

**The Women's Health and Cancer  
Rights Act (WHCRA) of 1998**

**Helpful Tips**  
**As of 06/14/2010**

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**1. WHCRA notice requirements** -- There are three separate WHCRA notice requirements for all group health plans and health insurance issuers. All require that the group health plans or health insurance issuers use measures reasonably calculated to ensure actual receipt of the notice by plan participants and policyholders. The notice must be sent by a method or methods of delivery likely to result in full distribution. The following are the requirements:

- At the time that WHCRA was enacted, there was an initial one-time notice requirement under which group health plans and insurance issuers must furnish a written description of the benefits that WHCRA requires to their group and individual participants, policy holders, and beneficiaries no later than January 1, 1999.
- The second notice requirement must also describe the benefits required under WHCRA, but it must be provided to participants and policyholders in the group and individual markets upon enrollment in the plan. If a plan or health insurance issuer provides appropriate notice to a participant or policy holder upon enrollment in the plan, then the plan or issuer does not have to provide that participant or policy holder with an annual notice for the plan year during which that participant enrolled.
- The third notice requirement is to be furnished annually to participants under the group plan and to individual policyholders. The annual notice may be sent by itself or may, for example, be included in any of the following:
  - A summary plan description (SPD), a summary of material modifications (SMM), or a summary annual report (SAR);
  - A union newsletter or a benefits newsletter;
  - Open enrollment materials;
  - Policy renewal notification letter; or
  - Any other written communication by the plan or issuer.

Self-funded non federal governmental plans may opt-out of the WHCRA requirements. For more information on WHCRA opt-outs go to <http://www.cms.gov/SelfFundedNonFedGovPlans/>.

Example 1: Jane Smith joined Company ABC on April 27<sup>th</sup>. She did not receive an individual WHCRA notice; however, the Employee Orientation materials included an SPD containing a WHCRA notice. Her plan complied with the WHCRA notification requirements.

Example 2: Jane Smith purchased an individual market health insurance policy on April 27<sup>th</sup> and has renewed this policy every year for the past 10 years. Jane never received an individual WHCRA notice. Her policy renewal notification letter contains the WHCRA notification; therefore, the issuer complied with the WHCRA notification requirements.

Example 3: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the WHCRA requirements. Therefore, the WHCRA notice requirements do not apply to Jane since her coverage does not include WHCRA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

**2. Model language for written notification --** The following WHCRA model notice language may be used to satisfy the notification requirement:

As required by the Women's Health and Cancer Rights Act (WHCRA) of 1998, this plan provides 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 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 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.

Contact your plan administrator (*insert contact information*) for more information.

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Example 1: Jane Smith joined Company ABC on April 27<sup>th</sup>. She has group health coverage through that company and received a WHCRA notice with the model language listed above. Her plan complied with the WHCRA notification requirements.

Example 2: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the WHCRA requirements. Therefore, this model notification language does not apply to Jane since her coverage does not include WHCRA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

**3. Annual benefit notification** -- Both group health plans and health insurance issuers are required to provide you written notice of WHCRA benefits upon enrollment and annually thereafter. The enrollment and annual notification shall describe the benefits that group health plans and insurance issuers must cover under WHCRA. The notice must indicate that, in the case of a participant, policyholder, or beneficiary who is receiving benefits in connection with a mastectomy, coverage will be provided in a manner determined in consultation with the attending physician and the patient.

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

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Example 1: Jane Smith joined Company ABC on April 27<sup>th</sup>. Her Employee Orientation materials included an SPD that contained the WHCRA benefit notification. Her plan complied with the WHCRA benefit notification requirements.

Example 2: Jane Smith purchased an individual market health insurance policy on April 27<sup>th</sup> and has renewed this policy every year for the past 10 years. She has been renewing this policy for years and the policy renewal notification letter contains the WHCRA notice which includes a notification of benefits. The issuer of the policy complied with the WHCRA benefit notification requirements.

Example 3: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the WHCRA requirements. Therefore, the benefit notification requirement does not apply to Jane since her coverage does not include WHCRA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

**4. Deductibles or coinsurance** - Both group health plans and health insurance issuers may impose deductibles or coinsurance for reconstructive surgery in connection with a mastectomy, only if the deductibles and coinsurance are consistent with the cost-sharing arrangements that apply to other benefits under the plan or coverage.

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Example 1: Jane Smith joined Company ABC on April 27<sup>th</sup>. She has group health coverage through that company. She had a mastectomy on February 27<sup>th</sup>, 2 months before joining Company ABC. Jane had reconstruction surgery on June 27<sup>th</sup>. For this procedure, her deductible was \$100 more than other procedures and her coinsurance was 35% instead of the customary 20%. This practice violates WHCRA.

Example 2: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the WHCRA requirements. Therefore, the WHCRA deductible and coinsurance protections do not apply to Jane. She may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

**5. Changing employers/insurance** – If a group health plan or health insurance issuer is subject to WHCRA, the plan must provide the appropriate benefits. If you change employers or change insurance, the new insurance company (if applicable) must provide benefits. It does not matter what your previous plan did or did not cover.

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Example 1: Jane Smith joined Company ABC on April 27<sup>th</sup>. She has group health coverage through that company. She had a mastectomy on February 27<sup>th</sup>, 2 months before joining Company ABC. Jane had reconstruction surgery on June 27<sup>th</sup>. Her plan does not want to pay for the reconstruction since the plan did not authorize the mastectomy. This practice violates WHCRA.

Example 2: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the WHCRA requirements. Therefore, changing employers/insurance and the WHCRA protections associated with those changes do not apply to Jane. She may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

**6. Doctor or provider payments/incentives** -- WHCRA does not affect the amount that a health plan will pay a doctor. Each plan or health insurance issuer negotiates its own level and type of payment with attending providers. Such coverage may be subject to annual deductibles and coinsurance provisions and may be deemed appropriate if consistent with those established levels for other benefits under the plan or coverage. However, the law prohibits plans and issuers from penalizing attending providers or providing incentives that would induce a provider to provide care that is inconsistent with WHCRA.

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Example 1: Jane Smith joined Company ABC on April 27<sup>th</sup>. She has group health coverage through that company. She had a mastectomy on February 27<sup>th</sup>, 2 months before joining Company ABC. Jane had reconstruction surgery on June 27<sup>th</sup>. The insurance covered 80 percent of the cost of the hospital stay and procedure. If the doctor could have convinced her to not have the costly surgery, the doctor would have received \$500 from the plan. This incentive not to provide services violates WHCRA.

Example 2: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the WHCRA requirements. Therefore, the WHCRA protections associated with doctor or provider payments does not apply to Jane. She may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

**7. Your Rights After a Mastectomy** -- To obtain a copy of the Department of Labor's publication, Your Rights After a Mastectomy, contact their Employee Benefit Security Administration toll free at 866-444-3272.

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