

**In This Issue**

*The Women's Health and Cancer Rights Act, signed into law on October 21, 1998, contains protections for breast cancer patients who elect breast reconstruction in connection with a mastectomy. In certain cases, plans offering coverage for a mastectomy must also cover reconstructive surgery in connection with a mastectomy. The Act applies to group health plans for plan years beginning on October 21, 1998.*

*Group health plans, health insurance companies and HMOs covered by the law must notify individuals of the reconstructive benefit available under the Act.*

*This ninth issue of the McGraw Wentworth Benefit Advisor reviews the key points of this new law and its notification requirements. A complete text of the Women's Health and Cancer Rights Act of 1998 and a fact sheet from the PWBA is available is available for your review on the McGraw Wentworth interactive web site.*

**Women's Health Care Act**

**CONSEQUENCES FOR GROUP BENEFIT PROGRAMS**

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 was signed by President Clinton on October 21, 1998. The law added Section 713 to the Employee Retirement Income Security Act (ERISA). Section 713 mandates that all group health plans that provide coverage for mastectomies also provide coverage for reconstructive surgery following the mastectomy.



The Women's Health and Cancer Rights Act (WHCRA), also known as "Janet's Law", becomes effective on plan anniversary dates beginning on or after October 21, 1998.

**COVERAGE REQUIREMENTS**

A participant or beneficiary electing reconstructive surgery following a mastectomy is entitled to the following coverage:

- reconstruction of the breast on which the mastectomy has been performed

- surgery and reconstruction of the other breast to produce a symmetrical appearance
- prostheses and coverage for physical complications

The coverage may be subject to deductible and employee copayments consistent with plan benefits.

The WHCRA also contains prohibitions against:

- denial of patient eligibility or continued eligibility by plans and insurers to avoid the requirements of the WHCRA
- provision of incentives or penalties for physicians to induce them to provide care in a manner inconsistent with the WHCRA

**NOTIFICATION REQUIREMENTS**

The WHCRA requires employers and insurers to notify plan participants and other plan beneficiaries of the new mandated coverage. Initial notification to all plan participants and their

beneficiaries is required for plan years beginning on or after October 21, 1998. The notice must be made in writing on the earliest of:

- the next mailing made by the group plan
- the delivery of a yearly benefits information packet
- the date of January 1, 1999

In addition, subsequent annual notification must be given to all plan participants. Notification must also be given to a participant at the time of his/her enrollment in the plan. The notification, as specified in the WHCRA, must be in writing and prominently positioned in the literature or correspondence distributed to plan participants and their beneficiaries. The Department of Labor (DOL) has stated that these notices must be delivered in accordance with the DOL disclosure regulations applicable to furnishing summary plan descriptions. It is also the view of the DOL that a separate notice is required to be furnished to a group benefit plan beneficiary where the last known address of the beneficiary is different from the last known address of the covered plan participant.

## MICHIGAN LAW

The WHCRA is an enhancement to an existing Michigan law, which was effective March 30, 1983. The Michigan statute requires coverage for breast reconstruction and prosthetic devices following a mastectomy, including coverage for the prosthesis to maintain or replace the

body part(s) following the mastectomy. As with the Federal Law, the charges for this coverage shall be based on "reasonable and customary" amounts, and the reconstruction will be covered when determined medically necessary by the attending physician.

The Michigan statute, unlike the Federal law, does not include a notification requirement.

## CARRIER RESPONSES

Due to the newness of this legislation, many insurance carriers are still determining if and how they will notify their covered members. Some carriers have indicated that they will individually notify each plan participant, while others will notify the employer representative responsible for administering their medical plan.



As noted above, the notification requirement under the WHCRA is a shared responsibility between the employers and insurers. If the insurance carrier with whom you work is not sending notification to members, it is ultimately your responsibility to make your plan participants and their beneficiaries aware of their coverage rights.

"Janet's Law" leaves much to interpretation with regard to

how the notification of plan participants should be structured. We have attached a sample notification letter for you to review. The law does not mandate this format, and you may use another form of notification. We recommend that you consult with your corporate or benefits legal counsel prior to releasing any notice. However, employee plan sponsors must notify plan participants by January 1, 1999.

Our technical bulletins are written and produced by the McGraw Wentworth staff and are intended to inform our clients and friends on general information relating to employee benefit plans. They are not intended to provide either legal or tax advice. Consult your legal counsel or tax advisor in matters that directly affect your benefit plans.

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