apply if you think you might be eligible.

•Fill out all paperwork. Make sure you complete all paperwork requested by the hospital so that there isn't a delay in reviewing your application. If you aren't sure where to find something, ask the financial counselor.

•Ask for an itemized bill. Even if you do qualify for financial assistance, you should ask for an itemized bill to make sure all charges are correct.

•Inquire about doctors. Sometimes physicians who treat you at a hospital aren't employed by the hospital, and therefore aren't bound by the financial agreement you and the hospital reach. Be sure to ask about the doctors that treat you, and find out their practice's financial policy if they aren't an employee of the hospital.

•Negotiate your bill. If you don't qualify for financial assistance, you should negotiate with the hospital for a discount. Many hospitals will grant a self-pay discount, which can be as high as 25 percent at some facilities.

•Never ignore your bill. It won't go away, and if you avoid your bill, your account will likely end up in collections, which may negatively impact your credit score.

2010 LEGISLATIVE REVIEW

By DANNY ORROCK



The 2010 Georgia General Assembly, which wrapped up in late April, was the longest session that anyone can remember. During the session Georgia

Watch monitored and spoke out on a number of different bills affecting consumers, including legislation on civil justice, ethics, flood plain notifications, lending, nonprofit hospitals, and utilities, to name a few.

Below we highlight several key bills that Georgia Watch worked on in 2010. For a full rundown of Georgia Watch's legislative work, please see the 2010 Legislative Report and Reference, which is hitting mailboxes now.

PSC EXPERT COMPENSATION (HB 1233)

To save money in a shrinking state budget, this year the legislature cut funding for expert testimony at the Public Service Commission (PSC). Experts are hired by PSC staff to testify on proposed rate increases to power and gas bills.

In order to ensure that experts would still be available, Rep John Lunsford (R-McDonough) introduced HB 1233, which would require utilities to pay for the experts that the PSC staff selects. The utilities could then bill their customers for the same amount, which would add up to a few pennies a year.

However, one type of expert was specifically left out of the bill. Rate design experts, who offer opinions on how to allocate rates across different classes of customers, were left out of the new compensation scheme at the request of a manufacturing association, which often tries to cut deals with utilities to shift the burden of cost increases onto families and small businesses.

Georgia Watch objected, and had the bill amended in committee to ensure that all experts would have a sustainable source of funding. The bill passed and has been signed by the governor.

MORTGAGE REFORM (SB 57)

Since fall 2008, Georgia has had more bank failures than any other state in the nation. Our state ranks consistently in the top ten for foreclosures, and between one-third and one-half of all mortgages in Georgia are underwater, meaning the borrower owes more on their loan than the home is worth.

Although legislators were well aware of these symptoms in Georgia's home lending market, they did nothing to address the problems. For the second year in a row, legislators let SB 57 die in the House Rules Committee. This bill, sponsored by Sen. Bill Hamrick (R-Carrollton), would have put safeguards in place to protect borrowers, investors, and communities from foreclosure and the riskiest of loans.



Most of the protections in the bill would have applied to subprime loans only, which have gone into default in large numbers, leading to a foreclosure crisis and an overall economic slide across the country. Measures such as banning mortgage broker kickbacks, prohibiting prepayment penalties, and requiring that a lender verify that a borrower has the ability to repay a subprime loan would be a narrow approach to solving a big problem.

These ideas were massaged for weeks in the House Judiciary Committee, and eventually weakened before moving on to the Rules Committee. However, the bill never moved out of Rules and onto the floor. The sponsor, Sen. Hamrick, never even asked for a floor vote.

COMPREHENSIVE TELECOM REFORM (HB 168)



HB 168 makes comprehensive changes to fee structures between telephone companies and the Universal Access Fund. This year, when the bill got over to the Senate, a provision was added to take away the authority of the PSC to handle consumer complaints related to phone service. This authority led to the PSC refunding \$145,000 to aggrieved customers in 2009.

Georgia Watch went public with opposition to the provision, and Governor Perdue threatened to veto any bill that took away the PSC's authority over phone service complaints. The authority was restored in the final version of HB 168, which passed and was signed by the governor.

For more information on Georgia Watch's legislative agenda or to volunteer your time at the Capitol, contact Danny Orrock at dorrock@georgiawatch.org

NEWS FROM....

THE DIRECTOR'S CHAIR

BY ANGELA SPEIR PHELPS

We hear a lot of talk about ethics in government - particularly the need for more. Candidates for public office often talk about the need for ethics reform and those elected talk



about their staunch support for strengthening ethics in government. But talk is cheap. Where the rubber meets the road is how one acts, how they conduct the people's business, and how they vote when presented with the opportunity to stand up for what's right. A message from a podium is nothing more than an empty promise if forgotten once elected.

This year, on the heels of a highly publicized scandal involving the cozy relationship between the former Speaker of the House and a lobbyist for Atlanta Gas Light Company and more than one front-page news story about elected officials using the power and influence of their office for personal gain, the legislature passed ethics reform in SB17.

Georgia Watch actively engaged at the legislature regarding this bill to encourage stronger reform. We supported restrictions on lobbyists giving gifts to legislators and capping the amount of gifts. We also supported full disclosure of money spent by lobbyists on legislators for travel and entertainment. On April 19, 2010 we noted in an OpEd that the bill as written in its current form would allow lobbyists to pay for travel for public officials without disclosing it - including airfare,

meals, and hotel accommodations - as long as the travel was related to bringing a public official to a meeting.

Under the proposal, a lobbyist could legally buy a legislator a first class trip to the tropics, including plane ticket, room at the Ritz Carlton, and room service and it would not have to be disclosed if the trip was for the purpose of a meeting. We pointed out this glaring flaw and insisted that the public has a right to know how much money lobbyists are spending on legislators. The following morning, April 20, the provision was removed. Lobbyists must now disclose this information.

Ethics is a cornerstone of our democracy. Our forefathers sacrificed so that we might have a better way of life. Those sacrifices came at a high cost, one which we are reminded of on Memorial Day. Georgia Watch will continue to advocate for more transparency and openness in government because we believe it is foundational, not optional. We also know that it is action, not apathy, that will mold our future. We are working hard on behalf of Georgians and we continue to ask you to stand beside us and support our efforts. We're in this together. It is our state and our future.

Thank you for your steadfast support. Please call me or our staff at anytime we can help you.



FACT BOX

NEW OVERDRAFT FEE RULES

Have you ever used your debit card to make a purchase or withdrawal that is greater than your checking account balance? Perhaps you have a friend or family member that complained about the bank allowing them to overdraw their account and then charging a hefty fee. Banks earn tens of billions of dollars in overdraft fees each year, but a new regulation will empower consumers to protect themselves from debit card overdrafts.

On July 1, a new Federal Reserve rule will require banks to obtain permission from their customers before allowing them to overdraw their accounts when using a debit or check card. This means that you have to opt-in in order to overdraw your account. If you don't opt-in, then you won't be charged an extra \$35 for buying a \$5 sandwich that overdraws your balance. (The new regulation doesn't apply to paper checks that are bounced.)

Banks don't want to lose this revenue source, so many are framing overdraft opt-in as a way to ensure that you can get money when you need it. But remember, if you choose to allow overdraft on your debit card, you will be subjected to fees even when you overdraw your account by just a few pennies.

It's your choice: Do you want your debit transactions and ATM withdrawals to go through, knowing that the bank will assess overdraft fees, or would you prefer to have your purchases and withdrawals for amounts greater than your balance declined so that you don't get hit with fees? If you do nothing, you'll be protected from debit overdraft fees and you won't be able to spend more money than you have in your account. But if you choose to opt-in to allow overdrafts, remember, it will cost you.