

Health Care Reform Must Eliminate Unfair and Discriminatory Insurance Industry Practices across All Health Insurance Markets

Common insurance industry practices impede women's access to affordable, quality health care. Insurers in both the individual and group health insurance markets are typically allowed to consider gender and health status when setting premiums. In many states, insurance companies can reject a woman's application for coverage or deny coverage of certain "pre-existing" health conditions.

To ensure that women can obtain affordable coverage that meets their needs, health reform must address these unfair and discriminatory health insurance practices. *To protect women and their families regardless of where they get their health insurance, it is critical that legislation includes robust insurance reforms that apply broadly to both the individual and group health insurance markets.*

Harmful and Discriminatory Insurance Industry Practices Make It Difficult for Women to Access Affordable, Quality Health Insurance Coverage

Premiums Based on Gender

- In a majority of states, insurers are allowed to consider gender when setting premiums (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 (where one buys insurance directly from an insurance company). For example, a recent study found that at age 25 women are charged between six and 45% more than men for identical insurance coverage.¹ At age 40, women's monthly premiums are between four and 48% higher than men's monthly premiums.²
 - Maternity coverage does not explain women's higher premiums—the same study showed that only six percent of examined individual health plans with gender-rated premiums included maternity coverage.³
- In most states, gender rating is also allowed in group health insurance markets (where employers get insurance for their employees). Businesses with a predominately female workforce may be charged more for coverage than other businesses. Gender rating affects the overall health insurance premium that the group pays.^{4,5}
- Since employers are generally prohibited from charging individual employees different premiums based on gender or other factors,⁶ the effect of gender rating may not be apparent to individual employees. But businesses with a predominately female workforce could face higher insurance costs as a result of gender rating, which may lead prevent these firms from offering health benefits, or to shift a greater share of health insurance costs to workers.

Application Denials and Premium Rating Based on Health Status

- In a majority of states, individual market insurers can reject health insurance applications for a wide variety of reasons—in eight states and D.C. it is still legal for insurers to deny coverage to applicants who are victims of domestic violence.⁷
- Insurance companies can also charge higher premiums to individuals who have health conditions or a history of health problems. Women are more likely than men to need health care services throughout their lifetimes and to have conditions which require ongoing care.^{8,9,10} As a result, they may also be more likely to face higher premiums due to health history or to be rejected from coverage altogether.

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.¹¹

Women Need Health Care Reform that Ends Unfair Industry Practices and Guarantees Access to Fair and Affordable Coverage

Health reform should ban the discriminatory practice of gender rating.

- Health reform should eliminate the discriminatory practice of gender rating. While many states protect individuals against rating based on factors such as race, national origin, or religion, only twelve states have adopted protections against rating based on gender.¹² Federal protections against gender rating are critical to ensuring that women in every state are not discriminated against because of their sex.
- Women are less able than men to afford the higher premiums charged for coverage, as they continue to earn only 78 cents for every dollar that men earn.¹³ The use of gender as a rating factor serves as a financial barrier to women getting the care they need.

Health reform must also prevent insurers from charging higher premiums based on health status and from excluding coverage for pre-existing health conditions.

- Because women are more likely than men to need health care services throughout their lifetimes and have conditions which require ongoing care, health status rating is a particular concern.¹⁴ Insurance market reforms must ensure that women are not charged more for coverage because of how healthy or sick they have been in the past.
- Even if an insurance company decides to offer an insurance policy to a woman, it may exclude coverage for the cost of services related to certain pre-existing health conditions. Insurance market reforms must prohibit pre-existing condition exclusions, ensuring that women have adequate policies that cover *all* the care they need.

Insurance market reforms must provide women with a guarantee of available coverage.

- Currently, only five states have adopted “guaranteed issue” and “guaranteed renewability” protections, which prohibit insurance companies from rejecting applications for coverage regardless of an applicant’s health status or history.¹⁵
- To ensure that health insurance is available to all women, legislation must include requirements that insurance companies accept anyone who applies for coverage, regardless of prior health insurance claims, health conditions, or history. Maintaining guaranteed issue and renewability requirements protects women from unfair denials of insurance coverage, guaranteeing that they are covered for the care they need, when they need it.

Reforms must apply broadly to all insurance markets, including both the individual and group health insurance markets.

- Unfair rating practices exist in both the individual and group health insurance markets. To ensure price fairness to all women regardless of where they obtain their coverage, whether directly from an insurance company or through an employer, insurance market reforms must be broad in scope so that they apply to both individual health plans and group health plans of all sizes.
- Limiting reforms to a subset of the health insurance market—such as for individuals and small groups only—will allow discriminatory practices to continue, squandering an opportunity to ensure uniform and fair rules for all women with health insurance. These practices are wrong, regardless of the size of a covered group.
- If reforms were only limited to the small group market, it could have the effect of financially penalizing employers who grow their workforce *by a single employee* beyond the size limits of the small group market. Employers who lose the insurance protections offered by the small group market could face unfair and costly insurance practices related to the sex, age, or health claims history of their employees simply because they expanded their workforce by a single employee.

Health reform must include insurance market reforms that protect women from unfair and discriminatory industry practices regardless of where they obtain coverage.

¹ National Women’s Law Center, *Nowhere to Turn: How the Individual Health Insurance Market Fails Women* 10 (2008), <http://action.nwlc.org/site/DocServer/NowhereToTurn.pdf?docID=601>.

² *Ibid*

³ *Ibid*

⁴ Nat’l Ass’n of Health Underwriters, *Consumer Guide to Group Health Insurance* 1, <http://www.nahu.org/consumer/groupinsurance.cfm> (last visited July 16, 2008).

⁵ Henry J. Kaiser Family Foundation, *How Private Health Coverage Works: A Primer, 2008 Update* (Apr. 2008), <http://www.kff.org/insurance/upload/7766.pdf>.

⁶ 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.

⁷ 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

⁸ Alina Salganicoff et al., *Women and Health Care: A National Profile* (2005), The Henry J Kaiser Family Foundation, available at <http://www.kff.org/womenshealth/upload/Women-and-Health-Care-A-National-Profile-Key-Findings-from-the-Kaiser-Women-s-Health-Survey.pdf> (last visited May 12, 2008);

⁹ Elizabeth Patchias and Judy Waxman, *Women and Health Coverage: The Affordability Gap* (2007), National Women's Law Center. An issue brief prepared for the Commonwealth Fund, available at <http://www.nwlc.org/pdf/NWLCCommonwealthHealthInsuranceIssueBrief2007.pdf> (last visited May, 12 2008)

¹⁰ Kessler RC, Berglund P, Demler O, Jin R, Koretz D, Merikangas KR, Rush AJ, Walters EE, Wang PS. The epidemiology of major depressive disorder: results from the National Comorbidity Survey Replication (NCS-R). *Journal of the American Medical Association*, 2003; Jun 18;289(23):3095-105; U.S. DHHS. Information about Women's Health "Men's Health: Anxiety Disorders," available at: <http://www.4woman.gov/mens/mental/anxiety.cfm> (Last visited April 2, 2009).

¹¹ 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.

¹² Minnesota, Montana, New Hampshire, North Dakota, New York, Maine, Massachusetts, New Jersey, Oregon, and Washington protect against gender rating. See *Nowhere to Turn*, *supra* note 1, for statutory citations relevant to premium regulations.

¹³ National Women's Law Center, *Falling Short in Every State: The Wage Gap and Harsh Economic Realities for Women Persist* 5, <http://www.nwlc.org/pdf/FallingShort2009.pdf>

¹⁴ See Patchias & Waxman, *supra* note 9.

¹⁵ Maine, Massachusetts, New Jersey, New York, and Vermont have guaranteed issue requirements. See *Nowhere to Turn*, *supra* note 1 statutory citations relevant to guaranteed issue requirements.