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 is 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, 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 my plan refuse to cover reconstructive surgery benefits because the mastectomy was performed when the participant was covered under a different insurance company?

If the plan provides coverage for mastectomies and the participant is receiving benefits under the plan that is related to a mastectomy, then the plan generally is required to cover reconstructive surgery upon request. In addition, the plan generally is required to cover the other benefits specified in WHCRA. It does not matter that the participant was not enrolled in the current plan and/or was not covered by the same insurance company at the time of the mastectomy.

There are additional related protections under the Affordable Care Act. For plan years beginning on or after January 1, 2014, a group health plan generally cannot limit or deny benefits relating to a health condition that was present before enrollment in the plan (a preexisting condition). For more information see the Affordable Care Act section of this publication at page 9 or visit the Affordable Care Act Web page of the Department of Labor's Employee Benefits Security Administration (EBSA) at dol.gov/ebsa/healthreform/ or the Department of Health and Human Services' Website at HealthCare.gov.

Is my plan required to provide preventive services related to the detection of breast cancer?

Under the Affordable Care Act, plans must provide certain preventive services, such as breast cancer mammography screenings for women 40 years of age and older, with no copayment, coinsurance or deductible (or other cost-sharing). For more information, visit HealthCare.gov/what-are-my-preventive-care-benefits/.

WHCRA does not require coverage for preventive services related to the detection of breast cancer.

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 141.

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, the 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 142.

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.

Where can I find more information about the requirements under WHCRA?

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

For more information regarding an employer-sponsored group health plan's responsibilities under WHCRA, visit the Website of the Department of Labor's Employee Benefits Security Administration at dol.gov/ebsa/healthlawschecksheets.html.

For more information on WHCRA, visit the Website of the Department of Health and Human Services' Centers for Medicare & Medicaid Services at cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/whcra_factsheet.html.