

Breast Reconstruction Insurance Coverage

The Federal Women's Health and Cancer Rights Act of 1998

The Women's Health and Cancer Rights Act (WHCRA) contains important protections for women with breast cancer who choose to have breast reconstruction after a mastectomy. It was signed into law on October 21, 1998. The US Departments of Labor and Health and Human Services have oversight of this law.

WHCRA:

- applies to group health plans for plan years starting on or after October 1, 1998
- applies to group health plans, health insurance companies and HMOs, if the plans or coverage provide medical and surgical benefits for a mastectomy

Under WHCRA, mastectomy benefits must include coverage for:

- reconstruction of the breast on which the mastectomy was performed
- surgery and reconstruction of the other breast to produce a symmetrical or balanced appearance
- the prostheses (or breast implant)
- any physical complications at all stages of mastectomy, including lymphedema

Mastectomy benefits may have a yearly deductible and coinsurance (a form of insurance in which health costs are insured for less than the full amount and the patient is responsible for the difference) but they must be like those established for other benefits under the plan or coverage.

The WHCRA will not allow:

- plans and insurance issuers to deny patients eligibility or continued eligibility to enroll or renew coverage under the plan to avoid the requirements of WHCRA
- plans and insurance issuers to provide incentives to or penalize doctors to cause them to provide care in a manner not supportive with WHCRA.

The law also requires insurance providers to notify you of this coverage at the time you enroll in their plan, and every year after that. Several states have their own laws requiring health plans that cover mastectomies to provide coverage for reconstructive surgery after a mastectomy. However, not all health plans are subject to state law. Contact your state's insurance department to find out whether protections in addition to WHCRA will apply to your coverage if you are not in a self-insured plan. The federal law applies to those plans that aren't currently covered by state law and sets a minimum standard for securing this service for all women in all states. This includes states with weaker laws and those without any laws on this at all.

The WHCRA is a complex law. If you have questions or concerns about it, please contact the US Department of Labor's toll-free number at 866-487-2365. You can also call your health plan directly (a number should be listed on your insurance card) or your State Insurance Commissioner's office (a number should be located in your local phone book in the state government section).

The following information is intended to provide general guidance on frequently asked questions about the Women's Health Act:

I have 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 HMOs that offer mastectomy coverage must also provide coverage for reconstructive surgery after mastectomy. This coverage includes reconstruction of the breast removed by mastectomy, reconstruction of the other breast to produce a symmetrical appearance, breast prostheses, and treatment of physical complications at all stages of the mastectomy, including lymphedema (swelling that sometimes happens after treatment for breast cancer).

This law sets a federal floor so that women can obtain breast reconstruction following mastectomy even if they live in states that do not require insurance companies to provide this coverage.

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

Generally, yes, as long as the insurance plan also covers medical and surgical benefits for mastectomies. However, certain church plans and government plans may not be required to pay for reconstructive surgery. If you are insured under a church or government plan, check with your plan administrator about it.

Under the Women's Health Act, may insurance providers impose deductibles or co-insurance 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.

My state requires the coverage for breast reconstruction that is required by the WHCRA and also requires minimum hospital stays for my mastectomy. If I have a mastectomy and breast reconstruction, am I also entitled to the minimum hospital stay?

It depends. If you have coverage through your employer and your employer is insured, you would be entitled to the minimum hospital stay required by the state law. If you have 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 plan is insured or self-insured, contact your plan administrator.

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

Are health plans required to give me notice of WHCRA benefits?

Yes. Both health plans and health insurance issuers are required to provide you notice of WHCRA benefits when you enroll and every year after that. The annual notice may be sent by itself or it may be included in almost any written communication by the plan or insurer, such as newsletters, annual reports, policy renewal letters, enrollment notices, and others. Enrollment notices may consist of a phone number or Web address from which to get more information about coverage.

Does WHCRA affect the amount that my health plan will pay my doctors?

No. WHCRA does not prevent a plan or health insurance issuer from negotiating the level and type of payment with doctors. However, the law prohibits insurance plans and issuers from penalizing doctors or providing incentives that would cause a doctor to give care that is inconsistent with WHCRA.

Do the WHCRA requirements apply to Medicare or Medicaid?

No. The law does not apply to Medicare and Medicaid.

Where can I get more information about my rights under WHCRA?

The US Department of Labor has published answers to frequently asked questions about WHCRA on its website at <http://www.dol.gov/ebsa/Publications/whcra.html>. Or you may call the Department of Labor at 866-USA-DOL or 866-487-2365.

This information was taken from the [American Cancer Society](http://www.americancancer.org) website.

Genetic Nondiscrimination Information Act

The Genetic Information Nondiscrimination Act (GINA), signed into law on May 21, 2008, is the first federal legislation that will provide protections against discrimination based on an individual's genetic information in health insurance coverage and employment settings. The health insurance protections offered by GINA are expected to roll out 12 months after the bill is signed, whereas the employment protections will be fully realized in 18 months.

Specifically, the legislation protects against genetic discrimination by health insurers or employers by:

- * Prohibiting group health insurance plans and issuers offering coverage on the group or individual market from basing eligibility determinations or adjusting premiums or contributions on the basis of an individual's genetic information. Insurance companies cannot request, require or purchase the results of genetic tests, and they are prohibited from disclosing personal genetic information.
- * Prohibiting issuers of Medigap policies from adjusting pricing or conditioning eligibility on the basis of genetic information. They cannot request, require or purchase the results of genetic tests, or disclose genetic information.
- * Prohibiting employers from firing, refusing to hire, or otherwise discriminating with respect to compensation, terms, conditions or privileges of

employment. Employers may not request, require or purchase genetic information, and they are also prohibited from disclosing personal genetic information. Similar provisions apply to employment agencies and labor organizations.

Adapted from materials taken from the [Coalition for Genetic Fairness](#) website.

State Laws on Breast Reconstruction

Insurance coverage required for post-mastectomy breast reconstruction if mastectomy is covered.

Alabama

Provides that federally funded and publicly funded state programs that provide coverage for mastectomy surgery shall also provide coverage for reconstruction of the breast. [Section 22-6-10]

<http://alisd.b.l.e.g.i.s.l.a.t.u.r.e.s.t.a.t.e.a.l.u.s/>

Alaska

Conforms state law to federal standards. Provides that health care insurers providing medical and surgical benefits for mastectomies must comply with 42 U.S.C. 300gg-52 regarding coverage for reconstructive surgery following mastectomies. [Sec. 21.42.400]

<http://www.legis.state.ak.us/>

Arizona

Conforms state law to federal standards. Provides that health care insurers providing medical and surgical benefits for mastectomies must comply with 42 U.S.C. 300gg-52 regarding coverage for reconstructive surgery following mastectomies.

Arkansas

Provides that every health benefit plan that provides coverage for mastectomy surgery shall also provide coverage for reconstruction of the breast. [23-99-405]

<http://www.arkleg.state.ar.us/>

California

Treatment for breast cancer shall include coverage for prosthetic devices or reconstructive surgery to restore and achieve symmetry for the patient incident to a mastectomy. [10123.8.(d)]

<http://www.leginfo.ca.gov/calaw.html>

Connecticut

Provides benefits for the reasonable costs of reconstructive surgery on each breast on which a mastectomy has been performed, and reconstructive surgery on a non-diseased breast to produce asymmetrical appearance. [Sec. 38a-504(c)]

<http://www.cga.ct.gov/2007/rpt/2007-R-0703.htm>

Delaware

Coverage available for (1) all stages of reconstruction of the breast on which the mastectomy was performed; (2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and (3) prostheses and physical complications of mastectomy, including lymphedemas. [§3563]

<http://delcode.delaware.gov/title18/c033/index.shtml>

Florida

Covers prosthetic devices and reconstructive surgery incident to mastectomy, including surgery to reestablish symmetry; surgery must be in a manner chosen by the treating physician. [627.6417]

<http://www.flsenate.gov/>

Illinois

Coverage for breast reconstruction in connection with a mastectomy shall include (1) reconstruction of the breast upon which the mastectomy was performed; (2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and (3) prostheses and treatment for physical complications at all stages of mastectomy, including lymphedemas. [215 ILCS 5/356g]

<http://www.ilga.gov/>

Indiana

Covers prosthetic devices and all stages of reconstructive surgery, in the manner determined by the attending physician and patient, including reconstruction of the other breast to produce symmetry. [27-13-7-14]

<http://www.in.gov/>

Kansas

Covers breast reconstruction, including surgery of the other breast to produce a symmetrical appearance, prostheses and physical complications, in a manner determined in consultation with the attending physician and the patient. [40-2,166]

<http://www.kslegislature.org/>

Kentucky

Provides coverage for breast reconstruction, including surgery of the other breast to produce asymmetrical appearance, prostheses and physical complications, in a manner determined in consultation with the attending physician and the patient. [304.18-0983]

<http://www.lrc.ky.gov/>

Louisiana

Includes coverage for reconstruction of the breast on which the mastectomy has been performed, coverage for surgery and reconstruction of the other breast to produce a symmetrical appearance, and coverage for prostheses and physical complications, all stages of mastectomy, including lymphedemas and such coverage shall be in a manner determined in consultation with the attending physician and the patient. [22:1077]

<http://www.legis.state.la.us/lss/lss.asp?doc=507910>

Maine

Provides coverage for reconstruction of the breast on which surgery has been performed and surgery and reconstruction of the other breast to produce a symmetrical appearance if the patient elects reconstruction and in the manner chosen by the patient and the physician. [§2837-C(2)]

<http://janus.state.me.us/legis/>

Maryland

Requires coverage for reconstructive surgery resulting from a mastectomy, including surgery performed on a non-diseased breast to establish symmetry. [§15-815] [31.11.06.03]

<http://www.dsd.state.md.us/comar/31/31.11.06.03.htm>

Michigan

Covers breast cancer rehabilitative services, delivered on an inpatient or outpatient basis, including reconstructive plastic surgery and physical therapy. [500.3616]

Reconstructive surgery and prosthetic devices are covered after the attending physician has certified medical necessity. [500.3613]

<http://www.legislature.mi.gov/>

Minnesota

Covers all reconstructive surgery incidental to or following injury, sickness or other diseases of the involved part, or congenital defect for a child. Specifically includes benefits for all stages of reconstruction following mastectomy, including surgery and reconstruction of the other breast to produce a symmetrical appearance and prostheses. Also specifies that limitations on reconstructive surgery do not apply to reconstructive breast surgery following medically necessary mastectomy. [62A.25]

<https://www.revisor.leg.state.mn.us/statutes/?id=62A.25>

Missouri

Covers prosthetic devices and reconstructive surgery necessary to achieve symmetry, as recommended by the oncologist or primary care physician. [376.1209]

<http://www.moga.mo.gov/statutes/c300-399/3760001209.htm>

Montana

Covers reconstructive surgery following a mastectomy resulting from breast cancer, including all stages of reconstructive surgery on the non-diseased breast to establish symmetry and costs of any prostheses. [33-22-135]

<http://data.opi.mt.gov/>

Nebraska

Requires coverage for medical and surgical benefits for mastectomy and for all stages of reconstruction of the breast after a mastectomy has been performed and reconstruction of the other breast to produce a symmetrical appearance. The measure also requires coverage for prostheses and physical complications of mastectomy. [44-797]

<http://www.unicam.state.ne.us/laws/statutes.php?statute=s4407097000>

Nevada

Covers at least two prosthetic devices and reconstructive surgery incident to mastectomy, including surgery to reestablish symmetry. [NRS 608.157]

<http://www.leg.state.nv.us/>

New Hampshire

Covers breast reconstruction, including surgery and reconstruction of the other breast to produce asymmetrical appearance, in the manner chosen by the patient and physician. [417-D:2-b]

<http://www.gencourt.state.nh.us/>

New Jersey

Covers reconstructive breast surgery, including coverage to achieve and restore symmetry, and provides benefits for prostheses. [17B:26-2.1a.]

<http://www.njleg.state.nj.us/>

New York

Covers breast reconstruction following mastectomy, including reconstruction on a healthy breast required to achieve reasonable symmetry, in the manner determined by the attending physician and the patient to be appropriate. [§3221]

North Carolina

Provides coverage for reconstructive breast surgery, including all stages and revisions of surgery performed on a non-diseased breast to establish symmetry, and reconstruction of the nipple/areolar complex without regard to the lapse of time between mastectomy and reconstruction, as well as coverage for prostheses and physical complications in all stages of mastectomy, including lymphademas. [§58-51-62]

<http://www.ncleg.net/>

North Dakota

Specifies that health insurance policies may not be issued or renewed in the state unless they provide the benefit provisions of the 1998 Federal Womens' Health and Cancer Rights Act. [26.1-36-09.11]

<http://www.legis.nd.gov/>

Oklahoma

Covers reconstructive breast surgery performed as a result of a partial or total mastectomy, including all stages of reconstructive surgery performed within 2 years on a non-diseased breast to establish symmetry. [§36-6060.5.(D)]

<http://www2.lsb.state.ok.us/>

Pennsylvania

Covers prosthetic devices and breast reconstruction, including surgery on the opposite breast to achieve symmetry, within six years of the mastectomy date. Additional legislation adds language consistent with federal law.

Rhode Island

Covers prosthetic devices and reconstructive surgery to restore and achieve symmetry incident to a mastectomy. Surgery must be performed within 18 months of the original mastectomy. [§27-18-39]

<http://www.rilin.state.ri.us/>

South Carolina

Covers prosthetic devices and breast reconstruction, including the non-diseased breast, if determined medically necessary by the patient and attending physician with the approval of the insurer. [38-71-130]

<http://www.scstatehouse.net/code/t38c071.htm>

Tennessee

Covers all stages of reconstruction for the diseased breast, excluding lumpectomy, and procedures to restore and achieve symmetry between the breasts, in the manner chosen by the patient and physician, within 5 years of the reconstructive surgery on the diseased breast. [56-7-2507]

Texas

Covers reconstruction of the breast incident to mastectomy, including procedures to restore and achieve symmetry, for contracts delivered, issued for delivery or renewed on or after Jan. 1, 1998. 1999 amendment conforms statute to federal law. [§1357.004]

<http://www.legis.state.tx.us/>

Utah

Follows the example of the federal statute by requiring coverage for medical and surgical benefits for mastectomy and for all stages of reconstruction of the breast after a mastectomy has been performed and reconstruction of the other breast to produce a symmetrical appearance. The measure also requires coverage for prostheses and physical complications of mastectomy. [31A-22-630]

http://le.utah.gov/~code/TITLE31A/htm/31A22_063000.htm

Virginia

Covers reconstructive breast surgery performed coincident with a mastectomy performed for breast cancer or following the mastectomy, and surgery performed to reestablish symmetry between the two breasts. [§ 38.2-3418.4]

<http://leg1.state.va.us/>

Washington

Covers reconstructive breast surgery if mastectomy resulted from disease, illness or injury, includessurgery to reestablish symmetry. [48.46.280]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=48.46.280>

West Virginia

Includes coverage for reconstruction of the breast on which mastectomy was performed and the opposite breast for symmetry; also provides coverage for prosthesis and complications as determined in consultation with attending physician and patient. [§33-15-4g]

<http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=33&art=15#15>

Wisconsin

Covers breast reconstruction of the affected tissue incident to mastectomy and specifies that such surgery is not considered cosmetic. [632.895(13)(a)]

<http://www.legis.state.wi.us/statutes/Stat0632.pdf>