

Women's Health and Cancer Rights Act

As passed in H.R. 4328, the Omnibus Appropriations bill FY 99 Conference Report 105-825; Public Law: 105-277 (10/21/98)

TITLE IX--WOMEN'S HEALTH AND CANCER RIGHTS

SEC. 901. SHORT TITLE.

This title may be cited as the ``Women's Health and Cancer Rights Act of 1998''.

SEC. 902. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) In General.--Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

SEC. 713. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

(a) In General.--A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for--

(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) prostheses and physical complications all stages of mastectomy, including lymphedemas; in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) Notice.--A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted--

- (1) in the next mailing made by the plan or issuer to the participant or beneficiary;
- (2) as part of any yearly informational packet sent to the participant or beneficiary; or
- (3) not later than January 1, 1999; whichever is earlier.

(c) Prohibitions.--A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not--

(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Rule of Construction.--Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) Preemption, Relation to State Laws.--

(1) In general.--Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section.

(2) Erisa.--Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans."

(b) Clerical Amendment.--The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

Sec. 713. Required coverage reconstructive surgery following mastectomies."

(c) Effective Dates.--

(1) In general.--The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) Special rule for collective bargaining agreements.-- In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 903. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

nbsp; (a) Group Market.--Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following new section:

SEC. 2706. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

The provisions of section 713 of the Employee Retirement Income Security Act of 1974 shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart."

(b) Individual Market.--Subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-51 et seq.) is amended by adding at the end the following new section:

SEC. 2752. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

The provisions of section 2706 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market."

(c) Effective Dates.--

(1) Group plans.--

(A) In general.--The amendment made by subsection (a) shall apply to group health plans for plan years beginning on or after the date of enactment of this Act.

(B) Special rule for collective bargaining agreements.-- In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by the amendment made by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

(2) Individual plans.--The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act.

This Act may be cited as the Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1999".

(g) For programs, projects or activities in the Department of Transportation and Related Agencies Appropriations Act, 1999, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act: AN ACT Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1999, and for other purposes.

November 1998

The Women's Health and Cancer Rights Act of 1998: Questions and Answers

The Women's Health and Cancer Rights Act (Women's Health Act) was signed into law on October 21, 1998. The law includes important new protections for breast cancer patients who elect breast reconstruction in connection with a mastectomy. The Women's Health Act amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) and is administered by the Departments of Labor and Health and Human Services.

The following information is intended to provide general guidance on frequently asked questions about the Women's Health Act provisions that amend ERISA .

I've been diagnosed with breast cancer and plan to have a mastectomy. How will the Women's Health Act affect my benefits?

Under the Women's Health Act, group health plans, insurance companies and health maintenance organizations (HMOs) offering mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas.

Will the Women's Health Act require all group health plans, insurance companies, and HMOs to provide reconstructive surgery benefits?

All group health plans, and their insurance companies or HMOs, that provide coverage for medical and surgical benefits with respect to a mastectomy are subject to the requirements of the Women's Health Act.

Under the Women's Health Act, may group health plans, insurance companies or HMOs impose deductibles or coinsurance requirements for reconstructive surgery in connection with a mastectomy?

Yes, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.

When do these requirements take effect?

The reconstructive surgery requirements apply to group health plans for plan years beginning on or after October 21, 1998. To find out when your plan year begins, check your Summary Plan Description (SPD) or contact your plan administrator.

These requirements also apply to individual health insurance policies offered, sold, issued, renewed, in effect, or operated on or after October 21, 1998. These requirements were placed in the PHS Act within the jurisdiction of the Department of Health and Human Services.

My State requires the coverage for breast reconstruction that is required by the Women's Health Act and also requires minimum hospital stays in connection with a mastectomy that is not required by the Women's Health Act. If I have a mastectomy and breast reconstruction, am I also entitled to the minimum hospital stay?

It depends. The federal Women's Health Act permits State law protections to apply to certain health coverage. State law protections apply if the State law is in effect on October 21, 1998 (date of enactment of the Women's Health Act) and the State law requires at least the coverage for reconstructive breast surgery that is required by the federal Women's Health Act.

If State law meets these requirements, then it applies to coverage provided by an insurance company or HMO ("insured" coverage). If you obtained your coverage through your employer and your coverage is "insured," you would be entitled to the minimum hospital stay required by State law. If you obtained your 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 Women's Health Act applies and it does not require minimum hospital stays. To find out if your group health coverage is "insured" or "self-insured," check your Summary Plan Description (SPD) or contact your plan administrator.

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

Notice Requirements under the Women's Health Act

The Women's Health Act also requires that group health plans, insurance companies, and HMOs provide two notices regarding the coverage required by the Women's Health Act. The following information is intended to provide general guidance on frequently asked questions about these notice requirements under the provisions of the Women's Health Act that amend ERISA.

Are all group health plans, and their insurance companies and HMOs, required to satisfy the notice requirements under the Women's Health Act?

All group health plans, and their insurance companies or HMOs, that offer coverage for medical and surgical benefits with respect to a mastectomy are subject to the notice requirements under the Women's Health Act.

What are the notice requirements under the Women's Health Act?

There are two separate notices required under the Women's Health Act. The first notice is a one-time requirement under which group health plans, and their insurance companies or HMOs, must furnish a written description of the benefits that the Women's Health Act requires. The second notice must also describe the benefits required under the Women's Health Act but it must be provided upon enrollment in the plan and it must be furnished annually thereafter.

How must these notices be delivered to participants and beneficiaries?

These notices must be delivered in accordance with the Department of Labor's disclosure regulations applicable to furnishing summary plan descriptions. (29 CFR § 2520.104b-1). For example, the notices may be provided by first class mail or any other means of delivery prescribed in the regulation. It is the view of the Department that a separate notice would be required to 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.

When must the initial one-time notice under the Women's Health Act be furnished to participants and beneficiaries?

The one-time notice must be furnished as part of the next general mailing (made after October 21, 1998) by the group health plan and their insurance companies or HMOs, or in the yearly informational packet sent out regarding the plan, but in no event can the one-time notice be furnished later than January 1, 1999.

Does a group health plan that already provided the coverage required by the Women’s Health Act have to send out the initial one-time notice?

A group health plan that, prior to the date of enactment (October 21, 1998), already provided the coverage required by the Women’s Health Act (and continues to provide such coverage) will have satisfied the initial one-time notice requirement if the information required to be provided in the initial notice was previously furnished to participants and beneficiaries in accordance with the Department’s regulations on disclosure of information to participants and beneficiaries.

What information must be included in the Women’s Health Act notices?

The notices must describe the benefits that the Women’s Health Act requires the group health plan, and its insurance companies or HMOs, to cover. The notice must indicate that, in the case of a participant or beneficiary who is receiving benefits under the plan in connection with a mastectomy and who elects breast reconstruction, the coverage will be provided in a manner determined in consultation with the attending physician and the patient, for:

- reconstruction of the breast on which the mastectomy was performed;
- surgery and reconstruction of the other breast to produce a symmetrical appearance; and
- prostheses and treatment of physical complications at all stages of the mastectomy, including lymphedemas.

The notice must also describe any deductibles and coinsurance limitations applicable to such coverage. Under the Women’s Health Act, coverage of breast reconstruction benefits may be subject only to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.

Must a group health plan, and their insurance companies or HMOs, furnish separate notices under the Women’s Health Act?

No. To avoid duplication of notices, a group health plan or its insurance companies or HMOs, can satisfy the notice requirements of the Women’s Health Act by contracting with another party that provides the required notice. For example, in the case of a group health plan funded through an insurance policy, the group health plan will satisfy the notice requirements

with respect to a participant or beneficiary if the insurance company or HMO actually provides the notice that includes the information required by the Women's Health Act.