



## LEGISLATIVE BRIEF

# Women's Health and Cancer Rights Act

The Women's Health and Cancer Rights Act of 1998 ("WHCRA") is a federal law that requires all health plans which provide medical and surgical benefits for a mastectomy to also cover breast reconstruction. The law became effective on October 21, 1998.

### **Who must comply with this law?**

The law applies to ERISA group health plans, state and local government plans, church plans, individual plans and health insurers.

### **What if my state also has a law regarding breast reconstruction benefits?**

This federal law does not preempt any state law in effect on or before Oct. 21, 1998, if the state law requires at least the same level of coverage as provided by WHCRA.

### **What coverage is required?**

Plans that provide medical and surgical benefits for a mastectomy shall also provide coverage for:

1. Reconstruction of the breast on which the mastectomy has been performed;
2. Surgery and reconstruction of the other breast to produce a symmetrical appearance;
3. External breast prostheses (breast forms that fit into your bra) that are needed before or during the reconstruction; and
4. Treatment of physical complications in all stages of mastectomy, including lymphedemas.

Coverage is determined by the health plan in coordination with the physician and patient.

### **May a health plan apply a deductible or charge a copayment for breast reconstruction benefits?**

Yes. Breast reconstruction surgery benefits may be subject to an annual deductible or coinsurance provision if it is consistent with the cost-sharing measures imposed on other similar benefits under the plan.

### **What notices are required?**

1. Initial Notice (deadline has passed)  
A one-time notice was required to be furnished no later than Jan. 1, 1999, as part of the first general mailing made after Oct. 21, 1998, or in the yearly informational packet sent out regarding the plan.
2. At Enrollment  
Notice must be provided to participants upon enrollment in the plan.
3. Annually  
A notice must be provided annually to participants under the plan.

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## **If notice is provided to a participant at the time of enrollment, does the annual notice also have to be provided again during the year?**

No. If a plan or health insurer provides appropriate notice to a participant upon enrollment in the plan, then the plan does not have to provide another notice to that participant during the year.

## **Must the notice be provided separately?**

No. The Department of Labor has indicated that the annual notice provided in open enrollment materials can serve to satisfy the annual notice requirement. The annual notice can also be provided in a company benefits newsletter.

## **How must the annual notice be delivered?**

Notices must be sent in a manner reasonably calculated to ensure actual receipt and the notice must be sent by a method likely to result in full distribution. For example, the notice may be provided by first-class mail or via e-mail.

## **Who must provide the notice?**

A group health plan or an insurance company must provide the notice. For insured plans, the insurer can provide the notice. The law does not require that both the insurance company and the employer provide the notice.

## **Must a separate notice be provided to each plan beneficiary?**

The U.S. Department of Labor recommends that a separate notice be provided to a plan beneficiary whose last known address is different from the address of the primary plan beneficiary. For example, separate notices should be provided to families where the parents are divorced and the non-custodial parent provides coverage.

## **What information must be included in the WHCRA notice?**

The U.S. Department of Labor sample notices on the following page can be used to provide notice at enrollment and annually thereafter. Note that the Enrollment Notice can also be used to satisfy WHCRA's annual notice requirement.

Please contact your Human Resources representative with any questions.

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## ***Enrollment Notice***

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.

These benefits will be provided subject to the same deductibles and coinsurance applicable to other medical and surgical benefits provided under this plan. Therefore, the following deductibles and coinsurance apply: [insert deductibles and coinsurance applicable to these benefits].

If you would like more information on WHCRA benefits, call your plan administrator (insert phone number).

## ***Annual Notice***

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 at (insert phone number) for more information.

