HEALTH PLANS
UNIVERSITY OF UTAH

**Administrative Policy**

# Women's Health and Cancer Rights Act Clarification

**Policy** Admin-006

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**Reviewed/Revised Date:** 06/23/2021

**Next Review Date:** 06/23/2022

**Current Effective Date:** 06/23/2021

**Disclaimer:**

1. Policies are subject to change in accordance with State and Federal notice requirements.
2. Policies outline coverage determinations for U of U Health Plans Commercial, and Healthy U (Medicaid) plans. Refer to the "Policy" section for more information.

## Description:

The Women's Health and Cancer Rights Act of 1998 (WHCRA) requires the following benefit:

A group health plan and health insurance issuer providing health insurance coverage in connection with a group health plan, which provides medical and surgical benefits with respect to mastectomy, shall also provide 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 at all stages of mastectomy, including lymphedemas; in a manner determined in consultation with the attending physician and the patient.

The statute requires the WHCRA notification to be sent to participants no later than January 1, 1999. The act also requires plans to give notification to participants upon plan enrollment and annually thereafter.

## Policy Statement and Criteria

### 1. Commercial Plans

**U of U Health Plans covers breast reconstruction on all covered mastectomies consistent with the WHCRA of 1998 and the Department of Labor clarifications of August 2001.**

2. **Medicaid Plans**
   **Coverage is determined by the State of Utah Medicaid program; if Utah State Medicaid has no published coverage position and InterQual criteria are not available, the U of U Health Plans Commercial criteria will apply. For the most up-to-date Medicaid policies and coverage, please visit their website at: http://health.utah.gov/medicaid/manuals/directory.php or the Utah Medicaid code Look-Up tool**

3. **Medicare Plans**
   **Coverage is determined by the Centers for Medicare and Medicaid Services (CMS); if a coverage determination has not been adopted by CMS and InterQual criteria are not available, the U of U Health Plans Commercial criteria will apply. For the most up-to-date Medicare policies and coverage, please visit their search website at: http://www.cms.gov/medicare-coverage-database/overview-and-quick-search.aspx?from2=search1.asp& or the manual website**

## Clinical Rationale

Multiple questions have arisen since enactment of the Women's Health and Cancer Rights Act (WHCRA) of 1998 due to the somewhat ambiguous language used in crafting the legislation. Subsequently, attempts have been made to clarify the intent of the legislation and its implications on the healthcare delivered to effected individuals and the cost ramifications to Health Plans.

A conference call was held with the U.S. Dept. of Labor (DOL) representatives on August 29, 2001. At that time it was made clear that in the absence of clarifying legislation or regulations the DOL was looking for "good faith compliance" with the principles of the WHCRA.

Additionally, specific questions involving common questions/scenarios were raised and discussed. These following questions and their associated answers represent an incomplete but improved picture outlining the expectations of U of U Health Plans in complying with the legislation:

1. **How long is a Health Plan expected to provide coverage for "cosmetic" procedures on the unaffected breast to maintain an appearance of symmetry?**

   Basically, use common sense and the guideline that symmetry only need be achieved once. Thus, if symmetry has been achieved at some point in the "treatment plan" then it is probably NOT necessary to cover a second effort. However, if no reconstructive procedure(s) were performed for this purpose since the mastectomy or lumpectomy (i.e. no attempt to achieve symmetry) then U of U Health Plans may be responsible for coverage of such efforts for "several" years beyond the initial mastectomy. If the asymmetry develops much beyond 10 years it is probably legitimate to deny coverage if the surgery would not be approved for any other medical or legal reasons. This is a value judgment guided by "good faith".

2. **If a woman delays reconstructive surgery, how long after the initial mastectomy must a health plan cover the initial reconstructive surgery? 1 year? 2 years? 5 years? 10 years? 25 years? Can a health plan place time restrictions on seeking the initial reconstructive surgery?**

   A "reasonable" time frame that shows "good Faith" was recommended. Given that most cancers are not considered cured unless a patient is disease-free for 5 years, it is probably appropriate to allow at least 5 years after the time of the surgery to have reconstruction.

3. **What degree of asymmetry is a Health Plan responsible to correct? If a woman has changes that are not perceptible to anyone other than her, with or without clothing, is the health plan responsible for providing coverage for continued reconstructive surgery/surgeries?**

   Use common sense and a sense of what most lay people without any medical education might expect with regard to symmetry. Symmetry does not mean perfectly equal. It was clarified that all that was required was achieving this once. If there was disagreement in the presence or absence of symmetry it was recommended that multiple medical opinions be sought.

4. **Is a health plan responsible for coverage of tattooing to create the sense that a person has a nipple where one does not exist?**

   This is considered part of the reconstruction this should be covered.

5. **Is a health plan responsible for covering surgery on the nipple of the unaffected breast to reduce or enlarge it so that it more closely matches the appearance of the reconstructed nipple?**

   Again a good faith effort should be done to provide a reasonable sense of symmetry as judged by the usual layperson.

6. **Is the reconstruction requirement applicable to mastectomies only or does it apply to lumpectomies as well?**

   Lumpectomy itself does not mandate that the patient receive reconstruction benefits. Certainly, if the lumpectomy leaves the patient "deformed" reconstruction benefits should apply. For minimal lumpectomies, which leave minimal change in the breast if the expectation of a layperson of reasonable intellect and with common sense would be that the lesion is deforming, reconstruction should probably be covered.

7. **Does the statute apply to individuals who have undergone a mastectomy for a noncancerous reason, such as fibrocystic disease of the breast? Does the statute apply to all types of mastectomies?**

   The statute does not limit coverage to just cancer-related malignancies. However, if the plan covers a mastectomy or benefits in connection with such mastectomy, regardless of the type of mastectomy, then the plan must also cover the

reconstruction. If coverage of a mastectomy was denied, then the reconstruction can also be denied.

8. **Is a Health plan required to provide all modalities of treatment for lymphedema, such as pneumatic compression devices, decompressive physiotherapy and/or compression garments? Or can a health plan restrict coverage to one type of therapy that is found to be superior to other methods?**

   A Health plan may restrict coverage to those types of therapies found to be safe and effective. It must offer some therapy but does not have to offer all therapies.

9. **Does the statute require that a health plan cover any/all breast reconstructive methods (i.e. DIEP flap vs. TRAM flap) if the member requests a specific method?**

   The health plan does not need to cover all methods of reconstruction as long as those methods offered are safe and effective.

## Applicable Coding

### CPT Codes

No applicable codes

### HCPCS Codes

No applicable codes

### References:


1. Women's Health and Cancer Rights Act, 1998
2. U.S. Dept. of Labor (DOL), Conference call, August 29,2001