

The Women's Health and Cancer Rights Act (WHCRA) of 1998

If you have had or are going to have a mastectomy, you may be entitled to certain benefits under the Women's Health and Cancer Rights Act of 1998 (WHCRA). For individuals receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending physician and the patient, for:

- All stages of reconstruction of the breast on which the mastectomy was performed;
- surgery and reconstruction of the other breast to produce a symmetrical appearance;
- prostheses; and
- Treatment of physical complications of the mastectomy, including lymphedema.

Please contact HealthEZ at 952-948-9450 for more information.

The following information should provide answers to frequently asked questions on WHCRA.

What is the Women's Health and Cancer Rights Act (WHCRA)?

The Women's Health and Cancer Rights Act of 1998 (WHCRA) was signed into law on October 21, 1998. It is a federal law that provides protections to patients who choose to have breast reconstruction in connection with a mastectomy. It requires group health plans to provide certain benefits in connection with a mastectomy, and helps to protect the participants.

What are the WHCRA Notice Requirements?

There are three separate WHCRA notice requirements for all group health plans and health insurance issuers. All require that the group health plans or health insurance issuers use measures reasonably calculated to ensure actual receipt of the notice by plan participants and policyholders. The notice must be sent by a method or methods of delivery likely to result in full distribution. The following are the requirements:

- At the time that WHCRA was enacted, there was an initial one-time notice requirement under which group health plans and insurance issuers must furnish a written description of the benefits that WHCRA requires to their group and individual participants, policy holders, and beneficiaries no later than January 1, 1999.
- The second notice requirement must also describe the benefits required under WHCRA, but it must be provided to participants and policyholders in the group and individual markets upon enrollment in the plan. If a plan or health insurance issuer provides appropriate notice to a participant or policy holder upon enrollment in the plan, then the plan or issuer does not have to provide that participant or policy holder with an annual notice for the plan year during which that participant enrolled.
- The third notice requirement is to be furnished annually to participants under the group plan and to individual policyholders. The annual notice may be sent by itself or may, for example, be included in any of the following:
 - A summary plan description (SPD), a summary of material modifications (SMM), or a summary annual report (SAR);
 - A union newsletter or a benefits newsletter;
 - Open enrollment materials;
 - Policy renewal notification letter; or
 - Any other written communication by the plan or issuer.

Is there specific model language that should be used in a written notification?

Yes. The following WHCRA model notice language may be used to satisfy the notification requirement:

As required by the Women's Health and Cancer Rights Act (WHCRA) of 1998, this plan provides coverage for:

1. All stages of reconstruction of the breast on which the mastectomy has been performed;
2. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and
3. Prostheses and physical complications of mastectomy, including lymphedemas, in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter. Contact your plan administrator HealthEZ, for more information.

When should I expect a benefit notification, and what can I expect in this notice?

Both group health plans and health insurance issuers are required to provide you written notice of WHCRA benefits upon enrollment and annually thereafter. The enrollment and annual notification shall describe the benefits that group health plans and insurance issuers must cover under WHCRA. The notice must indicate that, in the case of a participant, policyholder, or beneficiary who is receiving benefits in connection with a mastectomy, coverage will be provided in a manner determined in consultation with the attending physician and the patient.

The written notice should explain benefits included to cover all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, prostheses, and treatment of physical complications of the mastectomy, including lymphedema.

I plan to have a mastectomy, as I have been diagnosed with breast cancer. How will WHCRA affect my benefits?

Under WHCRA, group health plans and insurance companies offering mastectomy coverage also must provide coverage for certain services relating to the mastectomy in a manner determined in consultation with your attending physician and you. This required coverage includes:

- All stages of reconstruction of the breast on which the mastectomy was performed
- Surgery and reconstruction of the other breast to produce a symmetrical appearance
- Prostheses and treatment of physical complications of the mastectomy, including lymphedema.

Though I have not been diagnosed with cancer, due to medical reasons I must undergo a mastectomy. Does WHCRA apply to me?

Yes if your health plan covers mastectomies and you are receiving benefits in connection with a mastectomy. Nothing in the law limits WHCRA rights to cancer patients, despite its name.

Does WHCRA require all group health plans and health insurance companies to provide reconstructive surgery benefits?

Generally, insurance companies and group health plans that provide coverage for medical and surgical benefits with respect to a mastectomy must comply with WHCRA.

However, if your coverage is provided by a “governmental plan” or a “church plan,” check with your plan administrator. Certain governmental plans and church plans may not be subject to the law.

May health insurance companies or group health plans impose deductibles or coinsurance requirements on the coverage specified by WHCRA?

Yes, only if the coinsurance and deductibles are consistent with those established for other benefits under the plan or coverage.

I recently changed jobs and am enrolled under my new employer’s plan. I underwent a mastectomy and chemotherapy treatment under my previous employer’s plan. Now I want reconstructive surgery. Under WHCRA, is my new employer’s plan required to cover my reconstructive surgery?

If your new employer’s plan provides coverage for mastectomies and if you are receiving benefits under the plan that are related to your mastectomy, then your new employer’s plan generally is required to cover reconstructive surgery if you request it. In addition, your new employer’s plan generally is required to cover the other benefits specified in WHCRA. It does not matter that you were not enrolled in your new employer’s plan at the time you had the mastectomy.

There are additional protections under the Patient Protection and Affordable Care Act (ACA). For plan years beginning on or after January 1, 2014, a group health plan generally cannot limit or deny benefits relating to a health condition that was present before your enrollment date in your new employer’s plan (a preexisting condition).

My employer’s group health plan provides coverage through an insurance company. Following my mastectomy, my employer changed insurance companies. The new insurance company is refusing to cover my reconstructive surgery. Does WHCRA provide me with any protections?

Yes, as long as the new insurance company provides coverage for mastectomies, you are receiving benefits under the plan related to your mastectomy, and you elect to have reconstructive surgery. If these conditions apply, the new insurance company is required to provide coverage for breast reconstruction as well as the other benefits required under WHCRA. It does not matter that you were not covered by the new company at the time you had the mastectomy.

My health coverage is through an individual policy, not through an employer. What rights, if any, do I have under WHCRA?

WHCRA rights apply to individual coverage as well. These requirements are generally within the jurisdiction of the state insurance department. Call your state insurance department or the Department of Health and Human Services toll free at 1-877-267-2323, extension 61565, for further information.

My state requires health insurance companies to cover the benefits required by WHCRA and also requires health insurance companies to cover minimum hospital stays in connection with a mastectomy (which is not required by WHCRA). If I have a mastectomy and breast reconstruction, am I also entitled to the minimum hospital stay?

If your employer’s group health plan provides coverage through an insurance company, you are entitled to the minimum hospital stay required by the state law. Many state laws provide more protections than WHCRA. Those additional protections apply to coverage provided by an insurance company (known as “insured” coverage).

If your employer’s plan does not provide coverage through an insurance company (in other words, your employer “selfinsures” your coverage), then the state law does not apply. In that case, only the Federal law, WHCRA, applies, and it does not require minimum hospital stays.

To find out if your group health coverage is “insured” or “self-insured,” check your health plan’s Summary Plan Description or contact your plan administrator. If your coverage is “insured” and you want to know if you have additional state law protections, check with your state insurance department.

Do I have a right to preventive services related to the detection of breast cancer?

Under the ACA, you may receive recommended preventive services, such as breast cancer mammography screenings for women 40 years of age and older, with no copayment, coinsurance or deductible (or other cost-sharing).

WHCRA does not require coverage for preventive services related to the detection of breast cancer.

Does the WHCRA allow insurance plans to give doctors incentives to discourage women from having breast reconstruction after a mastectomy?

No. The WHCRA does not allow insurance plans and insurance issuers to penalize doctors or lead them to provide care in a way that does not support the WHCRA. Nor does it allow insurance plans to reward doctors who do not encourage their patients to look into breast reconstruction.

Where can I get more information about my rights under the WHCRA?

The US Department of Labor, which has the WHCRA information on its web site at www.dol.gov/ebsa/Publications/whcra.html, or call their toll-free number, 1-866-487-2365

- The Employee Benefits Security Administration, a special office of the Department of Labor, at 1-866-444-3272 for information about employer-based health insurance
- Your State Insurance Commissioner’s office which can be found at the National Association of Insurance Commissioners website at www.naic.org/state_web_map.htm. You can also call 1-866-470-NAIC (1-866-470-6242.)

*****Self-funded non-federal governmental plans may opt-out of the WHCRA requirements. For more information on WHCRA opt-outs go to www.cms.gov/SelfFundedNonFedGovPlans/*****