



The Affordable Health Care for America Act (H.R. 3962) Eliminates Unfair and Discriminatory Insurance Industry Practices

Current insurance practices impede women's access to affordable, quality health insurance coverage. Insurers in both the individual and group health insurance markets are typically allowed to vary premiums based on gender and health status. In many states, insurance companies can reject a woman's application altogether or exclude coverage for the care she needs based on "pre-existing conditions," which may include pregnancy or being a survivor of domestic violence.

To ensure that women can obtain affordable coverage that meets their needs, health reform must address these unfair and discriminatory practices. Moreover, to protect all women regardless of their source of coverage, it is critical that insurance market reforms apply broadly across the individual market and for groups of all sizes.

H.R. 3962 Bans Rating Based on Gender, Prohibiting Insurance Companies from Discriminating Against Women Because of Their Sex

- In a majority of states, insurers are allowed to consider gender when setting premium rates (a practice known as "gender rating"). As a result, women are often charged much more than men for the exact same coverage in the individual market. A recent study found that at age 25, for instance, women are charged up to 84% more than men for identical insurance coverage.¹
 - Maternity-related costs fail to explain women's higher premiums—the same study showed that while the vast majority (95%) of the "best-selling" health plans available to women living in their state's capital city practiced gender rating, just 6% included maternity coverage.²
- Gender rating also occurs in the group health insurance market, most notably when employers obtain coverage for their employees.³ Under this practice, insurance companies determine premiums based on the number of women a business employs, meaning that predominately female workforces—such as child care centers, home health care agencies, or non-profits—end up paying significantly more for coverage.⁴
- From the employee's perspective, gender rating may not be apparent, since employment discrimination laws prohibit an employer from charging male and female employees different rates for coverage.⁵ Yet gender rating in the group insurance market can present a serious obstacle to affordable health coverage—faced with higher premiums, a business may forgo offering coverage to workers altogether or shift a greater share of health insurance costs to employees.
- H.R. 3962 prohibits insurers from gender rating in both the individual and group health insurance markets. Federal protections against gender rating are critical to ensure that women across the country are not discriminated against because of their sex.

H.R. 3962 Prohibits Insurance Companies from Charging Higher Premiums Based on Health Status, Making Health Insurance More Accessible and Affordable for the Women Who Need It Most

- Insurance companies can also charge higher premiums to individuals who have health conditions or a history of health problems. Because women are more likely than men to need health care services throughout their lifetimes and to have conditions which require ongoing care, they may also be more likely to face higher premiums due to health history.^{6,7}
- H.R. 3962 prohibits insurers from charging individuals more based on their health status, ensuring that women are not charged more for coverage because of how healthy or sick they have been in the past.

H.R. 3962 Prohibits Insurers from Rejecting Applicants Based on Health Status, Providing Women with Guaranteed Health Insurance Coverage

- In a majority of states, individual market insurers can reject health insurance applications for a wide variety of reasons that are particularly harmful for women. Insurers can reject women for coverage because they are pregnant, have previously had a Cesarean section or received fertility treatment, or because of the medical care they receive following a sexual assault. In eight states and D.C., it is still legal for insurers to deny coverage to applicants who are victims of domestic violence.⁸
- H.R. 3962 includes guaranteed issue and renewability provisions that would require insurance companies to accept anyone who applies for coverage, regardless of prior health insurance claims, health conditions, or medical history. Currently, only five states have established such protections.⁹

H.R. 3962 Protects Women from Being Denied Coverage for Certain Health Conditions by Prohibiting Pre-Existing Condition Exclusions

- Insurance companies are generally allowed to offer women health insurance policies that exclude coverage for costs related to certain “pre-existing” conditions. For example, if a woman has previously had a Cesarean section, insurers may deny coverage for future C-sections, either for the life of the policy or for a specified number of months after enrollment.¹⁰
- H.R. 3962 prohibits the use of pre-existing exclusions, ensuring that women are covered for *all* the care they need.

H.R. 3962 Applies Insurance Market Reforms Broadly to All Insurance Markets, Including the Individual Market and for Groups of All Sizes

- Unfair rating practices exist in both the individual and group health insurance markets.
- H.R. 3962 ensures price fairness to all women regardless of where they obtain their coverage, and recognizes that insurance market reforms must be broad in scope so that they apply to both individual health plans and group health plans of all sizes. It establishes uniform and fair rules for all women with health insurance.

¹ Brigitte Courtot and Julia Kaye, National Women's Law Center (2009), *Still Nowhere to Turn: Insurance Companies Treat Women Like a Pre-Existing Condition*, <http://www.nwlc.org/pdf/stillnowheretoturn.pdf>

² Ibid.

³ There are also non-employer based group plans that provide insurance, commonly referred to as association health plans.

⁴ *Still Nowhere to Turn*, supra note 1.

⁵ Under Title VII of the Civil Rights Act of 1964, employers with 15 or more employees are prohibited from charging employees different premiums for health insurance based on gender or other factors. Almost every state has a law against sex discrimination in employment along the same lines as Title VII.

⁶ Elizabeth Patchias and Judy Waxman, National Women's Law Center (2007), *Women and Health Coverage: The Affordability Gap*, <http://www.nwlc.org/pdf/NWLCCommonwealthHealthInsuranceIssueBrief2007.pdf>

⁷ Alina Salganicoff et al., Henry J Kaiser Family Foundation (2005), *Women and Health Care: A National Profile*, <http://www.kff.org/womenshealth/upload/Women-and-Health-Care-A-National-Profile-Key-Findings-from-the-Kaiser-Women-s-Health-Survey.pdf>

⁸ There are efforts underway to address health insurance discrimination against survivors of domestic violence in at least five of the nine remaining jurisdictions that lack such protections: D.C., Mississippi, North Carolina, North Dakota, and Oklahoma. See: *Still Nowhere to Turn*, supra note 1 and Women's Law Project & Pennsylvania Coalition Against Domestic Violence, *FYI: Insurance Discrimination Against Victims of Domestic Violence, 2002 Supplement 2* (2002), http://www.womenslawproject.org/brochures/InsuranceSup_DV2002.pdf

⁹ Maine, Massachusetts, New Jersey, New York, and Vermont have guaranteed issue requirements. For statutory citations relevant to guaranteed issue requirements, see: Lisa Codispoti, Brigitte Courtot, and Jen Swedish, National Women's Law Center (2008), *Nowhere to Turn: How the Individual Health Insurance Market Fails Women*, <http://action.nwlc.org/site/DocServer/NowhereToTurn.pdf>

¹⁰ Denise Grady, *After Caesareans, Some See Higher Insurance Cost*, New York Times (June 1, 2008) http://www.nytimes.com/2008/06/01/health/01insure.html?pagewanted=2&_r=1.