

1998 Federal Breast Reconstruction Law

Signed into Law on October 21, 1998

SEC. 901. SHORT TITLE. This title may be cited as the "Women's Health and Cancer Rights Act of 1998".

SEC. 902. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

SEC. 713. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

(a) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, 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) prostheses and physical complications all stages 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 as 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.

(b) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance 1078 with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

- (1) in the next mailing made by the plan or issuer to the participant or beneficiary;
- (2) as part of any yearly informational packet sent to the participant or beneficiary; or
- (3) not later than January 1, 1999; whichever is earlier.

(c) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

- (1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

- (2) penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section. 1079

(d) **RULE OF CONSTRUCTION.**-Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) **PREEMPTION, RELATION TO STATE LAWS.**-

(1) **IN GENERAL.**-Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section. (2) **ERISA.**-Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans."

(b) **CLERICAL AMENDMENT.**-The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

SEC. 713. REQUIRED COVERAGE RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

(c) **EFFECTIVE DATES.**-

(1) **IN GENERAL.**-The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act. 1080

(2) **SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.**-In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 903. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) **GROUP MARKET.**-Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following new section:

SEC. 2706. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

"The provisions of section 713 of the Employee Retirement Income Security Act of 1974 shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart."

(b) **INDIVIDUAL MARKET.**-Subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 1081 300gg-51 et seq.) is amended by adding at the end the following new section: "SEC. 2752. REQUIRED COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES. "The provisions of section 2706 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market."

(c) **EFFECTIVE DATES.**-

(1) **GROUP PLANS.**-

(A) IN GENERAL.-The amendment made by subsection (a) shall apply to group health plans for plan years beginning on or after the date of enactment of this Act.

(B) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.-In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by the amendment made by 1082 subsection (a) shall not be treated as a termination of such collective bargaining agreement.

(2) INDIVIDUAL PLANS.-The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act.