

SENATE No. 896

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to women’s health and cancer recovery..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding any general law or special acts to the contrary:

2 A. Any insurer proposing to issue individual or group accident and sickness insurance
3 policies providing hospital, medical and surgical, or major medical coverage on an expense-
4 incurred basis; any corporation providing individual or group accident and sickness insurance
5 policies providing hospital, medical and surgical, or major medical coverage on an expense-
6 incurred basis; any health maintenance organization contract providing a health care plan for
7 health care services; and any group blanket policy of accident and sickness insurance, including
8 the contributory group insurance for persons in the active or retired service of the
9 Commonwealth, that covers medical and surgical benefits, shall provide coverage consistent
10 with all of the provisions of this section, known as the “Women’s Health and Cancer Recovery
11 Act.”

12 B. Coverage under this section shall include benefits that provide a minimum hospital
13 stay for such period as is determined by the attending physician in consultation with the patient
14 to be medically appropriate for such covered person undergoing a lymph node dissection or a

15 lumpectomy or a mastectomy for the treatment of breast cancer. Such coverage may be subject
16 to annual deductibles and coinsurance as may be deemed appropriate by the Division of
17 Insurance, herein referred to as “the division”, and as are consistent with those established for
18 other benefits within a given policy.

19 C. Every policy which provides hospital, medical, major medical, or similar
20 comprehensive-type coverage must provide coverage for a second medical opinion by an
21 appropriate specialist, including but not limited to a specialist affiliated with a specialty care
22 center for the treatment of cancer, in the event of a positive or negative diagnosis of cancer or a
23 recurrence of cancer or a recommendation of a course of treatment for cancer, subject to the
24 following:

25 (i) In the case of a policy that requires, or provides financial incentives for, the
26 insured to receive covered services from health care providers participating in a provider
27 network maintained by or under contract with the insurer, the policy shall include coverage for a
28 second medical opinion from a non-participating specialist, including but not limited to a
29 specialist affiliated with a specialty care center for the treatment of cancer, when the attending
30 physician provides a written referral to a non-participating specialist, at no additional cost to the
31 insured beyond what such insured would have paid for services from a participating appropriate
32 specialist. Provided however, that nothing herein shall impair an insured's rights (if any) under
33 the policy to obtain the second medical opinion from a non-participating specialist without a
34 written referral, subject to the payment of additional coinsurance (if any) required by the policy
35 for services provided by non-participating providers. The insurer shall compensate the non-
36 participating specialist at the usual, customary and reasonable rate, or at a rate listed on a fee

37 schedule filed and approved by the division, which provides a comparable level of
38 reimbursement.

39 (ii) In the case of a policy that does not provide financial incentives for, and
40 does not require, the insured to receive covered services from health care providers participating
41 in a provider network maintained by or under contract with the insurer, the policy shall include
42 coverage for a second medical opinion from a specialist at no additional cost to the insured
43 beyond what the insured would have paid for comparable services covered under the policy.

44 (iii) Such coverage may be subject to annual deductibles and coinsurance as may
45 be deemed appropriate by the division and as are consistent with those established for other
46 benefits within a given policy, and, where applicable, consistent with the provisions of clauses (i)
47 and (ii) of this subsection.

48 However, nothing in paragraph C. shall be construed as requiring the provision of
49 secondary consultations where the patient determines not to seek such a consultation.

50 D. Every policy which provides hospital, medical, major medical, or similar
51 comprehensive-type coverage shall provide the following coverage for breast reconstruction
52 surgery after a mastectomy:

53 (i) All stages of reconstruction of the breast on which the mastectomy has been
54 performed;

55 (ii) Surgery and reconstruction of the other breast to produce a symmetrical
56 appearance; and

57 (iii) Protheses and physical complications of mastectomy, including
58 lymphedemas.

59 Such coverage shall be provided in the manner determined by the attending physician and
60 the patient to be medically appropriate. Such coverage may be subject to annual deductibles and
61 coinsurance provisions as may be deemed appropriate by the division and as are consistent with
62 those established for other benefits within a given policy.

63 E. Every policy which provides hospital, medical, major medical, or similar
64 comprehensive-type coverage shall provide coverage which includes benefits for equipment,
65 supplies, complex decongestive therapy, and outpatient self-management training and education
66 for the treatment of lymphedema, if prescribed by a health care professional legally authorized to
67 prescribe or provide such items under law. Such coverage may be subject to annual deductibles
68 and coinsurance provisions as may be deemed appropriate by the division and as are consistent
69 with those established for other benefits within a given policy.

70 F. Written notice of the availability of such coverage provided by this section shall be
71 delivered to the policyholder or beneficiary of such policy, contract, arrangement or plan prior to
72 inception or renewal of such policy and annually thereafter.

73 G. An insurer providing coverage under this section and any participating entity
74 through which the insurer offers health services shall not:

75 (i) Deny to a covered person eligibility, or continued eligibility, to enroll or to
76 renew coverage under the terms of the policy or vary the terms of the policy for the purpose or
77 with the effect of avoiding compliance with this section;

78 (ii) Provide incentives (monetary or otherwise) to encourage a covered person to
79 accept less than the minimum protections available under this section;

80 (iii) Penalize in any way or reduce or limit the compensation of a health care
81 practitioner for recommending or providing care to a covered person in accordance with this
82 section;

83 (iv) Provide incentives (monetary or otherwise) to a health care practitioner
84 relating to the services provided pursuant to this section intended to induce or have the effect of
85 inducing such practitioner to provide care to a covered person in a manner inconsistent with this
86 section; or

87 (v) Restrict coverage for any portion of a period within a hospital length of stay
88 required under this section in a manner that is inconsistent with the coverage provided for any
89 preceding portion of such stay.

90 H. This Act shall take effect on the first of January next succeeding the date on which it
91 shall have become a law, and shall apply to all insurance policies, plans, arrangements, and
92 contracts issued, renewed, extended, modified, altered or amended on or after such date.

93 I. Exclusions —

94 This section shall not apply to, nor include, the following, or any combination thereof:

95 (i) Coverage for accidental death or dismemberment;

96 (ii) Coverage for short-term travel;

- 97 (iii) Coverage providing wages or payments in lieu of wages for any period
98 during which the employee is absent from work on account of sickness or injury;
- 99 (iv) A Medicare supplemental policy, as defined in Section 1852(g)(1) of the
100 Social Security Act, or any other similar coverage under state or federal government plans;
- 101 (v) Coverage issued as a supplement to liability insurance;
- 102 (vi) Worker’s compensation or similar insurance;
- 103 (vii) Automobile medical-payment insurance; and
- 104 (viii) A long-term policy, including a nursing home fixed indemnity policy, unless
105 the division determines that such a policy provides sufficiently comprehensive coverage of a
106 benefit so that it should be treated as a health insurance plan under Section 1.A. of this Act.