

The Women's Health and Cancer Rights Act

The Women's Health and Cancer Rights Act (WHCRA) provides protections for individuals who elect breast reconstruction after a mastectomy. Under WHCRA, group health plans offering mastectomy coverage must also provide coverage for certain services relating to the mastectomy, in a manner determined in consultation with the attending physician and the patient. 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.

Written notice about the availability of these mastectomy-related benefits must be delivered to participants in a group health plan upon enrollment and then each year afterwards.

Does WHCRA apply to individuals who have not been diagnosed with cancer but who must undergo a mastectomy due to other medical reasons?

Despite the title, nothing in the law limits entitlement to WHCRA benefits to cancer patients. If an individual is receiving benefits in connection with a mastectomy and the group health plan covers mastectomies, then the individual should be entitled to WHCRA benefits.

Also, despite the title, nothing in the law limits WHCRA entitlements to women.

Does WHCRA mandate minimum hospital lengths of stay in connection with mastectomy or breast reconstruction?

No, but many State laws applicable to insured coverage provide more protections than WHCRA. Thus, if a plan provides coverage through an insurance company or HMO, covered individuals may be entitled to minimum hospital stays under State law. If your plan is insured, check with your State insurance department for more information.

May group health plans impose deductibles or coinsurance requirements on the coverage specified in WHCRA?

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

Can an insurance company refuse to cover reconstructive surgery benefits because an individual's mastectomy was performed when the individual was covered under a different insurance company?

Even though the new insurance company did not cover the individual's mastectomy, as long as the new insurance company provides benefits for mastectomies, it is generally required to provide coverage for breast reconstruction as well as other required benefits under WHCRA if the individual is receiving benefits under the plan related to the mastectomy.

Any restrictions on benefits imposed by the new insurance company because the mastectomy occurred before it covered the individual must comply with HIPAA's rules limiting a plan or health insurance issuer's ability to impose a preexisting condition exclusion.

What information should be included in the notice provided when participants enroll in the plan?

The enrollment notice must state that, for an individual who is 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.

The enrollment notice must also describe any deductibles and coinsurance limitations applicable to such coverage. Under WHCRA, coverage of breast reconstruction and other benefits specified in WHCRA may be subject only to deductibles and coinsurance limits consistent with those established for other medical/surgical benefits under the plan or coverage.

A copy of a model enrollment notice is included on page 101.

What information should be included in the annual notice to participants in the plan?

The annual notice should describe the four categories of coverage required and should contain information on how to obtain a detailed description of the mastectomy-related benefits available under the plan. To satisfy this annual notice requirement, your plan may provide the same notice it provided to individuals upon enrollment in the plan if it contains the appropriate information as described above.

A model annual notice is included on page 102.

How must the plan provide these notices to participants?

These notices must be delivered in accordance with the Department of Labor's disclosure rules applicable to furnishing summary plan descriptions. For example, the notices may be provided by first class mail or any other means of delivery prescribed in the regulation. A separate notice must be furnished to a group health plan beneficiary where the last known address of the beneficiary is different than the last known address of the covered participant.

To avoid duplication of notices, a group health plan can satisfy the WHCRA notice requirements by contracting with another party that provides the required notice. For example, in the case of an insured group health plan, the plan will satisfy the notice requirements with respect to a particular participant if the issuer timely provides the notice including the information required by WHCRA.