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Women's Health and Cancer Rights Act

The Federal law

The Women's Health and Cancer Rights Act (WHCRA) helps protect many women with breast cancer who choose to have their breasts rebuilt (reconstructed) after a mastectomy. Mastectomy is surgery to remove all or part of the breast. This federal law requires most group insurance plans that cover mastectomies to also cover breast reconstruction. It was signed into law on October 21, 1998. The United States Departments of Labor and Health and Human Services oversee this law.

There are additional protections under the Affordable Care Act (ACA). For plan years (a plan year can be any 12-month period that the insurer chooses) beginning on or after January 1, 2014, a group health plan generally cannot limit or deny benefits relating to a pre-existing condition.

The WHCRA:

- Applies to group health plans for plan years starting on or after October 1, 1998
- Applies to group health plans, health insurance companies, and HMOs, as long as the plan covers medical and surgical costs for mastectomy

Under the WHCRA, mastectomy benefits must cover:

- Reconstruction of the breast that was removed by mastectomy
- Surgery and reconstruction of the other breast to make the breasts look symmetrical or balanced after mastectomy
- Any external breast prostheses (breast forms that fit into your bra) that are needed before or during the reconstruction

- Any physical complications at all stages of mastectomy, including lymphedema (fluid build-up in the arm and chest on the side of the surgery)

Mastectomy benefits may have a yearly deductible and may require that you pay some out-of-pocket costs.

Questions and answers about the WHCRA

Does the WHCRA allow insurers to take people off their plans so that they don't have to pay breast reconstruction benefits?

No. The WHCRA does not allow insurance plans and insurance companies to kick people out of the plan or keep them from enrolling or renewing their coverage under the plan to avoid WHCRA requirements.

Does the WHCRA let insurance plans give doctors incentives to discourage women from having breast reconstruction after 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.

Does my insurance provider have to tell me that I'm covered for breast reconstruction under the WHCRA?

Yes. The law also requires that insurance providers notify you of this coverage when you enroll in their plan, and every year after that.

What if my state has laws that require insurers to cover breast reconstruction?

Several states have their own laws requiring health plans that cover mastectomies to provide coverage for reconstructive surgery after a mastectomy. These state laws only apply to those health plans purchased by an employer from a commercial insurance company. If an employer is **self-insured**, state laws do not apply but federal laws do.

A self-insured (or **self-funded**) plan is one in which the employer, rather than a commercial insurance company, pays for the insured person's health expenses. Some employers that self-insure will hire a commercial insurance company to write the checks and track the paperwork, even though the money for the payments still comes from the employer. So it can be hard to tell whether you are in a self-insured or a commercially

insured plan unless you ask.

If you are unsure of your plan's status, ask your employer's benefits manager.

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

Under the WHCRA, group health plans, insurance companies, and HMOs that offer mastectomy coverage must also provide coverage for reconstructive surgery after mastectomy. This coverage includes reconstruction of the breast removed by mastectomy, reconstruction of the other breast to give a more balanced look, breast prostheses, and treatment of physical complications at all stages of the mastectomy, including lymphedema.

This federal law sets a minimum requirement so that women can have breast reconstruction after mastectomy, even if they live in states that do not make insurance companies provide this coverage.

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

In most cases, yes, as long as the insurance plan also covers medical and surgical benefits for mastectomies. But certain church plans and government plans may not be required to pay for reconstructive surgery.

If you are insured under a health plan sponsored by a church or local government plan, check with your plan administrator about it.

Under the WHCRA, can insurance providers impose deductibles or co-insurance requirements for reconstructive surgery in connection with a mastectomy?

Yes. But the deductibles and co-insurance must be like those that are used for other benefits under the plan or coverage. The company can't have you paying a higher deductible or co-pay for breast rebuilding than you would pay for other types of surgery.

If I have a mastectomy and breast reconstruction, am I also entitled to the state and WHCRA required minimum hospital stay?

It depends. If you have coverage through your employer and your employer is insured, you would be entitled to the minimum hospital stay required by the state law. If you have coverage through your employer but your coverage is not provided by an insurance company or HMO (that is, your employer "self-insures" your coverage), then state law

does not apply. In that case, only the federal WHCRA applies and it does not require minimum hospital stays. To find out if your group health plan is insured or self-insured, contact your plan administrator.

If you have coverage under a private health insurance policy (not through your employer), check with your State Insurance Commissioner's office to learn if state law applies.

Are health plans required to tell me about WHCRA benefits?

Yes. Both health plans and health insurance issuers are required to tell you about WHCRA benefits. They must do this when you enroll and every year after that. The annual notice may be sent by itself or it may be included in almost any written communication by the plan or insurer, such as newsletters, annual reports, policy renewal letters, enrollment notices, and others. Enrollment notices may even be a phone number or web address from which to get more information about coverage.

Does the WHCRA affect the amount that my health plan will pay my doctors?

No. The WHCRA does not keep a plan or health insurance issuer from bargaining about amounts and types of payment with doctors. But the law does forbid insurance plans and issuers from penalizing doctors or providing incentives that would cause a doctor to give care that's not consistent with WHCRA.

Does the new health care law affect the WHCRA?

No. The WHCRA was not changed by the Affordable Care Act and there are no provisions or regulations that affect it. Health insurance plans that offer mastectomy must continue to offer breast reconstruction.

Do the WHCRA requirements apply to Medicare or Medicaid?

No. The law does not apply to [Medicare and Medicaid](#)¹.

Still, Medicare covers breast reconstruction if you had a mastectomy because of breast cancer.

Medicaid coverage varies in each state, so you will have to get this information for your state.

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

If you have more questions or concerns, you can contact:

- The US Department of Labor for [WHCRA information](#)², or you can call their toll-free number, 1-866-487-2365
- The Employee Benefits Security Administration, of the Department of Labor, at 1-866-444-3272 for information about employer-based health insurance
- Your health plan administrator (a number should be listed on your insurance card)
- Your State Insurance Commissioner's office (The number should be listed in your local phone book in the state government section, or you can find it at the [National Association of Insurance Commissioners](#)³ website or call 1-866-470-NAIC (1-866-470-6242.)

You may also want to check the Additional resources section.

Hyperlinks

1. www.cancer.org/treatment/finding-and-paying-for-treatment/understanding-health-insurance/government-funded-programs/medicare-medicaid.html
2. <http://dol.gov/agencies/ebsa/laws-and-regulations/laws/whcra>
3. <http://www.naic.org>
4. <http://www.disabilityrightslegalcenter.org/>
5. <http://www.healthcare.gov/>
6. <http://www.naic.org/>
7. http://www.naic.org/state_web_map.htm
8. <http://www.dol.gov/ebsa/>

Additional resources

Along with the American Cancer Society, other sources of information and support include:

Cancer Legal Resource Center (CLRC) Toll-free number: 1-866-843-2572 (1-866-THE-CLRC) (leave a number for a call back)

Website: www.disabilityrightslegalcenter.org

(<http://www.disabilityrightslegalcenter.org/>)⁴ (choose "About DLRC" to get to the CLRC page)

- Offers information on disabilities and your legal rights with a special focus on

cancer

Healthcare.gov Website: www.healthcare.gov (<http://www.healthcare.gov/>)⁵

- Has the most up-to-date information on health insurance and the new health care law

National Association of Insurance Commissioners (NAIC) Telephone: 1-866-470-6242 (1-866-470-NAIC) Website: www.naic.org (<http://www.naic.org/>)⁶ Website for state insurance department information: www.naic.org/state_web_map.htm (http://www.naic.org/state_web_map.htm)⁷

- To contact your state insurance commission, which regulates insurance in your state

US Department of Health and Human Services Center for Medicare & Medicaid Services Toll-free number: 1-877-267-2323 Website: www.cms.hhs.gov ()⁸

- Information on what's covered by Medicare and Medicaid

US Department of Labor, Employee Benefits Security Administration Toll-free number: 1-866-444-3272 (1-866-444-EBSA) Website: www.dol.gov/ebsa (<http://www.dol.gov/ebsa/>)⁹

- Has information on employee benefits and health insurance requirements

**Inclusion on this list does not imply endorsement by the American Cancer Society.*

References

Centers for Medicare and Medicaid Services (CMS). *The Women's Health & Cancer Rights Act*. Accessed at https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/whcra_factsheet.html on May 13, 2019.

US Department of Labor. *FAQs about women's health and cancer rights*. Accessed at <https://www.dol.gov/sites/dolgov/files/legacy-files/ebsa/about-ebsa/our->

activities/resource-center/faqs/whcra.pdf on May 13, 2019.

US Department of Labor. *Health plans and benefits: Women's health and cancer rights*. Accessed at <https://www.dol.gov/general/topic/health-plans/womens> on May 13, 2019.

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