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Monday, April 15, 2002

BULLETIN NO. 9-2002

TO: ALL LICENSED ACCIDENT AND HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, MEDICAL SERVICE CORPORATIONS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: FEDERAL MASTECTOMY COVERAGE REQUIREMENTS UNDER THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998 ("WHCRA")

This bulletin advises health insurers and health maintenance organizations ("HMOs") and other interested parties, issuing accident and health insurance policies and HMO contracts in this state, to comply with the WHCRA provisions mandating medical and surgical benefits for mastectomies.

WHCRA REQUIREMENTS PREEMPT ARK. CODE ANN. §23-99-405

WHCRA preempts state laws governing mastectomy coverages that were in effect prior to the date WHCRA was enacted (October 21, 1998) if that state law fails to require coverage of at least the coverage of reconstructive surgery otherwise required under WHCRA. Arkansas' state law regulating mastectomy coverage requirements is set out in Ark. Code Ann. §23-99-405. The Department concedes that the state law provisions are not equal to those mandated in the WHCRA and therefore are preempted under WHCRA. The Department intends to modify our state statute on mastectomy benefits in the next legislative session to conform with federal requirements. During the interim, and pursuant to its authority to regulate insurance and enforce WHCRA requirements, the Department issues this bulletin mandating that health insurers, insurance companies, hospital and medical service corporations and HMOs issuing or delivering health benefit plans in the state of Arkansas, comply with the requirements of WHCRA.

WHCRA REQUIREMENTS AND FORM FILINGS

The Department attaches to this bulletin a copy of the WHCRA requirements set out in 42 U.S.C. section 300gg-6, 300gg-52. All accident and health policies and HMO contracts for insureds or enrollees in this state shall contain the WHCRA requirements and shall be reviewed for compliance with said requirements. The WHCRA expands state requirements related to medical and surgical benefits for mastectomies by additionally requiring:

- Surgery and reconstruction of the nonmastectomy breast to produce a symmetrical appearance, in a manner determined in consultation with the attending physician and the patient, subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the coverage, and
- Coverage for all stages of reconstruction on the breast on which the mastectomy was performed in a manner determined in consultation with the attending physician and the patient, subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the coverage.
- Coverage of prostheses and physical complications of mastectomy, including lymphedemas, in a manner determined in consultation with the attending physician and patient, subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the coverage,

- Written notice of the availability of WHCRA benefits to participants upon enrollment and annually thereafter, and
- Compliance with the prohibitions against denying patient coverage solely for the purpose of avoiding the requirements of WHCRA, and with the prohibitions against penalizing or providing incentives to attending providers to induce a provider to provide care in a manner inconsistent with the WHCRA.

MIKE PICKENS
INSURANCE COMMISSIONER - STATE OF ARKANSAS