

# COMPLIANCE OVERVIEW

Provided by Cottingham & Butler

## Women's Health and Cancer Rights Act

The Women's Health and Cancer Rights Act (WHCRA) requires group health plans and health insurance issuers that provide medical and surgical benefits for mastectomies to also provide benefits for reconstructive surgery. This coverage must include:

- ✓ All stages of reconstruction of the breast on which a mastectomy has been performed;
- ✓ Surgery and reconstruction of the other breast to produce a symmetrical appearance; and
- ✓ Prostheses and physical complications of mastectomy, including lymphedemas.

In addition, the WHCRA includes two notice requirements. One notice must be provided to plan participants when they enroll in the plan, and the other notice must be provided to plan participants on an annual basis.

### LINKS AND RESOURCES

- DOL's [Self-Compliance Tool](#) for health plans, which addresses compliance with the WHCRA
- [IRS Form 8928](#) and related [instructions](#)

### HIGHLIGHTS

#### COVERAGE REQUIREMENTS

- Group health plans and issuers that provide benefits with respect to mastectomies must comply with the WHCRA's coverage requirements.
- Mastectomy benefits may be subject to annual deductibles and coinsurance provisions if they are consistent with the cost-sharing for other plan benefits.

#### NOTICES

Group health plans and issuers must provide notices about the WHCRA's coverage requirements to plan participants:

- At the time of enrollment; and
- On an annual basis after enrollment.



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## WHO MUST COMPLY WITH THE WHCRA?

The law applies to ERISA group health plans, state and local government plans, church plans, individual plans and health insurers.

## WHAT COVERAGE IS REQUIRED?

Plans that provide medical and surgical benefits for mastectomies must also provide coverage for:

- ✓ Reconstruction of the breast on which a mastectomy has been performed;
- ✓ Surgery and reconstruction of the other breast to produce a symmetrical appearance;
- ✓ External breast prostheses (breast forms that fit into a bra) that are needed before or during the reconstruction; 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 ARE THE POTENTIAL CONSEQUENCES FOR NOT COMPLYING WITH THE WHCRA'S REQUIREMENTS?

If a group health plan does not comply with the WHCRA's requirements, the employer maintaining the plan may be subject to an excise tax under the Internal Revenue Code. Generally, an excise tax of **\$100 per individual, per day** applies to violations of the WHCRA. Any applicable excise taxes must be reported on IRS Form 8928, "Return of Certain Excise Taxes under Chapter 43 of the Internal Revenue Code." Instructions for Form 8928 are also available.

In addition, ERISA's civil enforcement rules may be used by affected parties to file lawsuits to enforce the WHCRA's coverage requirements. This could include, for example, a claim by a plan participant for benefits due under the health plan based on the WHCRA's coverage requirements.

## WHAT NOTICES ARE REQUIRED?

The WHCRA includes the following two notice requirements:

**Enrollment Notice** A notice must be provided to participants upon enrollment in the plan.

**Annual Notice** A notice must be provided annually to participants under the plan.

## 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 DOL has 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 benefits newsletter. Also, there is no requirement that the annual notice be delivered at any specific time during the plan year.

## 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 hand delivery. Electronic delivery is also permissible if the health plan or issuer meets the DOL's rules for electronic disclosure of ERISA-required documents.

## 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 DOL 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, separate notices should be provided to families where the parents are divorced and the non-custodial parent provides coverage.

## WHAT INFORMATION MUST BE INCLUDED IN THE WHCRA NOTICE?

The Department of Labor (DOL) has provided sample notices that can be used for the enrollment and annual notices.

### ENROLLMENT NOTICE:

If you have had or are going to have a mastectomy, you may be entitled to certain benefits under the Women's Health and Cancer Rights Act of 1998 (WHCRA). For individuals 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.

These benefits will be provided subject to the same deductibles and coinsurance applicable to other medical and surgical benefits provided under this plan. Therefore, the following deductibles and coinsurance apply: **[insert deductibles and coinsurance applicable to these benefits]**.

If you would like more information on WHCRA benefits, call your plan administrator **[insert phone number]**.

### ANNUAL NOTICE:

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 at **[insert phone number]** for more information.