

Your Rights After A Mastectomy... Women's Health and Cancer Rights Act of 1998

Article By:

U.S. Department of Labor

If you have had a mastectomy or expect to have one, you may be entitled to special rights under the Women's Health and Cancer Rights Act of 1998 (WHCRA).

The following questions and answers clarify your basic WHCRA rights. Under WHCRA, if your group health plan covers mastectomies, the plan must provide certain reconstructive surgery and other post-mastectomy benefits.

Your health plan or issuer is required to provide you with a notice of your rights under WHCRA when you enroll in the health plan, and then once each year.

The following information provides answers to frequently asked questions about WHCRA.

I've been diagnosed with breast cancer and plan to have a mastectomy. How will WHCRA affect my benefits?

Under WHCRA, group health plans, insurance companies and health maintenance organizations (HMOs) 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.

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

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

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

Generally, group health plans, as well as their insurance companies and HMOs, 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 "church plan" or "governmental plan", check with your plan administrator. Certain plans that are church plans or governmental plans may not be subject to this law.

May group health plans, insurance companies, or HMOs 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 benefits under the plan or coverage.

I just 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 will be 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 your mastectomy was not covered by your new employer's plan.

However, a group health plan may limit benefits relating to a health condition that was present before your enrollment date in your current employer's plan through a preexisting condition exclusion. A Federal law known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) limits the circumstances under which a preexisting condition exclusion may be applied.

Specifically, HIPAA provides that a plan may impose a preexisting condition exclusion only if:

- The exclusion relates to a condition (whether physical or mental) for which medical advice, diagnosis, care or treatment was recommended or received within the 6 month period ending on your enrollment date;
- The exclusion extends no more than 12 months (or 18 months in the case of a late enrollee in the new plan) after the enrollment date; and
- The preexisting condition exclusion period is reduced by the days of prior creditable coverage (if any, which is defined in HIPAA as most health coverage).

The plan also must provide you with written notification of the existence and terms of any preexisting condition exclusion under the plan and of your rights to demonstrate prior creditable coverage.

For an explanation of HIPAA, request a copy of [Your Health Plan and HIPAA...Making The Law Work For You.](#)

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 your mastectomy was not covered by the new insurance company.

I understand that my group health plan is required to provide me with a notice of my rights under WHCRA when I enroll in the plan. What information can I expect to find in this notice?

Plans must provide a notice to all employees when they enroll in the health plan describing the benefits that WHCRA requires the plan and its insurance companies or HMOs to cover. These benefits include coverage of 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 also must state that for the covered employee or their family member who is receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending physician and the patient.

Finally, the enrollment notice must describe any deductibles and coinsurance limitations that apply to the coverage specified under WHCRA. Deductibles and coinsurance limitations may be imposed only if they are consistent with those established for other benefits under the plan or coverage.

What can I expect to find in the annual WHCRA notice from my health plan?

Your annual notice should describe the four categories of coverage required under WHCRA and information on how to obtain a detailed description of the mastectomy-related benefits available under your plan. For example, an annual notice might look something like this:

“Do you know that your plan, as required by the Women’s Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including all stages of reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy, including lymphedema? Call your plan administrator [phone number here] for more information.”

Your annual notice may be the same notice provided when you enrolled in the plan if it contains the information described above.

My State requires health insurance issuers to cover the benefits required by WHCRA and also requires health insurance issuers 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 or HMO, 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 or HMO (known as "insured" coverage).

If your employer's plan does not provide coverage through an insurance company or HMO (in other words, your employer "self-insures" 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.

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

Health insurance companies and HMOs are generally required to provide WHCRA benefits to individual policies too. 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.

Resources

WHCRA is administered by the U.S. Departments of Labor and Health and Human Services.

Department of Labor

If you have questions regarding your WHCRA rights under an employer-sponsored group health plan, call the Department of Labor's Employee Benefits Security Administration toll free at 1.866.444.3272 or visit the [EBSA Web site](#) and click on [Contact Us](#) for the addresses of the 15 field offices that can assist you. You also can request a copy of [Your Health Plan and HIPAA...Making the Law Work for You](#) and a list of all publications from the Employee Benefits Security Administration.

Centers for Medicare and Medicaid Services

Go to the [Web site](#) for more information on WHCRA and HIPAA or call toll free at 1.877.267.2323, extension 61565.

National Association of Insurance Commissioners

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