The Individual Insurance Market: A Hostile Environment for Women

Most people get their health insurance from an employer. But in 2007, over six million women between the ages of 18 and 64 obtained health insurance through the individual insurance market, where consumers purchase health insurance directly from an insurance company. The individual market is an unwelcoming environment for consumers in general, and for women in particular. In most states, insurance companies that sell individual market policies are allowed to charge people different premiums based on factors such as gender or age, and insurers are often permitted to refuse to sell coverage altogether to those with pre-existing health conditions. In contrast, federal and state law generally bar employers from charging their workers different premiums based on gender or age.

Why Focus on the Individual Insurance Market?

The majority of women—and of Americans in general—receive their health coverage through an employer. In 2007, nearly two-thirds of all women ages 18-64 were covered through their own or a family member's job-based health plan. A smaller proportion of women were covered through public health insurance programs like Medicaid, the State Children's Health Insurance Program (SCHIP), or Medicare.

Individual market insurance is the least common type of coverage; in 2007, just 7 percent of women ages 18-64 had individual market coverage. Yet, this market is a growing part of the current health care landscape. The individual market may be the only coverage option—albeit an undesirable one—for those women who do not have access to employer-sponsored health insurance (ESI) and who do not qualify for public health insurance programs.

Who might be stuck in the individual market?

- A woman who works part-time with no employer coverage;
- A young adult who takes her first job—without benefits—after graduating from college;
- A self-employed single mother;
- A woman who loses dependent coverage when her husband qualifies for Medicare two or three years before she does; or
- A woman working for an employer who decides he can no longer offer his employees health coverage, but instead provides a stipend to employees to purchase insurance on their own.

These women must choose between becoming (or remaining) uninsured or trying to get coverage in the deeply-flawed individual insurance market.

Some health reform proposals would expand the individual market. But given the many problems in the individual insurance market, health reform should reduce or eliminate the need for the individual market by making it easier for people to obtain employer coverage, and by creating medical insurance pools large enough to accommodate anyone who needs coverage.

The Individual Insurance Market for Women: Unaffordable, Unequal, and Inadequate

Women applying for individual insurance coverage face challenges related to their gender, age, and health status, which may prove to be insurmountable obstacles to getting and affording health insurance. Generally, when a person applies for coverage in the individual market, an insurance company decides whether to sell the applicant insurance and then what premium to charge the applicant based on various criteria, including gender, age, medical history, and occupation. This process is known as "medical underwriting." Insurers also decide which services to cover, such as whether to cover maternity care.

1. Deciding Whether to Sell Applicants Insurance

Insurers can reject individual insurance applicants for a variety of reasons, such as having any health history—but many reasons are particularly relevant to women.

It is still legal in nine states and D.C. for insurers to reject applicants who are survivors of domestic violence.

In the early 1990s, advocates discovered that routine insurance practices discriminated against survivors of domestic violence, when insurers regularly denied applications for individual coverage submitted by women who had experienced domestic violence.[1] Since 1994, 40 states have responded by adopting legislation prohibiting health insurers from denying coverage based on domestic violence.[2] Arkansas, Idaho, Mississippi, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Wyoming and the District of Columbia should join these states by passing laws to protect access to health insurance for survivors of domestic violence.[3]

Insurers can also reject women for coverage simply for having previously had a Cesarean section.

Women who have given birth by Cesarean section (C-section) may also encounter challenges in the individual market, according to a recent *New York Times* investigation.[4] If, during the medical underwriting process, the insurer discovers that an applicant underwent a past C-section, it may charge her a higher premium, impose an exclusionary period during which it refuses to cover another Cesarean, or reject her for coverage altogether unless she has been sterilized or is above childbearing age.[5] Presumably, insurers do this because a woman with a previous C-section is more likely to have another C-section,[6] and insurers do not want to take on that financial risk.[7] This practice could affect the growing number of women who have C-sections. In 2006, 31% of all recorded U.S. births were delivered through C-section—a rate that has climbed 50 percent over the last ten years.[8] Individual insurance providers should not be permitted to treat women differently based on a previous C-section by denying them insurance coverage when they need it most.

2. Deciding What Premium to Charge

Gender Rating: A Financial Barrier to Health Coverage

In most states, insurance companies generally charge women higher premiums than men until around age 55, after which point many insurers charge men more than women.[9]

One might assume that higher premiums for women are based on women's reproductive capacity, in case a woman gets pregnant and requires additional health care services. But while the cost of maternity coverage plays a role in the increased cost of health care for women,[10] this does not explain the difference because most individual health insurance policies exclude maternity benefits.[11] In fact, research conducted by NWLC—and available

in the report *Nowhere to Turn: How the Individual Insurance Market Fails Women*—showed that only 6 percent of examined plans that gender-rated included maternity coverage.[12]

The insurance industry argues that gender rating reflects actual differences in the cost of providing health insurance to women versus men; premiums are higher because women have higher hospital and physicians' costs than men.[13] Many states that allow gender rating require that any difference in premiums between women and men be "justified by actuarial statistics,"[14] which means that the difference must be based on statistically based variations in health costs between women and men.[15]

However, in the aforementioned *Nowhere to Turn* report, NWLC demonstrates that the range of differences in premiums between women and men varies dramatically, raising real questions about how arbitrary gender rating is in practice. The premiums charged to men and women for the same coverage can differ significantly. For example:

- At age 25, women are charged between six and 45 percent more than men for insurance coverage;
- At age 40, women's monthly premiums are between four and 48 percent higher than men's monthly premiums; and
- At age 55, the premiums women are charged range from 22 percent lower to 37 percent higher than the rates men are charged.

NWLC found that even within a single zip code, great variation in premiums exists. For example, the ten best-selling individual market insurance plans available in Phoenix, Arizona each use gender as a rating factor; one plan charges 40-year-old women only 2 percent more in monthly premiums than men while another plan charges women 51 percent more than men for the same coverage.[16] (See Table 1.)

Women are even less able to afford the higher premiums charged for individual coverage because today, women earn only 78 cents for every dollar that men earn.[17] The use of gender as a rating factor is unjust and serves as a barrier to health care.

Age Rating: More Expensive Coverage for Older Applicants

Insurers in the individual market often decide how much to charge an applicant based on age. Unless prohibited by state law, insurance companies charge higher rates to older applicants.

Do Your Local Health Insurance Plans Gender-Rate?

Advocates can find out whether health insurance plans in their area charge women more than men for the same coverage. To obtain this information, follow these five simple steps:

1. On the internet, visit http://www.ehealthinsurance.com/.
2. Enter your zip code and click "Get quotes."
3. Input a date of birth for a female applicant and hit "Get quotes." Make a note of the various premiums charged for different health plans.
4. Go back to the previous screen and now input the same date of birth for a male applicant and click "Get Quotes." Make a note of the various premiums charged for different health plans.
5. Compare the different rates. If the same plan charges a different rate for a woman than for a man, that plan gender rates.

Presumably, higher rates are charged because older people are more likely to need health care services; on average, the expected health costs of people over age 50 are more than twice as high as the expected health costs of people under age 20.[18] Nevertheless, age rating may have a particularly onerous effect on women in the individual market, because older women ages 55 to 64 are more likely to purchase individual insurance than men of the same age.[19] These women may be more likely to seek individual coverage because their older spouses qualify for Medicare, causing them to lose dependent coverage and become uninsured.[20]

Health Status Rating: A Barrier to Access and a Contributor to Higher Premium Rates

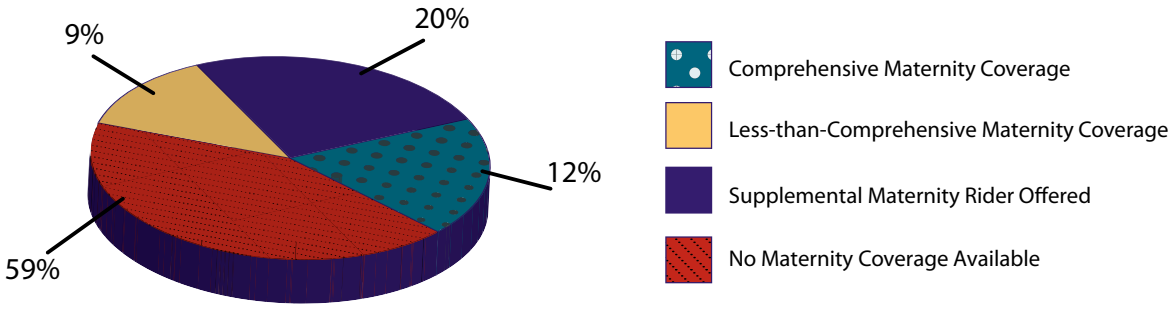
Unless prohibited by state law, when a person applies for coverage directly from an insurance company, the insurer is free to deny coverage if the applicant has prior health insurance claims, health conditions, or a history of health problems. If offered coverage, these applicants are more likely to have pre-existing conditions excluded from coverage and they are usually charged higher premium rates than healthier people. Because women are more likely than men to need health care services throughout their lifetimes[21] and are more likely to have chronic conditions requiring ongoing treatment such as arthritis and asthma,[22] they may find it more difficult to access and afford coverage in the individual health insurance market.

3. Deciding Which Services to Cover

Maternity Coverage in the Individual Market: Expensive, Limited and Difficult to Obtain

Although most women with job-based health insurance receive maternity benefits due to state and federal anti-discrimination protections, no such protection exists in the individual insurance market. In this market, women face multiple challenges in obtaining comprehensive or affordable health insurance that covers maternity care. For example, insurers may consider pregnancy as grounds for denying a woman's application, or as a pre-existing condition for which coverage can be excluded. Moreover, the NWLC *Nowhere to Turn* report shows that a majority of individual market health insurance policies fail to cover maternity care at all (see Figure 1 below). In some states, NWLC found that women may be able to purchase supplemental maternity benefits (called a "rider") for an additional premium. This coverage, however, is often limited in scope and can be prohibitively expensive; a rider may cost a woman far more than her monthly health insurance premium.

Figure 1: Availability of Maternity Coverage in Individual Market Insurance Policies



n=3,512 policies (offered in 47 states and D.C.)

Comprehensive maternity coverage includes coverage for prenatal care, labor, delivery, and postnatal care, for both routine pregnancies and in case of complications.

SOURCE: National Women's Law Center, *Nowhere to Turn: How the Individual Insurance Market Fails Women* (2008). Please see report for details on research methdology.

The importance of adequate maternity care—especially prenatal care—cannot be overstated. If a woman visits a healthcare provider early and regularly during her pregnancy, birth defects and other complications can be prevented or appropriately managed. But a precursor to timely care is having the finances or insurance coverage to pay for it; when pregnant women are uninsured, they are considerably less likely to get proper prenatal care.[23] Adequate and affordable maternity coverage is essential for the health of mothers and their children—it should not be a luxury to which only some women have access.

What Can States Do to Address Problems in the Individual Market?

Because the regulation of insurance has traditionally been a state responsibility,[24] there are few federal laws governing the individual market—and no federal law addresses gender rating in the individual insurance market. A few states have taken steps to increase the affordability of and accessibility to individual health insurance coverage, by regulating health insurance premiums in one of two ways:

- Prohibiting the use of different factors such as gender, age or health status in setting premiums
  - A few states have adopted laws or regulations to simply ban the use of different rating factors outright, such as gender.
  - A few more states have used "community rating" to prohibit the use of different rating factors. Community rating is a method of calculating health insurance premiums based on the average or anticipated health costs of a whole community, rather than based on an individual's particular needs.[25] Under "pure community rating," insurers must set the same premium for everyone who has the same coverage, regardless of age, health status, or gender.[26] Under "modified community rating," insurers are prohibited from varying premiums based on the insured individual's health status or claims history, but are allowed to use certain other rating factors, which can include gender, age, and/or geographic location.[27]
- Limiting how much insurers can vary premiums based on different rating factors through a "rate band"
  - Some states have limited how much an insurance company may use rating factors to vary a premium through a "rate band."[28] In general, a rate band sets limits between the lowest and highest premium that a health insurer may charge for the same coverage based on certain rating factors, such as gender, health status, and age.[29]

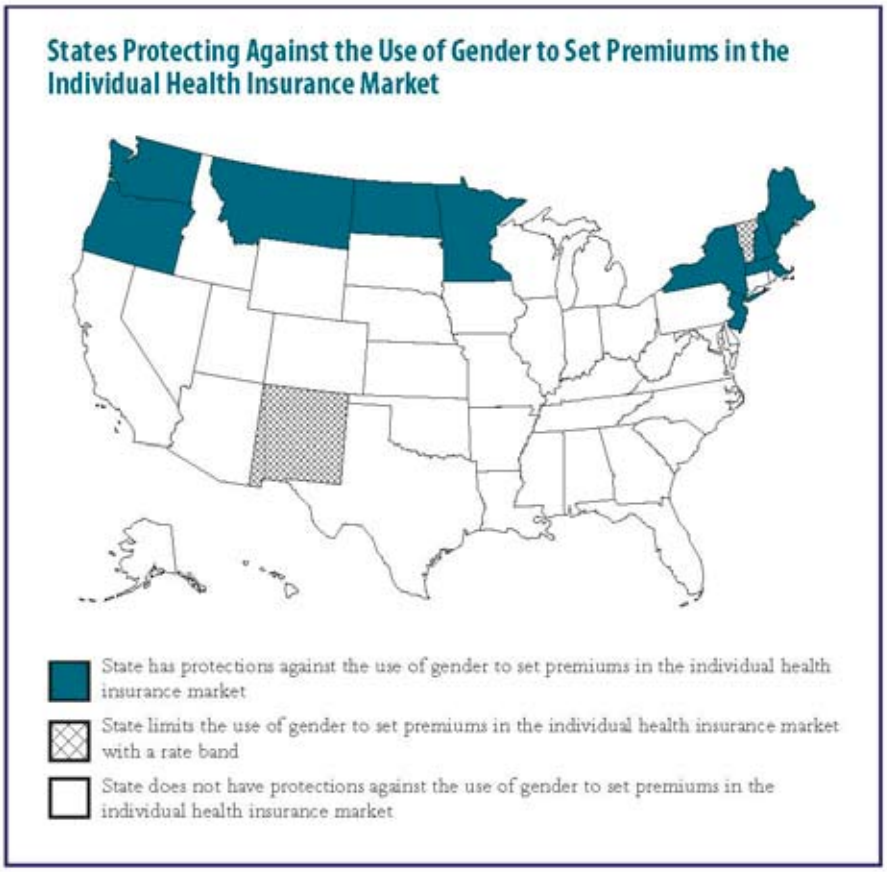
How Have States Used Premium Regulations?[30]

A limited number of states have used the two methods of premium regulation described above to address obstacles in the individual market.

Protections Against Gender Rating

Overall, 40 states and the District of Columbia allow individual insurers to gender rate. (See Table 2 and map on next page.) There are ten states that have adopted protections against gender rating.

- Outright ban on gender rating: Four states—Minnesota, Montana, New Hampshire, and North Dakota—prohibit insurers from using gender to determine premiums for individual health insurance.



- Gender rating prohibited through community rating: Six states prohibit the use of gender as a rating factor under community rating statutes: New York imposes pure community rating, and Maine, Massachusetts, New Jersey, Oregon, and Washington require modified community rating, under which gender rating is prohibited along with rating based on health status.
- Limiting gender rating through rate bands: New Mexico and Vermont limit how much insurers can vary premiums based on gender through a rate band.

Protections Against Age Rating

Unless prohibited, insurers generally charge older applicants higher premiums for individually-purchased health insurance.

- Only one state, New York, bans the use of age as a rating factor through pure community rating requirements.
- Seven states—Maine, Massachusetts, Minnesota, New Hampshire, North Dakota, South Dakota, and Vermont—have enacted rate bands to limit insurers' ability to vary rates based on age. (See Table 2.)

Protections Against Health Status Rating

Unless prohibited by state law, health status rating contributes to higher premiums in the individual market for those with a history of health problems.

- Seven states prohibit the use of health status as a rating factor through community rating for individually-purchased insurance: New York, Maine, Massachusetts, Oregon, Vermont, New Jersey, and Washington.
- Eight additional states impose rate bands to limit how much insurers can vary rates based on health status. (See Table 2.)

Limiting Rejection of Insurance Applicants: Guaranteed Issue Requirements[31]
In most states, insurers in the individual market can refuse to sell health insurance to applicants who have health conditions or a history of health problems. Five states—Maine, Massachusetts, New Jersey, New York, and Vermont—prohibit this practice through "guaranteed issue" requirements, which mandate that individual insurance providers accept **anyone** who applies for coverage, regardless of health status. Although these laws prohibit insurers from denying coverage, they do not address the premiums that may be charged. These five states also prohibit insurers from charging different individuals higher premiums based on health history (under community rating)—but affordability can still be a challenge as premiums in these states may still be higher than other states.

What Can Women's Advocates Do?

Women's advocates can support efforts to eliminate or reduce the need for the individual market.
The individual market is deeply flawed. Even in the states that have taken incremental action to address its many challenges, this market remains an expensive, difficult way for women to obtain health coverage. Advocates should support proposals that:

- **Make employer-sponsored insurance easier to obtain.** The primary vehicle for health insurance coverage in the United States is through the workplace, where women enjoy important workplace protections. But the number of Americans receiving coverage through their employer continues to decrease.[32] In fact, the decline in employer-sponsored insurance coverage is the dominant factor underlying the growth in the number of uninsured Americans.[33]

  For too many part-time employees, employer health insurance coverage is either not offered or unaffordable. Uninsured women are more likely than uninsured men to work part time.[34] State or federal assistance to employers that provide affordable health benefits to these employees will help expand health coverage.

  Efforts to make employer-sponsored health insurance easier to obtain should focus on small businesses because they are less likely than their larger counterparts to offer health benefits.[35] And women are more likely than men to work for small businesses who do not offer health insurance.[36] There are a variety of ways to help small businesses provide health insurance, such as offering financial help and/or tax incentives, or creating purchasing pools. For example, Montana offers refundable tax credits to small businesses with two to nine employees that are currently providing health insurance to their workers.[37]

- **Create health insurance pools large enough to accommodate everyone who needs coverage.** Some states, such as Massachusetts, have merged their individual and small group markets to create one large pool.[38] This approach spreads risk among a larger group of insured people, thus saving administrative costs, and, by building on the current insurance system, it gives people the ability to keep their existing coverage.[39] Early reports out of Massachusetts suggest that the new pool has decreased the cost

and increased the number of plans available to people purchasing individual health insurance.[40] This model could be adopted by other states, or it could be applied nationally by the federal government.

In the short term, until adequate alternatives to the individual market exist, women's advocates should support efforts that make individual insurance coverage easier to obtain and afford.

Insurers should be prohibited from using gender to set premiums in the individual market. Premiums for individual coverage also should not be based on age or health status, and insurance companies should not be permitted to reject applicants because they have pre-existing health conditions or a history of health problems. States should either ban gender rating or adopt pure community rating that requires insurers to set the same premium for everyone who has the same coverage. Because pure community rating can, however, result in higher premiums, affordability must also be addressed to ensure true access to coverage.[41]

Women's advocates should support efforts to ensure that all health insurance policies sold include comprehensive coverage for vital health services such as maternity care.

Health reform proposals must ensure that women have access to comprehensive health benefits that meet their needs; adequate maternity coverage must certainly be part of every plan.

For further reading, see:

Families USA, *Failing Grades: State Consumer Protections in the Individual Health Insurance Market* (June 2008), http://www.familiesusa.org/assets/pdfs/failing-grades.pdf.

Henry J. Kaiser Family Foundation, *How Private Health Coverage Works: A Primer, 2008 Update* (Apr. 2008), http://www.kff.org/insurance/upload/7766.pdf.

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Families USA, *Issue Brief: Understanding How Health Insurance Premiums Are Regulated* (Sept. 2006), http://familiesusa.org/assets/pdfs/rate-regulation.pdf.

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2 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. Since 1994, the majority of states have adopted legislation prohibiting health insurers from denying coverage based on domestic violence, but nine states and D.C. offer no such protection to survivors of domestic violence. Even though Vermont lacks legislation specifically prohibiting discrimination against domestic violence survivors, the state requires guaranteed issue of all individual insurance plans. *See* Vt. Stat.Ann. tit. 8, § 4080b(d)(1) (2008).

3 *Id.*

4 Denise Grady, *After Caesareans, Some See Higher Insurance Cost*, The New York Times, June 1, 2008, at A26.

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8 *Births: Preliminary Data for 2006*. National Center for Health Statistics (December 2007), http://www.cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_07.pdf.

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10 Robert H. Jerry II & Kyle B. Mansfield, *Justifying Unisex Insurance: Another Perspective*, 34 Am. U.L. Rev. 329, 343 (1985).

11 America's Health Insurance Plans, *Individual Health Insurance 2006-2007: A Comprehensive Survey of Premiums, Availability, and Benefits* 24-25 (Dec. 2007); America's Health Insurance Plans, *Individual Health Insurance: A Comprehensive Survey of Affordability, Access, and Benefits* 26-27 (Aug. 2005). *See also* Anne C. Cicero, *Strategies for the Elimination of Sex Discrimination in Private Insurance*, 20 Harv. C.R.-C.L. L. Rev. 211, 215 n.23 (1985) (suggesting that maternity costs may be factored into women's rates even though not covered by their policies).

12 For a detailed discussion of the inadequate maternity coverage offered in the individual market *see Nowhere to Turn*, *supra* note 9.

13 Cicero, *supra* note 11, at 214-15 (citing testimony given by Ralph J. Eckert, Chairman and Chief Executive Officer, Benefit Trust Life Insurance Co. at Fair Insurance Practices Act: Hearings on S. 372 Before the Comm. on Commerce, Science, and Transportation, 98th Cong., 1st Sess. 2-16 (1983)).

14 *See, e.g.*, Colo. Rev. Stat. Ann. § 10-3-1104(1)(f)(III) (West 2008) (defining "unfair discrimination" as "[m]aking or permitting to be made any classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics"); Okl. Admin. Code § 365: 10-I-9(A)(2008) (This section "is not intended to prohibit reasonable and justifiable differences in premium rates based upon sound actuarial principles or actual or reasonably anticipated experience.")

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26 *How Private Health Coverage Works*, *supra* note 15.

27 *Id.*

28 Chollet & Kirk, *supra* note 9, at 43-44.

29 Families USA, *Issue Brief: Understanding How Health Insurance Premiums Are Regulated* 7 (Sept. 2006).

30 *See Nowhere to Turn*, *supra* note 9 for statutory citations relevant to premium regulations.

31 *See Id.* for statutory citations relevant to guaranteed issue requirements.

32 Dawn M. Gencarelli, Nat'l Health Policy Forum, *Background Paper: Health Insurance Coverage for Small Employers* 3 (Apr. 2005), http://www.nhpf.org/pdfs_bp/BP_SmallBusiness_04-19-05.pdf.

33 John Holahan & Allison Cook, *The U.S. Economy and Changes in Health Insurance Coverage, 2000-2006*, Health Affairs, Feb. 20, 2008, at w135-w144.

34 Patchias & Waxman, *supra* note 22, at 2.

35 Kaiser Family Foundation & Health Research and Educational Trust, *Employer Health Benefits: 2008 Annual Survey* (2008), http://ehbs.kff.org/.

36 Paul Fronstin & Ruth Helman, Employee Benefit Research Inst., *Issue Brief No. 253, Small Employers and Health Benefits: Findings from the 2002 Small Employer Health Benefits Survey* 11 (Jan. 2003), http://www.ebri.org/pdf/briefspdf/0103ib.pdf.

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41 In researching the individual insurance rates for Appendix 1, NWLC found high premiums in New York, where pure community rating is required. One insurance company charged everyone a monthly premium of $425.14, while another insurance company charged $665.88 for coverage, regardless of age, gender, health status, or other factors.

2008

Table 1. Prevalence of Gender Rating and Range in the 'Gender Gap' Among Best-Selling Plans in the Individual Insurance Market

The 'gender gap' reflects the difference between premiums charged to same-aged women and men for best-selling individual insurance market plans offered by the leading online provider in their state's capital city. For instance, all ten of the best-selling plans available to a 40-year-old woman living in Jefferson City, Missouri use gender to set premium rates. Depending on the best-selling plan she selects, this woman is charged at least 15 percent more and up to 140 percent more than a 40-year-old man for the same coverage.

State	Proportion of Best-Selling Plans That Gender Rate[a,b]	Range in Percentage Difference in Premiums Between 40-Year-Old Women and Men, Among Plans that Gender Rate	
		Minimum	*Maximum*
Alabama	All	11%	44%
Alaska	All	10%	24%
Arizona	All	2%	51%
Arkansas	All	13%	63%
California	Some	10%	39%
Colorado	Some	8%	43%
Connecticut	All	4%	41%
Delaware	Some	13%	25%
District of Columbia	Some	11%	24%
Florida	All	14%	44%
Georgia	All	15%	47%
Hawaii	All	23%	23%
Idaho	All	42%	44%
Illinois	All	15%	39%
Indiana	All	20%	48%
Iowa	All	15%	44%
Kansas	All	10%	49%
Kentucky	All	15%	48%
Louisiana	All	13%	38%
Maine[c]	N/A (and gender rating prohibited)		
Maryland	Some	12%	22%
Massachusetts[c]	N/A (and gender rating prohibited)		
Michigan	Some	15%	40%
Minnesota	None	Gender rating prohibited	
Mississippi	All	13%	43%
Missouri	All	15%	140%
Montana	None	Gender rating prohibited	
Nebraska	All	11%	60%
Nevada	All	11%	39%
New Hampshire	None	Gender rating prohibited	
New Jersey[d]	Some	23%	36%
New Mexico	All	19%	21%
New York	None	Gender rating prohibited	
North Carolina	All	11%	43%
North Dakota[e]	All	19%	29%
Ohio	All	15%	48%
Oklahoma	All	11%	40%
Oregon	None	Gender rating prohibited	
Pennsylvania	All	13%	37%
South Carolina	Some	15%	54%
South Dakota	All	20%	25%
Tennessee	All	18%	37%
Texas	All	15%	42%
Utah	Some	8%	37%
Vermont[c]	N/A		
Virginia	All	11%	32%
Washington	None	Gender rating prohibited	
West Virginia	All	13%	34%
Wisconsin	All	14%	45%
Wyoming	All	13%	25%

Notes

a. "Best-selling" status is assigned by eHealthInsurance, based on the number of applications submitted through its website, http://ehealthinsurance.com, and approved by the insurance company during the most recent calendar quarter.

b. Across the nation, a total of 347 best-selling plans (83%) gender rate. The absence or presence of maternity coverage generally cannot explain gender rating. Of the best-selling plans that gender rate, a total of 21 (6%) include maternity coverage in the individual health insurance policy.

c. Individual rate quotes were not available for Maine, Massachusetts, or Vermont through eHealthInsurance.

d. Although gender rating is prohibited in New Jersey, the best-selling plans available through eHealthInsurance include bare-bones basic and essential plans, which are exempted from the state's prohibition on gender rating.

e. Gender rating is prohibited in North Dakota, but the only company offering individual policies through eHealthInsurance does use gender as a rating factor.

Table 1 Methodology

The data in Table 1 were gathered through eHealthInsurance from its website, http://www.ehealthinsurance.com. NWLC submitted information for a hypothetical female applicant and a hypothetical male applicant at age 40 in 50 states and D.C., using a coverage start date of July 15, 2008. Applicants were listed as healthy non-smokers living in the state's capital city, in the same zip code as the governor's office (in D.C. the zip code of the mayor's office was used). For each of the 47 states and D.C. where coverage was offered, NWLC then determined how many of the best-selling individual insurance plans use gender as a rating factor. "Best-selling" status is assigned by eHealthInsurance, and is based on the number of applications submitted through eHealthInsurance's website and approved by the insurance company during the most recent calendar quarter. In the case of North Dakota, because only 12 plans are offered, the website lists all plans rather than only the best-selling plans. For this state, all 12 plans were analyzed. For each plan that gender rates, NWLC calculated the gender gap, or the difference in the premiums charged to a woman versus a similarly-aged man as a percentage of the premium charged to the woman. The Table indicates the minimum and maximum percentage difference in the premiums charged to a man and a woman among the best selling plans that gender rate.

Notably, eHealthInsurance may not represent all insurance companies licensed to sell individual health insurance policies in every state. However, the company bills itself as the leading online source of health insurance for individuals, families, and small businesses, partnering with over 160 health insurance companies in 50 states and D.C. and offering more than 7,000 health insurance products online.

Table2: State Laws Protecting Against the Use of Gender, Age, and Health Status to Set Premiums in the Individual Market

See Table 2 notes for statutory citations.

State	Gender	Age	Health Status
Alabama	✕	✕	✕
Alaska	✕	✕	✕
Arizona	✕	✕	✕
Arkansas	✕	✕	✕
California	✕	✕	✕
Colorado	✕	✕	✕
Connecticut	✕	✕	✕
Delaware	✕	✕	✕
District of Columbia	✕	✕	✕
Florida	✕	✕	✕
Georgia	✕	✕	✕
Hawaii	✕	✕	✕
Idaho	✕	✕	⊖
Illinois	✕	✕	✕
Indiana	✕	✕	✕
Iowa	✕	✕	✕
Kansas	✕	✕	✕
Kentucky	✕	✕	⊖
Louisiana	✕	✕	⊖
Maine (modified community rating)	●	⊖	●
Maryland	✕	✕	✕
Massachusetts (modified community rating)	●	⊖	●
Michigan	✕	✕	✕
Minnesota	●	⊖	⊖
Mississippi	✕	✕	✕
Missouri	✕	✕	✕
Montana	●	✕	✕
Nebraska	✕	✕	✕
Nevada	✕	✕	⊖
New Hampshire	●	⊖	⊖
New Jersey (modified community rating)	●	✕	●
New Mexico	⊖	✕	✕
New York (pure community rating)	●	●	●
North Carolina	✕	✕	✕
North Dakota	●	⊖	✕
Ohio	✕	✕	✕
Oklahoma	✕	✕	✕
Oregon (modified community rating)	●	✕	●
Pennsylvania	✕	✕	✕
Rhode Island	✕	✕	✕
South Carolina	✕	✕	✕
South Dakota	✕	⊖	⊖
Tennessee	✕	✕	✕
Texas	✕	✕	✕
Utah	✕	✕	⊖
Vermont (modified community rating)	⊖	⊖	●
Virginia	✕	✕	✕
Washington (modified community rating)	●	✕	●
West Virginia	✕	✕	✕
Wisconsin	✕	✕	✕
Wyoming	✕	✕	✕

Key
● Protections exist
⊖ Limited protections exist (use limited through rate band)
✕ No protections exist

Notes to Table 2

Alabama: Ala. Admin. Code r. 482-1-074-.03 (2008) (prohibiting only rates based on blindness as unfairly discriminatory). See also Ala. Code §§ 27-19-1 to -39 (2008), Ala. Admin. Code r. 482-1-024-.01 to -.06 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Alaska: Alaska Stat. §§ 21.36.090(b), 21.51.405 (2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory between individuals of the same class). See also Alaska Stat. §§ 21.51.010–.500 (2008), Alaska Admin. Code tit. 3, §§ 28.410–.520 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Arizona: Gender: Ariz. Admin. Code § 20-6-607(G) (2008) (calculating the average annual premium per policy for individual health insurance policies based on "all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc."); see also Ariz. Admin. Code § 20-6-207(C)(2) (2008) (restricting gender discrimination in insurance "except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under A.R.S. Title 20"). Age: Ariz. Admin. Code § 20-6-607(G) (2008) (calculating the average annual premium per policy for individual health insurance policies based on "all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc."). Health status: Ariz. Rev. Stat. Ann. §§ 20-1341 to -1382 (2008), Ariz. Admin. Code §§ 20-6-101 to -2201 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Arkansas: Gender and age: Ark. Ins. Dep't, Consumer Frequently Asked Questions, *available at* http://www.insurance.arkansas.gov/Consumers/F_A_Q.htm (last visited Sept. 18, 2008) (explaining that the state's unfair discrimination statute, Ark. Code Ann. § 23-66-206(14)(G) (West 2008), does not prohibit an insurer from basing rates on age or gender, if proven to substantially affect underwriting). Health status: Ark. Code Ann. §§ 23-85-101 to -139 (West 2008), Ark. Code R. 18 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

California: Cal. Dep't of Insurance, Consumers: Individual Health Insurance Underwriting/AB 356, *available at* http://www.insurance.ca.gov/0100-consumers/0070-health-issues/ind-health-insurance-underwriting-ab-356.cfm (last visited Sept. 18, 2008) ("When you apply for individual health insurance, the health insurance company uses a process called underwriting to look at your age, sex, and health history to decide whether it will cover you and how much it will cost to provide you coverage.").

Colorado: Gender: Colo. Rev. Stat. § 10-3-1104(1)(f)(III) (2008) (providing that classifications based solely on gender do not constitute unfair discrimination if justified by actuarial statistics). Age: Colo. Rev. Stat. § 10-16-107(1.5) (2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory); see also 3 Colo. Code Regs. § 702-4-2-11(8)(E) (2008) (providing that "use of a premium schedule which provides for attained age premiums to a specific age followed by a level premium, or the use of reasonable step rating" is not prohibited); 3 Colo. Code Regs. § 702-4-2-11(6)(P) (2008) (requiring that the actuarial memorandum display "all other rating factors and definitions, including the area factors, age factors, gender factors, etc., and support for each of these factors in a new rate filing"). Health status: Colo. Rev. Stat. § 10-16-107(1.5) (2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory); see also Colo. Rev. Stat. §§ 10-16-101 to -220 (2008), 3 Colo. Code Regs. §§ 4-2-1 to -28 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Connecticut: Conn. Gen. Stat. §§ 38a-481(b), 38a-488 (2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory between individuals of the same class). See also Conn. Gen. Stat. §§ 38a-480 to -511 (2008), Conn. Agencies Regs. §§ 38a-78-11 to -16, 38a-434-1, 38a-481-1 to -4, 38a-505-1 to -13 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Delaware: Gender and age: 18-1300-1303 Del. Code Regs. § 7.4 (Weil 2008) (calculating the average annual premium per policy for individual health insurance policies based on "all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc."); see also Del. Code Ann. tit. 18, §§ 2503(a)(2), 2304(13)(b) (2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory between individuals of the same class). Health status: Del. Code Ann. tit. 18, §§ 2503(a)(2), 2304(13)(b) (2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory between individuals of the same class); see also Del. Code Ann. tit. 18, §§ 3301–3355, 3601–3608 (2008), 18-1300-1301 to -1304 Del. Code Regs. (Weil 2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

District of Columbia: D.C. Code § 31-2231.11(b) (2008) (prohibiting only rates that are unfairly discriminatory between individuals of the same class). See also D.C. Code §§ 31-2801 to -3851.13 (2008), D.C. Code Mun. Regs. tit. 26, §§ 100–8899 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Florida: Fla. Stat. § 627.410(8)(a) (2008) (providing that benefits are deemed to be reasonable in relation to premium rates if filed pursuant to a loss ratio guarantee). See also Fla. Stat. §§ 627.601–.6499 (2008), Fla. Admin. Code Ann. r. 69O-149.002–.024, 69O-154.001–.210 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Georgia: Ga. Code Ann. §§ 33-9-4(1), 33-6-4(8)(A)(iv)(I) (West 2008) (prohibiting only rates that are excessive, inadequate, or unfairly discriminatory because based on race, color, or national or ethnic origin). See also Ga. Code Ann. §§ 33-29-1 to -22, 33-9-1 to -44 (West 2008), Ga. Comp. R. & Regs. 120-2-81-.01 to -.20 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Hawaii: Haw. Ins. Div., A Consumer's Guide to Health Insurance in Hawaii 3, *available at* http://hawaii.gov/dcca/areas/ins/consumer/consumer_information/health/Health_Insurance_Consumers_guide.pdf (last visited Sept. 18, 2008) ("The law does not limit what you can be charged for individual health insurance policy and you can be charged substantially higher premiums because of your health status, age, gender, and other factors.").

Idaho: Gender and age: Idaho Code Ann. § 41-5206(f) (2008) ("The individual carrier shall not use case characteristics, other than age, individual tobacco use, geography as defined by rule of the director, or gender, without prior approval of the director."). Health status: Idaho Code Ann. §§ 41-5206(1)(a) (2008) (providing that rates may not vary by more than 50% of the index rate).

Illinois: Gender: Ill. Admin. Code tit. 50, § 2603.40(a) (2008) (allowing insurance companies to differentiate in rates on the basis of gender if such "differentiation is based upon expected claim costs and expenses derived by applying sound actuarial principles"). Age and health status: 215 Ill. Comp. Stat. § 5/352–5/370e (2008), 50 Ill. Admin. Code tit. 50, § 2001.1–2051.100 (2008) (no statute or regulation restricts the use of age or health status as a rating factor in the individual market).

Indiana: Ind. Code §§ 27-8-5-1.5(1), 27-4-1-4(7)(B) (2008) (requiring only that benefits be reasonable in relation to the premium charged and prohibiting only unfairly discriminatory rates between individuals of the same class). See also Ind. Code §§ 27-8-5-1 to -5.7-11 (2008), 760 Ind. Admin. Code 1-8 to 1-9-4 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Iowa: Iowa Code § 513C.5(5)(a) (2008) (requiring insurers to disclose "[t]he extent to which premium rates for a specified individual are established or adjusted based upon rating characteristics"); Iowa Code § 513C.3(16) (2008) (defining "rating characteristics" as "demographic characteristics of individuals which are considered by the carrier in the determination of premium rates for the individuals and which are approved by the commissioner"). Health status: Iowa Code § 513C.5(1)(e) (2008) (only limiting an insurer's use of health status as a rating factor within a single block of business, that is all people insured under the same individual health benefit plan).

Kansas: Kan. Stat. Ann. § 40-2404(7)(b) (2008) (prohibiting only rates that are unfairly discriminatory between individuals of the same class). See also Kan. Stat. Ann. §§ 40-2201 to -2259 (2008), Kan. Admin. Regs. §§ 40-4-1 to -42g (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Kentucky: Gender and age: Ky. Rev. Stat. Ann. § 304.17A-0952(6) (West 2008) (allowing the use of gender and age as rating factors). Health status: Ky. Rev. Stat. Ann. § 304.17A-0952(1) (West 2008) (providing that rates may vary by no more than 35% of the index rate between individuals with "similar case characteristics").

Louisiana: Gender and age: La. Rev. Stat. Ann. § 22:228.6(B)(3) (2008) (expressly allowing individual insurance carriers to use gender and age as rating factors). Health status: La. Rev. Stat. Ann. § 22:228.6(B)(2) (2008) (providing that premiums may not deviate according to medical underwriting and screening or experience and health history rating by more than plus or minus 33%). Some reports suggest that Louisiana's health status rate band is not enforced. See Georgetown Univ. Health Policy Inst., *Summary of Key Consumer Protections in Individual Health Insurance Markets* 5 (Apr. 2004), *available at* http://www.healthinsuranceinfo.net/images/discrimination_limits_front.gif.

Maine: Gender and health status: Me. Rev. Stat. Ann. tit. 24-A, § 2736-C(2)(B) (2008) (prohibiting insurance carriers from varying the community rate due to gender or health status). Age: Me. Rev. Stat. Ann. tit. 24-A, § 2736-C(2)(D)(3) (2008) (imposing a rate band under which insurance carriers may only vary the community rate due to age by plus or minus 20% for policies issued after July 1, 1995).

Maryland: Gender: Md. Code Ann., Ins. § 27-208(b)(2) (West 2008) (prohibiting "a differential in ratings, premium payments, or dividends for a reason based on the sex of an applicant or policyholder unless there is actuarial justification for the differential"). Age and health status: Md. Code Ann., Ins. §§ 15-201 to -226 (West 2008), Md. Code Regs. 31.10.01.01–.35.03 (2008) (no statute or regulation restricts the use of age or health status as rating factors in the individual market).

Massachusetts: Gender and health status: Mass. Gen. Laws ch. 176M, § 1 (2008) (defining "modified community rate" as "a rate resulting from a rating methodology in which the premium for all persons within the same rate basis type who are covered under a guaranteed issue health plan is the same without regard to health status; provided, however, that premiums may vary due to age, geographic area, or benefit level for each rate basis type as permitted by this chapter"). Age: Mass. Gen. Laws ch. 176M, § 4(a)(2) (2008) (imposing a rate band under which the "premium rate adjustment based upon the age of an insured individual" may range from 0.67 to 1.33).

Michigan: Gender and age: Mich. Comp. Laws § 500.2027(c) (2008) (prohibiting as unfair competition the "[c]harging of a different rate for the same coverage based on sex, marital status, age, residence, location of risk, disability, or lawful occupation of the risk unless the rate differential is based on sound actuarial principles"). Health status: Mich. Comp. Laws §§ 500.3400–.3475 (2008), Mich. Admin. Code r. 500.1–501.354, 550.101–.302 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Minnesota: Gender: Minn. Stat. § 62A.65(4) (2008) ("No individual health plan offered, sold, issued, or renewed to a Minnesota resident may determine the premium rate or any other underwriting decision, including initial issuance, through a method that is in any way based upon the gender of any person covered or to be covered under the health plan."). Age: Minn. Stat. § 62A.65(3)(b) (2008) (imposing a rate band under which the "[p]remium rates may vary based upon the ages of covered persons . . . [by] up to plus or minus 50 percent of the index rate"). Health status: Minn. Stat. § 62A.65(3)(a) (2008) (mandating that rates may vary no more than 25% above and 25% below the index rate based on health status, claims experience, and occupation).

Mississippi: Miss. Code Ann. § 83-5-35(g)(2) (West 2008) (prohibiting only unfairly discriminatory rates between individuals of the same class). See also Miss. Code Ann. §§ 83-9-1 to -35 (West 2008), Code Miss. R. 28 000 001–095 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Missouri: Gender: Mo. Rev. Stat. § 375.936(11)(b) (2008) (prohibiting only unfairly discriminatory rates between individuals of the same class); Mo. Rev. Stat. § 375.936(11)(e) (2008) (restricting insurers from limiting the amount of coverage available to an individual based on gender); see also Mo. Rev. Stat. §§ 376.770–.823 (2008), Mo. Code Regs. Ann., tit. 20, §§ 400-2.010–.170 (2008) (no statute or regulation restricts the use of gender as a rating factor in the individual market). Age and health status: Mo. Rev. Stat. §§ 376.770–.823 (2008), Mo. Code Regs. Ann., tit. 20, §§ 400-2.010–.170 (2008) (no statute or regulation restricts the use of age or health status as a rating factor in the individual market).

Montana: Gender: Mont. Code Ann. § 49-2-309(1) (2008) ("It is an unlawful discriminatory practice for a financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits."). Age and health status: Mont. Code Ann. §§ 33-22-201 to -311 (2008), Mont. Admin. R. 6.6.101–.8512 (2008) (no statute or regulation restricts the use of age or health status as a rating factor in the individual market).

Nebraska: Gender: 210 Neb. Admin. Code § 28-005 (2008) (requiring insurers to provide, upon request, justification in writing for rating differentials based on gender, providing that "[a]ll rates shall be based on sound actuarial principles, valid classification systems and must be related to actual experience statistics"). Age and health status: Neb. Rev. Stat. §§ 44-710 to -7,102 (2008), 210 Neb. Admin. Code §§ 2-001–81-004 (2008) (no statute or regulation restricts the use of age or health status as a rating factor in the individual market).

Nevada: Gender and age: Nev. Rev. Stat. § 689A.680(2) (2008) (allowing the use of gender and age as rating factors). Health status: Nev. Rev. Stat. § 689A.680(3) (2008) (imposing a rate band in which the highest rating factor associated with health status may not exceed the lowest rating factor by more than 75%).

New Hampshire: Gender: N.H. Rev. Stat. Ann. § 420-G:4(I)(d) (2008) (allowing insurers to base rates in the individual market solely on age, health status, and tobacco use). Age: N.H. Rev. Stat. Ann. § 420-G:4(I)(d)(1) (2008) (imposing a rate band in which the maximum differential based on age is 4 to 1). Health status: N.H. Rev. Stat. Ann. § 420-G:4(I)(d)(2) (2008) (imposing a rate band in which the maximum rating differential due to health status is 1.5 to 1).

New Jersey: 2008 N.J. Sess. Law Serv. Ch. 38, page nos. 12, 15 (Senate 1557) (West) (amending N.J. Stat. Ann. § 17B:27A-2 (West 2008) to define "modified community rating" as "a rating system in which the premium for all persons under a policy or a contract for a specific health benefits plan and a specific date of issue of that plan is the same without regard to sex, health status, occupation, geographic location or any other factor or characteristic of covered persons, other than age," and amending N.J. Stat. Ann. § 17B:27A-4 (West 2008) to require individual health benefits plans to "be offered on an open enrollment, modified community rated basis"). New Jersey law excludes bare-bones basic and essential plans from the modified community rating requirement. See N.J. Dept. of Banking & Ins., *N.J. Individual Health Coverage Program Buyer's Guide: How To Select a Health Plan – 2006 Ed.* (2006), http://www.state.nj.us/dobi/division_insurance/ihcseh/ihcbuygd.html.

New Mexico: Gender: N.M. Stat. § 59A-18-13.1(A) (2008) (allowing gender rating); N.M. Stat. § 59A-18-13.1(B) (2008) (providing that "the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rates in the age group by more than twenty percent of the lower rate"). Age: N.M. Stat. § 59A-18-13.1(A) (2008) (allowing insurers to use age as a rating factor in the individual market). Health status: N.M. Stat. § 59A-18-13.1(C) (2008) (providing that insurers are not precluded from using health status as a rating factor).

New York: N.Y. Ins. Law § 3231(a) (McKinney 2008) (defining community rating as "a rating methodology in which the premium for all persons covered by a policy or contract form is the same based on the experience of the entire pool of risks covered by that policy or contract form without regard to age, sex, health status or occupation").

North Carolina: Gender: 11 N.C. Admin. Code 4.0317(a) (2008) (excluding from definition of unfair discrimination gender rating when based on rate or premium differentials not prohibited under the chapter); see also NC Gen. Stat. Ann. §§ 58-3-1 to -4-25, 58-50-1 to -95 (West 2008), 11 NC Admin. Code 12.0101–.1804 (2008) (no statute or regulation restricts the use of gender as a rating factor in the individual market). Age and health status: N.C. Gen. Stat. Ann. §§ 58-3-1 to -4-25, 58-50-1 to -95 (West 2008), 11 N.C. Admin. Code 12.0101–.1804 (2008) (no statute or regulation restricts the use of age as a rating factor in the individual market).

North Dakota: Gender and age: N.D. Cent. Code § 26.1-36.4-06(1) (2008) (imposing a rate band under which age, industry, gender, and duration of coverage may not vary by a ratio of more than 5 to 1, but providing that "[g]ender and duration of coverage may not be used as a rating factor for policies issued after January 1, 1997"). Health status: N.D. Cent. Code § 26.1-36.4-06 (2008) (not explicitly prohibiting the use of health status as a rating factor in the individual market). Association health plans offered in North Dakota are not subject to these rating requirements. See N.D. Cent. Code § 26.1-36.4-02(1) (2008) (the definition of "insurer" does not include an association that offers health insurance coverage).

Ohio: Ohio Rev. Code Ann. § 3923.15 (West 2008) (prohibiting only unfairly discriminatory rates between individuals of substantially the same hazard). See also Ohio Rev. Code Ann. §§ 3923.01–.99 (West 2008), Ohio Admin. Code §§ 3901-1-01 to -7-04 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

Oklahoma: Gender: Okla. Admin. Code § 365:10-1-9(d)(1) (2008) ("The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced solely on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the Oklahoma Insurance Code."). Age and health status: Okla. Stat. tit. 36, §§ 4401–4411 (2008), Okla. Admin. Code §§ 365:10-1-1 to :10-3-20, 365:10-5-1 to :15-5-2 (2008) (no statute or regulation restricts the use of age as a rating factor in the individual market).

Oregon: Or. Rev. Stat. § 743.767(2) (2008) ("The premium rates charged during a rating period for individual health benefit plans issued to individuals shall not vary from the individual geographic average rate, except that the premium rate may be adjusted to reflect differences in benefit design, family composition and age.").

Pennsylvania: Gender: 31 Pa. Code § 145.1 (2008) (excluding from the definition of "unfair discrimination" when insurers "differentiat[e] in premium rates between sexes where there is sound actuarial justification"). Age: 40 Pa. Cons. Stat. § 1171.5(a)(7)(iii) (2008) (prohibiting unfair discrimination with regard to underwriting standards based on age, among other factors, but excluding the promulgation of rates based on age from the definition of unfair discrimination); see also 40 Pa. Cons. Stat. §§ 752–776.7 (2008), 31 Pa. Code §§ 88.1–.195 (2008) (no statute or regulation restricts the use of age as a rating factor in the individual market). Health status: 40 Pa. Cons. Stat. §§ 752–776.7 (2008), 31 Pa. Code §§ 88.1–.195 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Rhode Island: R.I. Gen. Laws § 27-18.5-3(f) (2008) ("nothing in this section shall be construed to create additional restrictions on the amount of premium rates that a carrier may charge an individual for health insurance coverage provided in the individual market"). See also RI Gen. Laws §§ 27-18-1 to -68 (2008), RI Code Ins., R. 23, Pts. VII & XI (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).

South Carolina: Gender and age: S.C. Code Ann. § 38-71-325 (2008) ("Nothing contained in this section may be construed to prevent the use of age, sex, area, industry, occupational, and avocational factors or to prevent the use of different rates for smokers and nonsmokers or for any other habit or habits of an insured person which have a statistically proven effect on the health of the person and are approved by the director or his designee."). Health status: S.C. Code Ann. §§ 38-71-310 to -680 (2008), S.C. Code Ann. Regs. 69-34 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

South Dakota: Gender: S.D. Codified Laws § 58-17-74(8) (2008) (expressly allowing the use of gender as a rating factor). Age: S.D. Codified Laws § 58-17-74(8) (2008) ("The maximum rating differential based solely on age may not exceed a factor of 5:1."). Health status: S.D. Admin. R 20:06:39:03 (2008) ("The application of rating factors based on health status or weight is limited to a 30 percent deviation from the index rate.").

Tennessee: Gender: Tenn. Comp. R. & Regs. 0780-1-34-.04(1) (2008) ("The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced solely on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the Tennessee Insurance Code."). Gender and age: Tenn. Comp. R. & Regs. 0780-1-20-.06(1) (2008) (calculating the average annual premium per policy for individual health insurance policies based on "all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc."). Health status: Tenn. Code Ann. §§ 56-26-101 to -133 (West 2008), Tenn. Comp. R. & Regs. 0780-1-20-.01 to -.09 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Texas: Gender: 28 Tex. Admin. Code § 21.406 (2008) ("When rates differ by sex or marital status, the insurer may be required to justify that the differential equitably reflects the difference in the risk assumed."). Age and health status: Tex. Ins. Code Ann. §§ 1201.001–1202.052 (Vernon 2008), 28 Tex. Admin. Code §§ 3.1–.128 (2008) (no statute or regulation restricts the use of age or health status as a rating factor in the individual market).

Utah: Gender and age: Utah Code Ann. § 31A-30-106(1)(h) (West 2008) (allowing the use of gender and age as rating factors). Health status: Utah Code Ann. § 31A-30-106(1)(b)(i) (West 2008) (providing that premium rates may vary from the index rate by no more than 30% of the index rate for individuals with "similar case characteristics").

Vermont: Vt. Stat. Ann. tit. 8, § 4080b(h)(1) (2008) (prohibiting the use of the following rating factors when establishing the community rate: demographics including age and gender, geographic area, industry, medical underwriting and screening, experience, tier, or duration); Vt. Stat. Ann. tit. 8, § 4080b(h)(1) (2008), 21-020-034 Vt. Code R. § 93-5(11)(G), (13)(B)(6) (2008) (providing that upon approval by the insurance commissioner, insurers may adjust the community rate by a maximum of 20% for demographic rating including age and gender rating, geographic area rating, industry rating, experience rating, tier rating, and durational rating).

Virginia: Gender and age: 14 Va. Admin. Code § 5-130-60(C)(7) (2008) (calculating the average annual premium per policy for individual health insurance policies based on "all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc."). Health status: Va. Code Ann. §§ 38.2-3430.1–.10, 38.2-3500 to -3520 (West 2008), 14 VA Admin. Code §§ 5-13-10 to -100 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Washington: Wash. Rev. Code § 48.43.005(1) (2008) (defining "adjusted community rate" as "the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities"); Wash. Rev. Code § 48.44.022(1)(a) (2008) (allowing insurers to only vary the adjusted community rate based on geographic area, family size, age, tenure discounts, and wellness activities).

West Virginia: W. Va. Code § 33-15-1b(c) (2008) ("Nothing contained in this section may be construed to prevent the use of age, sex, area, industry, occupational, and avocational factors in setting premium rates or to prevent the use of different rates after approval by the commissioner for smokers and nonsmokers or for any other habit or habits of an insured person which have a statistically proven effect on the health of the person.").

Wisconsin: Gender: Wis. Admin. Code Ins. § 6.55(5) (2008) (permitting insurers to differentiate rates on the basis of gender provided that such rates are based "on sound actuarial principles or a valid classification system and actual experience statistics"). Age: Wis. Admin. Code Ins. 3.13(6) (2008) (requiring individual accident and sickness insurers to file a "schedule of rates including policy fees or rate changes at renewal, if any, variations, if any, based upon age, sex, occupation, or other classification"). Health status: Wis. Stat. §§ 632.71–.899 (2008), Wis. Admin. Code Ins. §§ 3.13–.70 (2008) (no statute or regulation restricts the use of health status as a rating factor in the individual market).

Wyoming: Wyo. Stat. Ann. § 26-13-109(a) (2008) (prohibiting only rates that are unfairly discriminatory between individuals of the same class). See also Wyo. Stat. Ann. §§ 26-18-101 to -137 (2008), Wyo. Admin. Code Ins. Gen. ch. 1, § 1 to ch. 59, § 7 (2008) (no statute or regulation restricts the use of gender, age, or health status as a rating factor in the individual market).