



YOUR RIGHTS AFTER A MASTECTOMY



EMPLOYEE BENEFITS SECURITY ADMINISTRATION
UNITED STATES DEPARTMENT OF LABOR

Your Rights After A Mastectomy



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.

I've been diagnosed with breast cancer and plan to have a mastectomy, which my plan covers. Will my health plan cover reconstructive surgery too?

If your group health plan or health insurance company covers mastectomies, it must provide certain reconstructive surgery and other benefits related to the mastectomy, including:

- 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 plan must consult with you and your attending physician when determining how this coverage will be provided.

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

Yes, the law applies if your group health plan or health insurance company covers mastectomies and you are receiving benefits in connection with a mastectomy – whether or not you have cancer. Despite its name, nothing in the law limits WHCRA rights to cancer patients.

Do all group health plans and health insurance companies have to provide reconstructive surgery benefits?

Generally, WHCRA applies to all group health plans that provide coverage for medical and surgical benefits with respect to a mastectomy, as well as their insurance companies. However, there are exceptions for some “church plans” and “government plans.” If your coverage is provided by a “church plan” or “governmental plan,” check with your plan administrator.

Will I have to pay a deductible or coinsurance?

Possibly. Group health plans or health insurance companies may impose deductibles or coinsurance requirements on mastectomies and post-mastectomy treatment, but no more than those established for other benefits. In other words, the deductible for post-mastectomy reconstructive surgery should be similar to the deductible for any similar procedure covered by the plan.

Before I changed jobs, I had a mastectomy and chemotherapy which were covered under my previous employer's plan. Now I am enrolled under my new employer's plan and want reconstructive surgery. Is my new employer's plan required to cover it?

If you request reconstructive surgery, your new employer's plan generally must cover it if:

- the plan provides coverage for mastectomies, and
- you are receiving benefits under the plan that are related to your mastectomy.

In addition, your new employer's plan generally must cover the other benefits specified in WHCRA, even if you were not enrolled in your new employer's plan when you had the mastectomy.

The Patient Protection and Affordable Care Act includes additional protections. A group health plan generally cannot limit or deny benefits relating to a health condition that existed before you enrolled in your new employer's plan. For more information, visit dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-workers-and-families or HealthCare.gov.

My employer's group health plan provides coverage through an insurance company. After my mastectomy, my employer changed insurance companies. The new insurance company refuses to cover my reconstructive surgery. Is that legal?

Not if:

- 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, then the new insurance company must 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 when you had the mastectomy.

I understand that my group health plan must provide me with a notice of my WHCRA rights when I enroll in the plan. What information does this notice include?

Plans must provide a notice to all employees when they enroll in the health plan that:

- describes the benefits that WHCRA requires the plan and its insurance companies to cover, which includes:
 - 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;
- states that mastectomy-related benefits coverage will be provided in a manner determined in consultation with the attending physician and the patient;
- describes any applicable 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 information does the annual WHCRA notice from my health plan include?

Your annual notice should describe the four categories of coverage required under WHCRA and how to obtain a detailed description of the mastectomy-related benefits available under your plan. For example, an annual notice might look 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 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 for coverage provided by an insurance company or “insured coverage.”

If your employer’s group health plan provides...	You are entitled to...
Coverage through an insurance company	Federal and state protections (in states that provide them)
Self-insured coverage	Federal protections only

To find out if your group health coverage is “insured” or “self-insured,” check your health plan’s Summary Plan Description (SPD) or contact your plan administrator.

If your coverage is “insured” and you want to know if you have additional state law protections, contact your state insurance department.

I have health coverage through an individual policy, not through an employer. Am I covered 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 6-1565, for more information.

Can I get breast cancer screening or similar preventive services for free? Possibly. Under the Affordable Care Act, you may receive certain recommended preventive services, such as breast cancer mammography screenings for women aged 40 and older, with no copayment, coinsurance, deductible, or other cost-sharing. For more information, visit [HealthCare.gov/coverage/preventive-care-benefits/](https://www.healthcare.gov/coverage/preventive-care-benefits/). WHCRA does not require coverage for preventive services related to the detection of breast cancer.

Resources

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

Department of Labor

For more information about your WHCRA rights under an employer-sponsored group health plan and other health coverage topics, visit dol.gov/agencies/ebsa. To order publications, learn more about our programs and services, or discuss questions about your benefits, contact EBSA at askebsa.dol.gov or call toll-free: 1-866-444-3272.

Department of Health and Human Services

For more information on WHCRA, visit www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/whcra_factsheet.html or call toll-free: 1-877-267-2323, extension 6-1565.

National Association of Insurance Commissioners

To find the contact information for your state office, visit naic.org/state_web_map.htm.