



July 22, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

VIA EMAIL: legislative.secretary@exec.ny.gov

Re: S.7881 (Stavisky) /A.8537 (Pheffer Amato)

AN ACT to amend the insurance law and the public health law, in relation to providing coverage and information on chest wall reconstruction surgery after a mastectomy or partial mastectomy

Dear Governor Hochul,

The New York State Society of Plastic Surgeons, Inc. (NYSSPS), the statewide medical specialty society representing practicing plastic surgeons with a mission of advancing quality care for plastic surgery patients and promoting public policy that protects patient safety, strongly supports the enactment of the above referenced legislation. This legislation will provide individuals coverage for breast or chest wall reconstruction surgery, allowing patients to freely choose the best treatment option as discussed with their physician following a mastectomy or partial mastectomy.

This bill would amend the New York State Public Health and Insurance Laws to include coverage of chest wall reconstruction surgery in addition to breast reconstruction surgery. This coverage could include coverage of aesthetic flat closure, a type of chest wall reconstruction as defined by the National Cancer Institute, with all stages of reconstruction of the chest wall on which the mastectomy or partial mastectomy has been performed; and surgery and reconstruction of the other chest wall to produce a symmetrical appearance. Chest wall reconstruction surgery should be considered equally as breast reconstruction surgery: as part of the cancer treatment episode of care when a mastectomy is performed. This legislation is needed to ensure that women have coverage for all mastectomy-related treatment options.

Each year in the United States, about 255,000 cases of breast cancer are diagnosed in women and about 2,300 in men, according to the Centers for Disease and Prevention Control. Breast cancer is the most common cancer in women, second only to skin cancer. Incidence continues to rise by 0.5% per year, according to the American Cancer Society (ACS), which estimates that about 287,500 new cases of invasive breast cancer will be diagnosed in women in 2022. The ACS estimates that there are more than 3.8 million survivors of breast cancer in the U.S.

By one estimate, more than 100,000 women undergo some form of mastectomy each year which is a procedure to remove all breast tissue.¹ While many pursue breast reconstructive

¹ Brigham and Women's Hospital <https://www.brighamandwomens.org/surgery/surgical-oncology/resources/mastectomy>

surgeries, some choose to "stay flat" and pursue aesthetic flat closure, rather than a breast reconstruction. Under current NYS Insurance Law, insurers are required to cover surgery for those diagnosed with breast cancer, which includes lumpectomy or lymph node dissection; mastectomies; preventive mastectomies; in-patient hospital care after surgery; reconstruction, which includes rebuilding one or both breasts; and prostheses.²

However, coverage for chest wall reconstruction is not mandated. According to the advocate organization Not Putting On A Shirt, mastectomy patients going flat are regularly denied insurance coverage for the services of a plastic surgeon, and cancer surgeons who spend extra time to create an aesthetic flat closure at the time of the mastectomy are frequently not reimbursed for their work. As a result, one in four of the 70,000 patients in the USA going flat end up with egregiously poor aesthetic outcomes. That's over 17,000 patients every single year who are suffering needlessly.

Hence this legislation would codify coverage for chest wall reconstruction. Since passage of the federal Women's Health Care and Cancer Rights Act (WHCRA) in 1998, which is known as "Janet's Law" named for a 32-year-old Long Island woman who was denied coverage of reconstructive breast surgery after a mastectomy to treat her aggressive cancer, group health and individual health plans that offer breast cancer coverage have been required to provide coverage for breast reconstruction and prostheses following a mastectomy. The WHCRA, too, does not include coverage for chest wall reconstruction. Efforts are underway to amend the WHCRA to correct this deficiency; however, the law only applies if the health plan "chooses to cover mastectomies."

New York has a long history of leadership in supporting women's health. In these times when women's rights to health care options are being challenged, it is especially important that New York demonstrate its continued commitment to women's health care by passing this legislation and enacting it into law. Doing so will ensure that individuals have all treatment options available following a breast cancer diagnosis and mastectomy. It ensures that they receive the care they need and can choose options that are safe and provide them with dignity, which is further confirmed by recent survey found 74% of their survey respondents were happy with their decision for a flat closure following a mastectomy.

For the above reasons, NYSSPS urges you to sign the above referenced legislation into law.

Sincerely,



Beth Aviva Preminger, MD
President, NYSSPS

² https://www.health.ny.gov/diseases/cancer/breast/nys_breast_cancer_faqs.htm