

ASSEMBLY, No. 2088

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Requires hospitals to provide breast cancer patients with information concerning reconstructive surgery; prohibits certain provisions in managed care plan contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning breast cancer and supplementing Title 26 of the
2 Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. a. Each general hospital licensed pursuant to P.L.1971,
8 c.136 (C.26:2H-1 et seq.) that provides surgical services for the
9 treatment of breast cancer, the breast cancer gene, or other breast
10 abnormality, including, but not limited to, mastectomy surgery,
11 lymph node dissection, or lumpectomy, shall ensure that each
12 patient receiving treatment for breast cancer is provided with
13 written notice of: (1) the patient's right to seek a consultation with
14 a board-certified or board-eligible plastic surgeon of the patient's
15 choosing who provides breast reconstructive services, regardless of
16 whether the plastic surgeon is affiliated with the general hospital or
17 a health care provider network, concerning the patient's treatment
18 options during and after the provision of surgical services, including
19 the use of a prosthesis and the option of undergoing reconstructive
20 surgery during or after the provision of surgical services for the
21 treatment of breast cancer, the breast cancer gene, or other breast
22 abnormality; (2) the patient's right to obtain reconstructive surgery
23 from a board-certified or board-eligible plastic surgeon who
24 provides breast reconstructive services, regardless of whether the
25 plastic surgeon is affiliated with the general hospital or a health care
26 provider network; and (3) the availability of coverage under a
27 health benefits plan for reconstructive surgery pursuant to section 1
28 of P.L.1983, c.50 (C.17:48-6b), section 1 of P.L.1983, c.51
29 (C.17:48A-7b), section 35 of P.L.1985, c.236 (C.17:48E-35),
30 section 1 of P.L.1983, c.53 (C.17B:26-2.1a), section 1 of P.L.1983,
31 c.52 (C.17B:27-46.1a), section 6 of P.L.1997, c.75 (C.26:6J-4.14),
32 and federal law. The written notice shall be provided to the patient
33 upon the general hospital's notification of the patient's breast
34 cancer diagnosis and in advance of obtaining consent to the surgical
35 procedure.

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37 2. a. A contract between a carrier and a health care provider
38 for network participation shall not contain any provision that:

39 (1) prohibits a health care provider from making
40 recommendations to a covered person to a board-certified or board-
41 eligible plastic surgeon, regardless of network affiliation, who
42 provides the full scope of breast reconstructive services necessary
43 and appropriate to the patient's treatment, provided that the primary
44 consideration when making such recommendations shall be the
45 patient's clinical needs, as determined by the patient's treating
46 physician. Other considerations may include the plastic surgeon's
47 training, expertise, availability, and accessibility to the patient; or

1 (2) seeks to limit the ability of a health care provider to make
2 recommendations as described in paragraph (1) of this subsection.

3 b. In no case shall a carrier deny requests to approve the
4 medical necessity for reconstructive surgery or related services
5 based solely on the network status or hospital affiliation of the
6 plastic surgeon who will perform the reconstructive surgery and
7 related services.

8 c. The provisions of this section shall apply to reconstructive
9 breast surgery or surgery to restore and achieve symmetry between
10 two breasts following treatment or surgery for breast cancer, the
11 breast cancer gene, or other breast abnormality, including, but not
12 limited to, mastectomy surgery, lumpectomy, or radiation.

13 d. As used in this section, “carrier” means a “carrier” as
14 defined in section 2 of P.L.1997, c.192 (C.26:2S-2), the State
15 Health Benefits Program, and the School Employees’ Health
16 Benefits Program.

17 e. The Commissioner of Banking and Insurance shall, pursuant
18 to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-
19 1 et seq.), adopt rules and regulations as shall be necessary to
20 effectuate the provisions of this section.

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22 3. This act shall take effect on the 90th day after the date of
23 enactment.

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STATEMENT

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28 This bill requires general hospitals that provide surgical services
29 for the treatment of breast cancer, the breast cancer gene, or other
30 breast abnormality, including, but not limited to, mastectomy
31 surgery, lymph node dissection, or lumpectomy, to ensure that
32 breast cancer patients are provided written notice of the patient’s
33 right to seek a consultation with a board-certified plastic surgeon of
34 the patient’s choosing who provides reconstructive services
35 concerning the patient’s treatment options during and after the
36 provision of surgical services, including the use of a prosthesis and
37 the option of undergoing reconstructive surgery either during, or
38 after receiving, surgical treatment for breast cancer, the breast
39 cancer gene, or other breast abnormality, as well as the patient’s
40 right to obtain such services, regardless of the plastic surgeon’s
41 hospital affiliation or network participation. Patients are also to be
42 provided with written notice concerning the availability of coverage
43 under a health benefits plan for reconstructive surgery pursuant to
44 State and federal law. The written information is to be provided to
45 the patient when the hospital is notified of the patient’s breast
46 cancer diagnosis and in advance of obtaining consent to the surgical
47 procedure.

1 The bill also supplements the “Health Care Quality Act” to
2 provide that a contract between a carrier and a health care provider
3 for network participation will not contain any provision that
4 prohibits or limits a health care provider in making
5 recommendations or referrals for a covered person to a board-
6 certified plastic surgeon, regardless of network affiliation, who
7 provides the full scope of breast reconstructive services necessary
8 and appropriate to the patient’s treatment needs, as determined by
9 the patient’s treating physician based on the plastic surgeon’s
10 training, experience, and location in relation to the patient’s primary
11 residence, provided that the primary consideration in making such
12 recommendations and referrals is the patient’s treatment needs.
13 Carriers will not be permitted to deny authorization for
14 reconstructive surgery and related services based on the plastic
15 surgeon’s network status or hospital affiliation. The provision
16 applies to reconstructive breast surgery or surgery to restore and
17 achieve symmetry between two breasts following treatment or
18 surgery for breast cancer, the breast cancer gene, or other breast
19 abnormality, including, but not limited to, mastectomy surgery,
20 lumpectomy, or radiation. For purposes of the bill, the term
21 “carrier” means a carrier as used in the “Health Care Quality Act,”
22 P.L.1997, c.192 (C.26:2S-1 et seq.), as well as the State Health
23 Benefits Program and the School Employees’ Health Benefits
24 Program.