

Legislative Brief

Women's Health and Cancer Rights Act of 1998



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

When is the law effective?

The law applies to plan years beginning on or after October 21, 1998. Health plan benefits established under a collective bargaining unit may be modified to comply with this law. This amendment shall not be treated as a termination of the collective bargaining agreement.

Who must comply with this law?

The law applies to ERISA group health plans, state and local government 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 October 21, 1998 if the state law requires at least the level of coverage as provided by the Women's Health Act.

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; and
3. Prosthesis and 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
A one-time notice must be furnished as part of the first general mailing made after October 21, 1998 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.
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 recently 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 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 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, families where the parents are divorced and the non-custodial parent provides coverage.

What information must be included in the Women's Health Act notice?

The sample notice on the following page can be used to provide notice at enrollment and annually thereafter.

Please contact your Trapani Dickins and Associates Employee Benefits and Insurance Services, Inc. representative with any questions.

Revised RHK 3/01

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The Women's Health and Cancer Rights Act of 1998

Important Notice

In October 1998, Congress enacted the Women's Health and Cancer Rights Act of 1998. This notice explains some important provisions of the Act. Please review this information carefully.

As specified in the Women's Health and Cancer Rights Act, a plan participant or beneficiary who elects breast reconstruction in connection with a mastectomy is also entitled to the following benefits:

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; and
3. Prosthesis and treatment of physical complications in all stages of mastectomy, including lymphedemas.

Health plans must determine the manner of coverage in consultation with the attending physician and the patient. Coverage for breast reconstruction and related services may be subject to deductibles and coinsurance amounts that are consistent with those that apply to other benefits under the plan.
