TURNING TO FAIRNESS

Insurance discrimination against women today and the Affordable Care Act

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

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About the Center

The National Women's Law Center is a Washington, D.C., nonprofit organization working to expand opportunities and eliminate barriers for women and their families, with a major emphasis on women's health and reproductive rights, education and employment opportunities, and family economic security.

Authors

This Report was a collaborative endeavor that relied upon the work of many individuals. The primary author—Danielle Garrett—was greatly assisted by Marcia Greenberger, Judy Waxman, Anna Benyo, Kate Dickerson, Katherine Gallagher-Robbins, Rachel Moore, and Sarah Trumble. The report also relies heavily on work done by the authors of *Nowhere to Turn* (2008) and *Still Nowhere to Turn* (2009), Lisa Codispoti, Brigette Courtot, Julia Kaye, and Jen Swedish.

Disclaimer

While text, citations, and data are, to the best of the authors' knowledge, current as this report was prepared, there may well be subsequent developments, including recent legislative actions, that could alter the information provided herein. This report does not constitute legal advice; individuals and organizations considering legal action should consult with their own legal counsel before deciding on a course of action. In addition, this report does not constitute medical advice. Individuals with health problems should consult an appropriate health care provider.

March, 2012

Executive Summary

Women continue to face unfair and discriminatory practices when obtaining health insurance in the individual market—as well as in the group health insurance market. Women are charged more for health coverage simply because they are women, and individual market health plans often exclude coverage for services that only women need, like maternity care. Furthermore, insurance companies—despite being aware of these discriminatory practices—have not voluntarily taken steps to eliminate the inequities. While some states have outlawed or limited these practices, only when the Affordable Care Act is fully implemented in 2014 will they end nationally.

The National Women's Law Center's most recent research shows that:

- Gender rating, the practice of charging women different premiums than men, results in significantly higher rates charged to women throughout the country. In states that have not banned the practice, the vast majority, 92%, of best-selling plans gender rate, for example, charging 40-year-old women more than 40-year-old men for coverage. Only 3% of these plans cover maternity services.

- Based on an average of currently advertised premiums and the most recent data on the number of women in the individual health insurance market, the practice of gender rating costs women approximately $1 billion a year.

- There is such wide variation in differences women are charged both within and across states—even with maternity care excluded—that it is difficult to see how actuarial justifications could explain the difference. For example, one plan examined in Arkansas charges 25-year-old women 81% more than men for coverage while a similar plan in the same state only charges women 10% more for coverage than men.

- There is also wide variation in differences women are charged across insurance companies. For example, one insurance company charges 40-year-old women an average of 20% more than men for the same coverage while another company charges 40-year-old women an average of 50% more than men for the same coverage.

- Even with maternity coverage excluded, nearly a third of plans examined charge 25- and 40-year-old women at least 30% more than men for the same coverage and in some cases, the difference is far greater. For example, one company charged 25-year-old women 85% more than men for the same coverage, again excluding maternity coverage altogether. These differences result in women paying significantly more for health

insurance every year than their male counterparts. For example, one plan in South Dakota charges a 40-year-old woman $1252.80 more a year than a 40-year-old man for the same coverage.

- In most states, it is common for a female non-smoker to be charged more than a male smoker simply because she is a woman. For example, 56% of best-selling plans charge a 40-year-old woman who does not smoke more than a 40-year-old man who does smoke.

- Gender rating also occurs in the group market, where businesses with predominately female workforces are routinely charged more for group coverage.

- Maternity coverage is largely unavailable in the individual market. In states where it is not mandated, only 6% of the health plans available to a 30-year-old woman provide maternity coverage. Even when states that mandate maternity coverage are included in the calculation, the number only reaches 12%.

- Fourteen states have taken steps to ban or limit gender rating in the individual market. These states are California, Colorado, Maine, Massachusetts, Minnesota, Montana, New Hampshire, New Mexico, New Jersey, New York, North Dakota, Oregon, Vermont, and Washington.

- Seventeen states have laws banning or limiting gender rating for group health plans. These states are California, Colorado, Delaware, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington.

- Nine states require all insurers on the individual market to cover maternity care. These states are California (as of July 1, 2012), Colorado, Massachusetts, Montana, New Jersey, New York, Oregon, Vermont and Washington. An additional three states, Alabama, Georgia, and Illinois, require at least some plans on the individual market to provide maternity coverage.

- The Affordable Care Act applies nationally and eliminates gender rating in the individual market, requires all plans on the individual market to provide maternity coverage, and prohibits sex discrimination in health plans from insurance companies that receive federal funds or are conducted by the federal government.

Introduction

The National Women's Law Center (NWLC or the Center) has engaged in ongoing research on the difficulties women face obtaining health insurance on the individual and small group markets. In particular, women are routinely charged more for coverage than men while maternity coverage is generally excluded from individual market plans.[1] This new report demonstrates that little progress has been made since the Center first documented the problem. The overarching conclusion is that the outright discrimination and barriers based on sex largely remain in place and there is no sign that insurance companies have, on their own, taken steps to eliminate the inequities. The Affordable Care Act addresses these problems nationally, and removes these inequities by 2014 when the law is fully implemented.

Background

In the U.S., most non-elderly individuals get health insurance through their employer, while a smaller number are covered through public programs such as Medicaid. Individuals who do not have access to employer insurance and do not qualify for public programs generally must either purchase health coverage directly from an insurer on the individual market or be uninsured. There are a number of barriers to obtaining coverage on the individual market. For example, many companies will refuse to sell insurance to individuals with pre-existing conditions such as asthma or diabetes. Buying insurance on the individual market can also be unaffordable for many people. Most employers who offer coverage pay for at least a portion of their employees' premiums, but individuals who purchase coverage directly must cover the full cost of the monthly premiums themselves.

Women face even more hurdles to obtaining comprehensive coverage on the individual market and are often faced with outright discrimination when they purchase a plan. Two of the most egregious examples are the practice of charging women higher premiums than men (known as "gender rating") and the exclusion of maternity coverage from most individual market plans.

- **Gender rating**
  Except in states where the practice is prohibited,[2] insurance carriers routinely charge women and men different premiums for individually-purchased insurance under a practice known as gender rating. NWLC's research has consistently shown that the vast majority of insurance plans engage in this practice. Additionally, the difference in premiums charged to women and men varies to such a large degree across states and insurance companies, that it is difficult to point to actuarial justifications as the cause of much of the difference.

- **Exclusion of maternity care**
  Although most women with employer-based health insurance receive maternity benefits as a result of state and federal anti-discrimination protections, no such protection has generally existed in the individual insurance market. In this market, women face multiple challenges in obtaining comprehensive or affordable health insurance that covers maternity care. NWLC has consistently found the vast majority of individual market plans do not cover maternity care at all, while a limited number of insurers sell separate maternity coverage for an additional fee known as a "rider." Riders allow women to opt into maternity coverage by paying an additional monthly premium, but this supplemental coverage is often expensive or limited in scope.[3]

Federal anti-discrimination protections enacted prior to the Affordable Care Act have not eradicated these problems. While Title VII[4] prohibits employers covered by the statute from charging female employees higher premiums than male employees, the employer can be charged higher premiums by the insurance company if he or she employs more women than men, and a number of smaller employers are not covered by Title VII. In contrast to employer-issued insurance, the regulation of individual insurance has traditionally been a state responsibility[5] and the vast majority of states subject the individual market to few, if any, protections against sex discrimination. Additionally, Title VII and some state anti-discrimination laws require employer health plans to cover maternity care, but again, these laws do not reach all employer plans or plans in the individual market.[6]

Findings

The practice of gender rating is rampant in the individual market.

- **The vast majority of insurance companies charge women significantly more than men, even with maternity coverage excluded.**

  To assess the prevalence of gender rating among popular plans in the individual health insurance market, NWLC examined gender rating among best-selling plans on eHealthInsurance.com.

  As shown in Table 1, the Center found that in the capital cities of states that permit gender rating, 92% of best-selling plans charge 40-year-old women more than 40-year-old men for identical coverage. Gender rating is highly prevalent across and within states. In 31 states, *all* of the best-selling plans engage in this unfair practice. Moreover, of the best-selling plans that gender rate in 2012, only 3% include maternity coverage in the individual health insurance policy. Therefore, overall, maternity coverage does not account for the extra amount that women must pay.

- **Based on an average of currently advertised premiums and the most recent data on the number of women in the individual health insurance market, the practice of gender rating costs women approximately $1 billion in a year.[7]**

  There are approximately 7.5 million women who purchase health insurance in the individual market.[8] Every month, women who live in states that allow gender rating are made to pay higher premiums than men for the same coverage. Over time, this additional cost adds up. When average currently advertised premium prices are applied to the number of women who purchase individual insurance coverage, NWLC calculates that aggregately, women spend approximately $1 billion more for health coverage annually than they would if they were men, not counting any additional costs women must pay because of the exclusion of maternity benefits.

- **Such wide variations in the 'premium gender gap' exist, both within and across states, that any actuarial justification is highly questionable.**

  NWLC found substantial differences in rates charged among comparable plans across the country. To do so, the Center selected plans with a similar set of features (i.e., similar cost-sharing and deductibles) that did not include maternity coverage and calculated the difference in premiums—or the 'premium gender gap'—charged to women and men at ages 25, 40, and 55. As shown in Table 2, there are wide variations in the premium gaps charged to women and men for health plans with similar features, both within states and across the country. For example, one plan examined in Arkansas charges 25-year-old women 81% more than men for coverage while a similar plan in the same state only charges women 10% more for coverage than men.

NWLC found that significant differences in the premium gender gap also exist across insurance companies. For example, one insurance company examined charges 40-year-old women an average of 20% more than men for the same coverage while another company charges women an average of 50% more than men for the same coverage.[9]

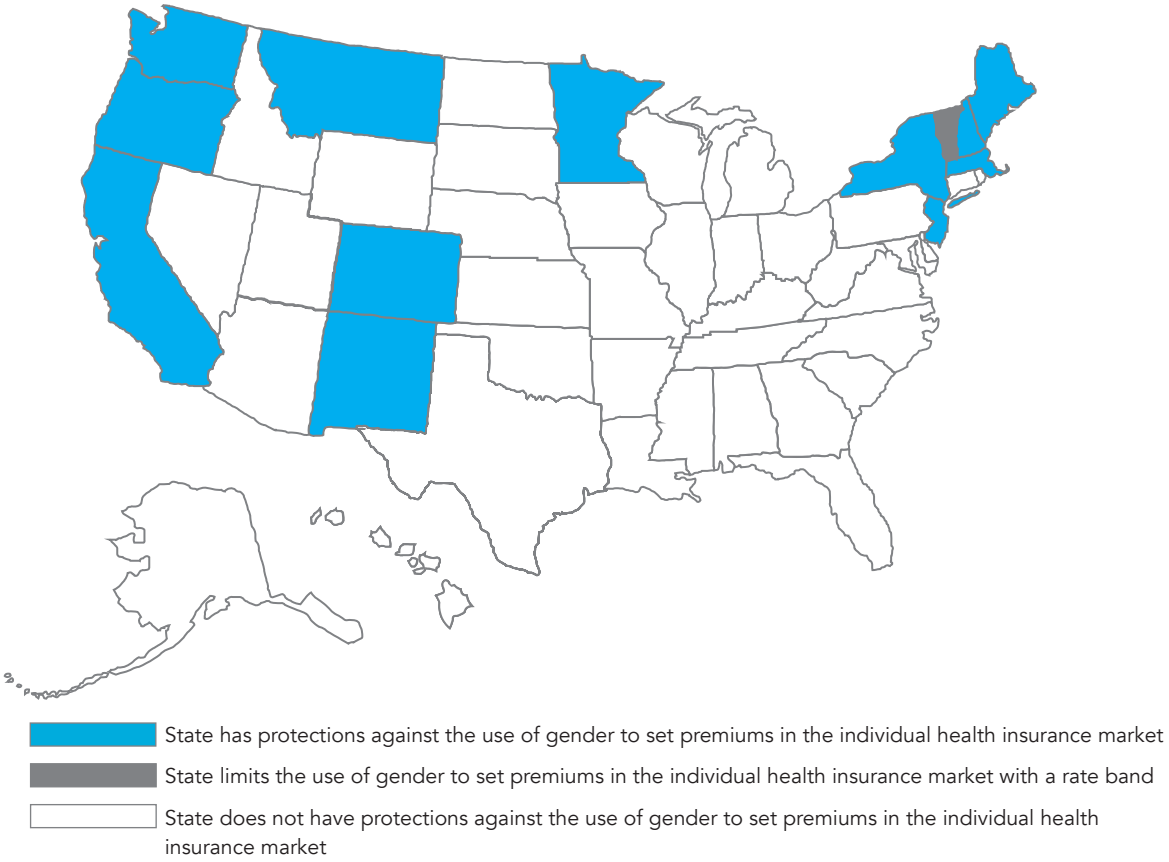
Such wide variations in plans with very similar features suggest that it is not merely actuarial considerations driving the price differences.

- **Women are routinely charged premium prices that are significantly higher than the premiums charged to men.** Although the gender premium gap varies widely among states and plans, the fact that women are charged significantly more remains routine. Even with maternity coverage excluded, nearly a third of plans examined charged 25 and 40-year-old women at least 30% more than men for the same coverage and in some cases, the difference is far greater. For example, one company charged 25 year old women 85% more than men for the same coverage, again excluding maternity coverage (see table 2). Additionally, these differences result in women paying significantly more for health insurance every year than their male counterparts. For example, one plan in South Dakota charges a 40-year-old woman $1252.80 more a year than a 40-year-old man for the same coverage, excluding maternity care (see table 3).

- **Insurance companies charge non-smoking women more than male smokers.** NWLC performed additional analyses to determine the premium differentials between 40-year-old women non-smokers and 40-year-old men who report tobacco usage within the past 12 months. As Table 1 demonstrates, NWLC found that even when compared to male smokers, most individual health plans still charge a non-smoking woman more for coverage.[10] In the capital cities of states that permit gender rating, 56% of best-selling plans charge a 40-year-old non-smoking woman a higher rate than they charge a 40-year-old male who reports recent tobacco usage.

- **Only thirteen states have banned gender rating, and one additional state has put limits on the practice.** Some states have taken steps to end the discriminatory practice of gender rating in the individual market, but the vast majority of states still allow this practice to continue. NWLC analyzed current state laws and found that only 13 states have banned gender rating in the individual market.[11] One state, Vermont, has instituted rate "bands," which set limits on the amount an insurer can vary premiums based on sex.

States protecting against the use of gender to set premiums in the individual health insurance market



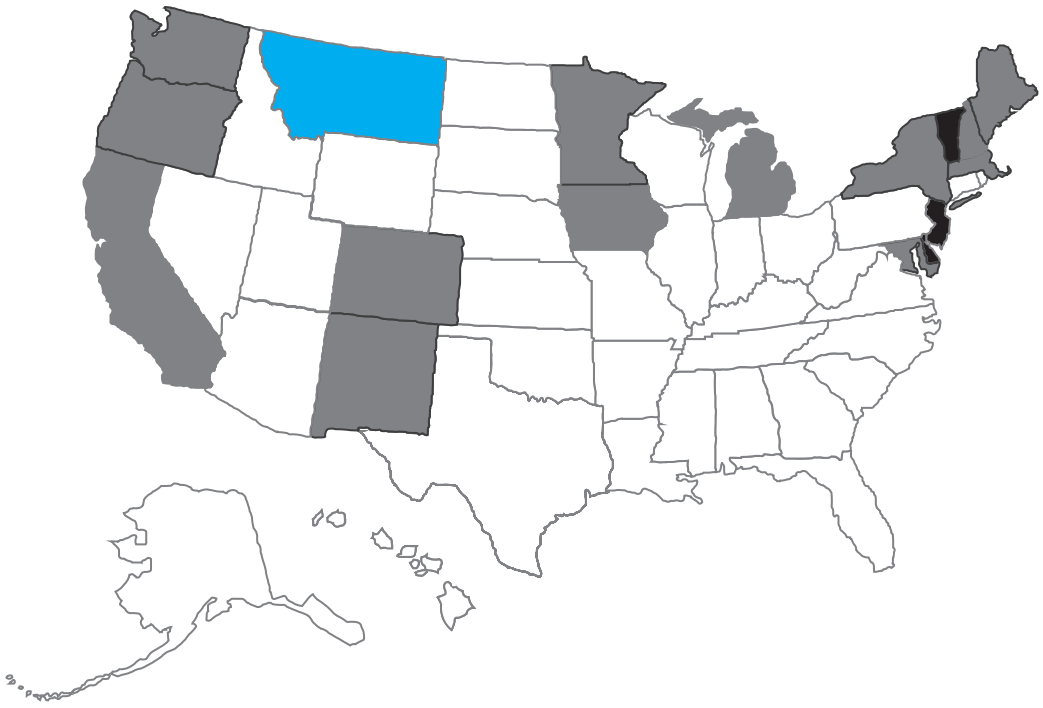
Gender rating also occurs in the group market.

- **Businesses with a predominantly female workforce often pay more for coverage.**
  The practice of gender rating also occurs in the group health insurance market where employers often obtain coverage for their employees.[12] Insurers in the group market use gender rating when deciding how much to charge a group for its health insurance policy. Under this practice, insurers determine premiums based on the number of women a business employs, so that businesses with predominantly female workforces pay significantly more for coverage. While the employer cannot charge its individual male and female employees different rates for coverage because of laws that prohibit sex discrimination in employment,[13] there is no similar legal protection to prevent an insurance company from charging the employer or other groups different rates based on the gender of the group members.[14]

Businesses with a predominately female workforce experience the effects of gender rating most acutely. Women account for the majority of employees in a wide range of industries. Home health care and child care businesses, for instance, are majority-female (90% and 95%, respectively).[15] More than three-quarters of people employed by hospitals and physician's offices are women, as are an estimated 81% of the employees in dentists' offices.[16] Women dominate the workforces of pharmacies and drug stores (66%), retail florists (71%), and community service organizations (70%).[17] Over two-thirds of employees in the nonprofit industry are women.[18]

- **Few states have protections against gender rating in the group health insurance market.**
  Thirteen states have banned gender rating in the small group market, either through community rating provisions (which require an insurer to charge the same premium for

States protecting against the use of gender to set premiums in the group health insurance market



State prohibits the use of gender to set premiums for health insurance groups of all sizes

State prohibits the use of gender to set premiums for health insurance for small groups

State imposes a rate band to limit the use of gender to set premiums for health insurance for small groups

State does not have protections against the use of gender to set premiums in the small group health insurance market

all small groups with the same coverage, regardless of the gender, age, health status, or occupation of members) or by specifically prohibiting insurers from considering gender when setting health insurance rates in the small group market. These states are: California, Colorado, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, New York, Oregon, and Washington. Three states limit the extent to which insurers may use gender rating to determine premiums for small groups, by using a rate band to set limits between the lowest and highest premium that a health insurer may charge for the same coverage based on gender. These states are: Delaware, New Jersey, and Vermont. Only one state—Montana—prohibits insurers from using gender as a rating factor in any type of insurance policy issued within the state.

The majority of individual market plans do not cover maternity care.

- **Six percent of plans include coverage for maternity services.**
  Maternity coverage continues to be largely unavailable in the individual health insurance market. NWLC examined over 3,300 individual health insurance policies offered to 30-year-old women living in capital cities across the country and found that only 6% of plans include coverage of maternity services in states where it is not mandated.[19] When states that mandate coverage of maternity services are included in the calculation, the number rises to 12%. Even among those plans that do cover maternity services however, the coverage is not always comprehensive or affordable. For example, several plans examined charge a separate maternity deductible that is as high as $10,000 and some plans have waiting periods of up to a year before maternity coverage can be used.

  As shown in Table 4, in the capital cities of 25 states, there were no insurance plans available through eHealthInsurance.com that included maternity care.

- **Maternity riders were available in 7% of plans, but usually at a prohibitively expensive rate, and with limited coverage.**
  Maternity riders as a supplement to individual insurance policies are available in the capital city of 21 states. In 14 of those cities, a rider was the only type of maternity coverage offered by the leading online provider. Even when a maternity rider is offered, the additional cost can be prohibitively expensive; a rider may cost far more than the monthly premium for the health insurance policy. For instance, a plan in Kansas offers a rider that costs over $1600 a month, while even the most expensive best-selling plan for overall coverage in the state only costs $222.76 a month.

  In addition to their prohibitive cost, maternity riders may include a waiting period (one or two years, for example) before the coverage even takes effect[20] and the actual benefits provided through riders are often limited in scope.[21]

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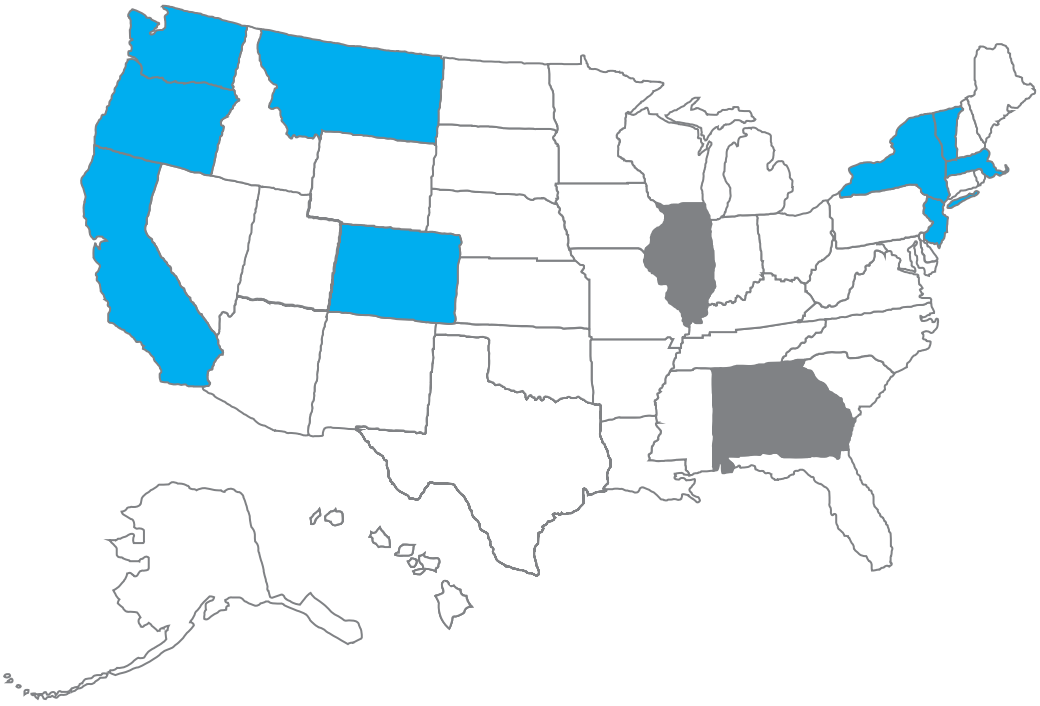
States that require individual market health plans to cover maternity services



State requires all individual market health plans to cover maternity services

State requires certain individual market health plans to cover maternity services

State does not require individual market health plans to cover maternity services

- **Few states require insurers to cover maternity care.**
  Only 9 states require all insurers on the individual market to cover maternity care. These states are California (as of July 2012), Colorado, Massachusetts, Montana, New Jersey, New York, Oregon, Vermont, and Washington. An additional three states, Alabama, Georgia, and Illinois require at least some plans on the individual market to cover maternity care.

The prevalence of gender rating and number of plans offering maternity coverage has remained steady over the last four years.

- The percentage of best-selling plans that practice gender rating has remained largely consistent over the last four years. In 2008, 93% of plans practiced gender rating. This number rose to 95% in 2009 and dropped only slightly, down to 92% in 2012.

- It is still common for plans to charge non-smoking women higher premiums than male smokers. In 2009, 60% of best-selling plans charged a 40-year-old woman who doesn't smoke more than a 40-year-old man who does. Now, 56% of plans examined still continue this practice in 2012.

- Maternity coverage remains largely unavailable in the individual market, with virtually no improvement in access. Only 12% of total plans examined covered maternity care in 2012 compared to 13% in 2009 and 12% in 2008.

- A few additional states have implemented protections against gender rating since the report was last published in 2009, but as the data shows, it is not enough to make a significant difference in the percentage of plans that practice gender rating. Since 2009, California, Colorado, and New Mexico have banned gender rating in the individual market and New Mexico also banned gender rating in the small group market.

- Since the report was last published in 2009, California and Colorado have passed laws requiring all individual market insurance plans to cover maternity services, but the California law does not go into effect until July of 2012.

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The effect of the Affordable Care Act

The Affordable Care Act, signed into law in 2010, contains specific provisions that eliminate gender rating and the exclusion of maternity coverage, and that apply nationwide.

- **Non-discrimination provisions**
  Congress adopted important non-discrimination protections in the health care law that prohibit discrimination on a number of bases, including sex. Section 1557 of the Affordable Care Act prohibits discrimination in health programs receiving federal dollars, including insurance, and other programs conducted by the federal government, including the health insurance exchanges.[22]

- **Explicit limits on gender rating**
  Individual and small group health plans are specifically precluded from using gender to determine premiums.[23] This provision takes effect for all new plans for plan years beginning no later than January 1, 2014. The Affordable Care Act defines the small group market as businesses with 100 or fewer employees, although states can choose to define small employers as employers with 50 or fewer employees until 2016.[24,25]

- **Explicit requirement to cover maternity care**
  Starting in 2014, all plans sold inside the health insurance exchanges and all new plans sold outside of the exchanges will be explicitly required to cover a specific set of services known as the Essential Health Benefits. These benefits include maternity and newborn care as well as ambulatory patient services; emergency services; hospitalization; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services (including contraception), and chronic disease management; and pediatric services, including oral and vision care.[26] All of these categories have important implications for women's health. The inclusion of maternity services will have a major impact given the large number of plans that do not currently cover such services.

Conclusion

Without changes in the law and the implementation and enforcement of the Affordable Care Act, women will continue to face unfair and discriminatory practices in the health insurance system, in both the individual and the group health insurance markets. The health insurance inequities documented by NWLC have remained over the last four years, and insurance companies have shown little sign that they will end these inequities on their own. Women are charged more for coverage simply because they are women at the same time that insurers exclude coverage for services that only women need, like maternity care.

The Affordable Care Act includes several provisions aimed at ending the inequities examined in this report, including non-discrimination provisions, bans on gender rating, and an explicit requirement that plans cover maternity services.

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Tables and methodology

Methodology

While gender rating does occur in the group market, data for these plans is largely unavailable to the public and thus much more difficult to analyze systematically. Through eHealthInsurance.com, NWLC was able to access the prices and plan details for a large number of individual market plans, allowing for a robust analysis. The methodology and tables below, therefore apply to individual market plans.

As in 2008 and 2009, NWLC created two study scenarios to examine the practice of gender rating. For the first, NWLC calculated the difference in premiums (or the 'premium gender gap') charged to hypothetical 40-year-old, healthy, non-smoking male and female applicants living in the state's capital city among each of the individual insurance plans identified as "best-selling" in the 48 states and D.C where coverage was offered through eHealthInsurance.com. NWLC additionally calculated the difference in premiums charged to a hypothetical 40-year-old male reporting tobacco usage during the previous 12 months as compared to a hypothetical 40-year-old female who identifies as a non-smoker, among best-selling plans. These findings are reflected in Table 1.

For the second gender rating study scenario, NWLC submitted information to eHealthInsurance.com for three hypothetical female applicants and three hypothetical male applicants at ages 25, 40 and 55 living in the 48 states and D.C where coverage was offered through eHealthInsurance.com. Applicants were listed as healthy non-smokers living in the state's capital city. Where available, two plans with comparable cost-sharing requirements and coverage (both of which excluded maternity coverage) were sampled in each state and D.C. For each plan, at the three ages listed above, the Center calculated the 'premium gender gap'—the difference in premiums charged to female and male applicants of the same age and health status. These findings are reflected in Table 2. NWLC used the same plans to calculate the annual dollar difference in premiums charged to 40-year-old women and men. These findings are reflected in table 3.

To determine the availability of maternity care coverage, NWLC examined all of the individual health insurance plans available to a healthy, non-smoking 30-year-old woman living in the capital city in the 48 states and D.C where coverage was offered through eHealthInsurance.com (a total of 3,331 plans). These findings are reflected in Table 4.

To determine the aggregate cost of gender rating, NWLC used U.S. Census data to find the number of women in each state who obtain health insurance coverage on the individual market. The data was then broken down into age groups (18-24, 25-34, 35-44, 45-54, 55-59, and 60-64). NWLC then used eHealthInsurance.com to find the average high and average low premium price for plans available beginning March 15th, 2012 in each age group in each state where plans were available. These numbers were then applied to the total number of women in that state and age group to find a range of aggregate costs. This range is between $845 million and $1.1 billion.

Notably, eHealthInsurance.com 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 180 health insurance companies in 50 states and D.C. and offering more than 10,000 health insurance products online. Because eHealthInsurance.com was the data source used in *Nowhere to Turn* (2008) and *Still Nowhere to Turn* (2009), NWLC used the site for this study to maintain consistency. NWLC does not guarantee the accuracy of the prices quoted.

Finally, for all 50 states and D.C., NWLC examined statutes and regulations relating to the individual and small group insurance market to determine whether the states and D.C. place any limitations on premium rating based on gender or require the coverage of maternity care.

Table 1. Prevalence of gender rating in best-selling plans[a] and difference in the premiums charged to 40-year-old non-smoking women and men in states' best-selling plans in the individual insurance market

State	Best Selling Plans that Practice Gender Rating (%)	Best-Selling Plans that Charge Non-Smoking Women More than Male Smokers (%)	Range in Percentage Difference in Premiums Between 40-Year-Old Woman and Men, Among Plans that Gender Rate	
			Minimum	*Maximum*
Alabama	100	40	21	53
Alaska	100	100	10	32
Arizona	100	40	10	31
Arkansas	100	60	21	55
California		Gender Rating Prohibited		
Colorado		Gender Rating Prohibited		
Connecticut	100	60	14	33
DC	40	40	26	32
Delaware	60	40	14	32
Florida	100	30	21	53
Georgia	100	100	30	38
Hawaii	100	100	23	23
Idaho	100	100	43	46
Illinois	100	50	16	55
Indiana	100	60	20	54
Iowa	100	80	20	43
Kansas	100	50	22	51
Kentucky	100	20	22	57
Louisiana	100	70	22	37
Maine[b]		N/A (and Gender Rating Prohibited)		
Maryland	70	30	21	39
Massachusetts		Gender Rating Prohibited		
Michigan	83	50	20	32
Minnesota		Gender Rating Prohibited		
Mississippi	100	40	20	22
Missouri	100	60	20	31
Montana		Gender Rating Prohibited		
Nebraska	100	20	15	53
Nevada	100	90	23	45
New Hampshire		Gender Rating Prohibited		
New Jersey[c]	80	80	36	47
New Mexico[d]	100	60	2	10
New York		Gender Rating Prohibited		
North Carolina	100	70	7	47
North Dakota[e]	20	0	25	25
Ohio	100	60	20	50
Oklahoma	100	20	20	48
Oregon		Gender Rating Prohibited		
Pennsylvania	100	80	20	47
Rhode Island[b]		N/A		
South Carolina	100	50	21	53
South Dakota	100	80	15	48
Tennessee	100	10	21	44
Texas	100	80	22	56
Utah	33	33	15	15
Vermont		Gender Rating Limited		
Virginia	100	80	21	35
Washington		Gender Rating Prohibited		
West Virginia	100	70	20	34
Wisconsin	90	40	22	42
Wyoming	100	50	14	41

Table 1 notes and methodology

a. "Best-selling" status is assigned by eHealthInsurance.com, based on the number of applications submitted through its website and approved by the insurance company during the most recent calendar quarter.
b. Individual rate quotes were not available for Maine or Rhode Island through eHealthInsurance.com.
c. Although gender rating is prohibited in New Jersey, the best-selling plans available on eHealthInsurance.com include bare-bones basic and essential plans, which are exempted from the state's prohibition on gender rating.
d. Gender rating in New Mexico is currently limited by a rate band. In March of 2010, New Mexico outlawed gender rating entirely, but the law does not go into effect until 2014.
e. Despite the statutory prohibition on gender rating in North Dakota, one company offering individual policies through eHealthInsurance.com does use gender as a rating factor. In an attempt to understand this seeming inconsistency, NWLC contacted the North Dakota Insurance Department, which indicated that this company is a "hybrid situation" and thus permitted to rate its individual policies as if they were sold on the group market; gender rating is allowed within limit for groups in North Dakota.
f. In Vermont, gender rating is limited by a rate ban.

The data in Table 1 were gathered through eHealthInsurance.com from its website (http://www.ehealthinsurance.com). NWLC submitted information for a hypothetical female applicant and two hypothetical male applicants at age 40 in 50 states and D.C., using a coverage start date of March 1, 2012. For the female applicant and one of the two hypothetical male applicants, NWLC did not report any tobacco usage within the last twelve months; for the second male applicant, the Center did report tobacco usage within the last twelve months. All applications were listed as 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 48 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 when both the male and female applicants identify as non-smokers, and how many plans charge female applicants higher premiums than male applicants of the same age when the male applicants report recent tobacco usage.

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

Table 2. Percent difference in premiums charged to women versus men (the 'premium gender gap') for similar health plans in the individual insurance market (two similar sets of plans called Plan A and Plan B)

State	Plan	Gender Gap 25-Year-Olds	40 Year Olds	55 Year Olds
Alabama	A	10%	20%	-1%
	B	26%	52%	6%
Alaska	A	10%	20%	-1%
	B	29%	22%	-8%
Arizona	A	10%	20%	-1%
	B	25%	51%	6%
Arkansas	A	81%	49%	9%
	B	10%	20%	-1%
California		**Gender rating prohibited**		
Colorado		**Gender rating prohibited**		
Connecticut	A	31%	13%	4%
	B	10%	20%	-1%
DC	A	0%	0%	0%
	B	10%	20%	-1%
Delaware	A	10%	20%	-1%
	B	0%	0%	0%
Florida	A	10%	20%	-1%
	B	26%	52%	6%
Georgia	A	10%	20%	-1%
	B	41%	33%	10%
Hawaii	A	35%	23%	2%
	B	35%	23%	2%
Idaho	A	29%	43%	5%
	B	20%	38%	7%
Illinois	A	31%	16%	-14%
	B	10%	20%	-1%
Indiana	A	49%	50%	6%
	B	10%	20%	-1%
Iowa	A	10%	20%	-1%
	B	50%	43%	15%
Kansas	A	11%	51%	6%
	B	68%	37%	-9%
Kentucky	A	37%	15%	6%
	B	17%	53%	6%
Louisiana	A	16%	15%	6%
	B	39%	36%	-11%
Maine[a]		**N/A (and gender rating prohibited)**		
Maryland	A	29%	22%	-8%
	B	28%	22%	-8%
Massachusetts		**Gender rating prohibited**		
Michigan	A	29%	22%	-8%
	B	28%	21%	-8%
Minnesota		**Gender rating prohibited**		
Mississippi	A	29%	21%	-8%
	B	26%	22%	-8%
Missouri	A	28%	29%	4%
	B	28%	25%	5%

State	Plan	Gender Gap 25-Year-Olds	40 Year Olds	55 Year Olds
Montana		**Gender rating prohibited**		
Nebraska	A	22%	46%	-8%
	B	42%	45%	3%
Nevada	A	30%	14%	-11%
	B	17%	48%	3%
New Hampshire		**Gender rating prohibited**		
New Jersey		**Gender rating prohibited**		
New Mexico[b]	A	10%	20%	-1%
	B	12%	15%	1%
North Carolina	A	16%	14%	-11%
	B	22%	22%	3%
North Dakota[c]	A	0%	0%	NA
	B	42%	23%	NA
Ohio	A	43%	22%	21%
	B	28%	49%	-3%
Oklahoma	A	0%	32%	-3%
	B	29%	22%	13%
Oregon		**Gender rating prohibited**		
Pennsylvania	A	50%	46%	2%
	B	69%	41%	9%
Rhode Island[a]		N/A		
South Carolina	A	45%	42%	20%
	B	29%	22%	-3%
South Dakota	A	11%	16%	-5%
	B	71%	37%	21%
Tennessee	A	28%	21%	-3%
	B	21%	47%	7%
Texas	A	29%	22%	-3%
	B	10%	20%	2%
Utah	A	0%	0%	0%
	B	0%	0%	0%
Vermont[d]		**N/A (and gender rating limited)**		
Virginia	A	14%	32%	-2%
	B	57%	26%	-4%
Washington		**Gender rating prohibited**		
West Virginia	A	28%	22%	-8%
	B	10%	21%	28%
Wisconsin	A	22%	22%	-8%
	B	34%	30%	-8%
Wyoming	A	85%	41%	1%
	B	30%	22%	-8%

Table 2 and table 3 notes and methodology

a. Individual rate quotes were not available for Maine or Rhode Island through eHealthInsurance.com
b. Gender rating in New Mexico is currently limited by a rate band. In March of 2010, New Mexico outlawed gender rating entirely, but the law does not go into effect until 2014.
c. Despite the statutory prohibition on gender rating in North Dakota, one company offering individual policies through eHealthInsurance.com does use gender as a rating factor. In an attempt to understand this seeming inconsistency, NWLC contacted the North Dakota Insurance Department, which indicated that this company is a "hybrid situation" and thus permitted to rate its individual policies as if they were sold on the group market; gender rating is allowed within limit for groups in North Dakota.
d. In Vermont, gender rating is limited by a rate ban.

The data in Table 2 were gathered through eHealthInsurance.com from its website (http://www.ehealthinsurance.com). NWLC submitted information for three hypothetical female applicants (ages 25, 40, and 55) and three hypothetical male applicants (ages 25, 40, and 55) in 50 states and D.C., using a coverage start date of March 1, 2012. 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). In the 48 states and D.C. in which coverage was available through eHealthInsurance.com, NWLC then selected for each age group two distinct individual insurance plans—"Plan A" and "Plan B"—with similar features, including a $2,500 deductible, a 0% coinsurance rate, inclusion of prescription drug coverage, and exclusion of maternity coverage. For both "Plan A" and "Plan B" NWLC obtained quotes for monthly premiums charged to a woman and to a man. NWLC then calculated the premium gender gap—the difference in the premiums charged to a woman versus a man for the same exact health plan, represented as a percentage of the man's premium. This calculation was carried out for men/women at ages 25, 40, and 55, for both "Plan A" and "Plan B."

For Table 3, NWLC used the same data gathered for Table 2 and calculated the annual dollar difference in premiums charged to 40-year-old women and men.

In some cases, NWLC could not identify a plan with all of the features desired for this analysis (such as a deductible of $2,500, a 0% coinsurance rate, inclusion of prescription drug coverage, and exclusion of maternity coverage). In these instances, an alternative plan was selected for inclusion in the analysis. Specifically:

- Health plans in Hawaii, Idaho, and New Mexico have deductibles other than $2,500.
- Health plans in Hawaii, North Dakota, Utah, and Wyoming have coinsurance rates other than 0%.
- There were no similar plans to compare for all age groups in Vermont and for 55 year old women in North Dakota.

Table 3. Difference in annual premiums charged to 40-year-old women versus 40-year-old men for similar health plans in the individual insurance market

State	Plan	Annual Difference (in dollars)
Alabama	A	828.60
	B	989.52
Alaska	A	960.24
	B	1,045.56
Arizona	A	571.92
	B	954.96
Arkansas	A	471.48
	B	544.08
California	**Gender rating prohibited**	
Colorado	**Gender rating prohibited**	
Connecticut	A	392.16
	B	705.96
DC	A	588.96
	B	0.00
Delaware	A	0.00
	B	802.32
Florida	A	598.92
	B	1,141.32
Georgia	A	649.92
	B	564.00
Hawaii	A	538.68
	B	632.04
Idaho	A	721.56
	B	684.00
Illinois	A	391.20
	B	387.60
Indiana	A	976.20
	B	621.96
Iowa	A	554.52
	B	531.12
Kansas	A	552.60
	B	1,033.08
Kentucky	A	290.28
	B	785.64
Louisiana	A	393.72
	B	796.68
Maine[a]	**N/A (and gender rating prohibited)**	
Maryland	A	383.52
	B	489.12
Massachusetts	**Gender rating prohibited**	
Michigan	A	349.92
	B	342.72
Minnesota	**Gender rating prohibited**	
Mississippi	A	489.36
	B	499.68
Missouri	A	553.20
	B	655.56
Montana	Gender rating prohibited	
Nebraska	A	772.92
	B	658.32
Nevada	A	293.88
	B	951.72
New Hampshire	**Gender rating prohibited**	
New Jersey	**Gender rating prohibited**	
New Mexico[b]	A	333.24
	B	231.00
New York	**Gender rating prohibited**	
North Carolina	A	410.16
	B	826.44
North Dakota[c]	A	0.00
	B	514.80
Ohio	A	371.04
	B	669.00
Oklahoma	A	726.48
	B	445.32
Oregon	**Gender rating prohibited**	
Pennsylvania	A	631.56
	B	616.92
Rhode Island[a]	**N/A**	
South Carolina	A	816.72
	B	583.68
South Dakota	A	409.68
	B	1,252.80
Tennessee	A	432.60
	B	863.16
Texas	A	558.12
	B	646.44
Utah	A	0.00
	B	0.00
Vermont[d]	**N/A (and gender rating limited)**	
Virginia	A	648.00
	B	316.08
Washington	**Gender rating prohibited**	
West Virginia	A	489.00
	B	478.80
Wisconsin	A	471.60
	B	533.28
Wyoming	A	1,131.60
	B	731.88

Table 4: Maternity coverage available to a 30-year-old woman in the individual insurance market, by state

State	Total Number of Plans Available	Plans with Maternity Coverage	Percentage of Plans with Maternity Coverage	Rider Availability	
				Plans that Offer riders	Rider Costs (per month)
Alabama[e]	48	0	0	0	
Alaska	30	0	0	0	
Arizona	120	2	1.7	0	
Arkansas	65	0	0	28	$15.00 - $255.95
California[d]	94	13	13.8	0	
Colorado[b]	97	97	100.0	0	
Connecticut	75	0	0	0	
DC	50	10	20.0	18	$126
Delaware	65	0	0	0	
Florida	78	0	0	1	$103.00 - $204.00
Georgia[e]	120	0	0	9	$157.59-294.18
Hawaii			N/A		
Idaho	44	30	68.2	0	
Illinoise	113	1	0.9	11	$96.72 -$270.01
Indiana	79	0	0	1	$99.09
Iowa	85	4	4.7	3	$74.50
Kansas	79	0	0	19	$390.00 - $1614.46
Kentucky	48	0	0	3	$50.32 - $59.68
Louisiana	96	0	0	7	$74.01 - $303.59
Maine[a]			N/A		
Maryland	81	28	34.6	9	$126
Massachusetts[b]	12	12	100.0	0	
Michigan	115	4	3.5	12	$210.26 - $670.00
Minnesota	51	20	39.2	0	
Mississippi	48	0	0	0	
Missouri	95	0	0	4	$66.31 - $91.76
Montana[b]	19	19	100.0	0	
Nebraska	92	0	0	8	$40.71 - $80.82
Nevada	58	0	0	0	
New Hampshire	16	0	0	16	$457.44 - $965.14
New Jersey[C]	17	14	82.4	0	
New Mexico	36	0	0	0	
New Yorke	7	6	85.7	0	
North Carolina	75	0	0	0	
North Dakota	41	6	14.6	0	
Ohio	104	0	0	3	$87.83 - $119.92
Oklahoma	90	0	0	0	
Oregon[b]	77	77	100.0	0	
Pennsylvania	94	7	7.4	11	$28
Rhode Island[a]			N/A		
South Carolina	100	0	0	0	
South Dakota	42	6	14.3	0	
Tennessee	107	0	0	16	$101.35 - $228.20
Texas	118	0	0	0	
Utah	56	28	50.0	0	
Vermont[b]	5	5	100.0	0	
Virginia	84	0	0	11	$71.00 - $295.74
Washington[C]	39	8	20.5	0	
West Virginia	66	1	1.5	8	$126.09 - $295.74
Wisconsin	130	0	0	28	$61.03 - $297.00
Wyoming	70	18	25.7	0	
Total	**3331**	**416**	**12**	**226**	**$15.00 - $1614.46**

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Table 4 notes and methodology

a. Individual policies were not available for Maine or Rhode Island through eHealthInsurance.com.
b. The state requires that all insurers in the individual health insurance market cover maternity.
c. Though the state requires that all insurers in the individual health insurance market cover maternity, the mandates exempt bare-bones individual insurance policies, which are included among the plans available through eHealthInsurance.com. Therefore, not all plans in these states include maternity coverage.
d. California recently passed a law requiring insurers in the individual health insurance market to cover maternity but the law does not go into effect until July 1, 2012.
e. The state requires that certain types of insurance plans, for example managed care organizations, cover maternity.

The data in Table 4 were gathered through eHealthInsurance.com from its website (http://www.ehealthinsurance.com). For 50 states and D.C., NWLC submitted information for a hypothetical 30-year-old female applicant, listing a coverage start date of March 1, 2012. The applicant was listed as healthy non-smoker 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 48 states and D.C. where coverage was offered on eHealthInsurance.com, NWLC calculated the total number of plans in the state's capital city for which eHealthInsurance.com's 'maternity icon' indicated that such benefits were covered within the health insurance policy. Health plans that offer 'maternity riders' at additional cost are generally not designated as plans that provide maternity care (i.e. the maternity icon is not displayed) and so are not included in the estimate of plans that cover maternity care. NWLC conducted a separate analysis to determine how many of the plans offered an optional maternity rider and how much those riders cost.

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Endnotes

1 The center previously reported its research on this issue in two reports: Lisa Codispoti, Brigette Courtot, and Jen Swedish, National Women's Law Center, *Nowhere to Turn: How the Individual Health Insurance Market Fails Women* (2008); Brigette Courtot and Julia Kaye, National Women's Law Center, *Still Nowhere to Turn: Insurance Companies Treat Women Like a Pre-Existing Condition* (2009).

2 See "Findings" section for list of states that prohibit gender rating.

3 Lisa Codispoti, Brigette Courtot, and Jen Swedish, National Women's Law Center, *Nowhere to Turn: How the Individual Health Insurance Market Fails Women* (2008)

4 42 U.S.C. § 2000e-2(a)(1) (2008) (Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin"). See also U.S. Equal Employment Opportunity Comm'n, *Directives Transmittal No. 915.003 EEOC Compliance Manual Chapter 3: Employee Benefits* (Oct. 3, 2000), http://www.eeoc.gov/policy/docs/benefits.html ("health insurance benefits must be provided without regard to the race, color, sex, national origin, or religion of the insured. An employer must non-discriminatorily provide to all similarly situated employees the same opportunity to enroll in any health plans it offers. An employer must also ensure that the terms of its health benefits are non-discriminatory.").

5 McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (2008).

6 State and federal anti-discrimination protections ensure that most employer-sponsored insurance covers maternity expenses. The Pregnancy Discrimination Act of 1978 amended Title VII to specify that discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Under the Pregnancy Discrimination Act, any health insurance provided by an employer with 15 or more employees must cover pregnancy on the same basis as other medical conditions. Correspondingly, the fair employment laws in almost all states consider discrimination based on pregnancy to be sex discrimination, and the majority of these laws apply to employers that are too small to be covered by Title VII. As a result of state and federal anti-discrimination protections, most women with job-based health insurance receive maternity benefits.

7 This analysis is based on the current number of women who purchase insurance in the individual market according to an NWLC analysis of 2011 Census Data and premium prices as advertised on eHealthinsurance.com for plans beginning on March 15, 2012. For more information, please see the methodology section.

8 National Women's Law Center analysis of 2010 health insurance data from the U.S. Census Bureau Current Population Survey's (CPS) 2011 Annual Social and Economic (ASEC) Supplements, available at http://www.census.gov/hhes/www/cpstc/cps_table_creator.html.

9 Analysis is based on the same methodology used in Table 2 (see Appendix Table 2). Rather than organize the data by state as it is presented in the Table, NWLC calculated averages based on insurance company.

10 Analyses only includes data for 39 states and the District of Columbia where gender rating is not entirely prohibited (with the exception of North Dakota and New Jersey, where some plans are allowed to use gender rating despite state laws that ban the practice) and individual health policies are offered through eHealthInsurance.com

11 Gender rating in New Mexico is currently limited by a rate band. In March of 2012, New Mexico outlawed gender rating entirely, but the law does not go into effect until 2014.

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

13 *Supra* note 4.

14 Nor were there any prohibition on sex discrimination in health care more generally, until §1557 of the Affordable Care Act was enacted.

15 U.S. Bureau of Labor Statistics, *Women in the Labor Force: A Data Book, 2011Edition* (2011), http://www.bls.gov/cps/wlf-databook-2011.pdf

16 *Ibid.*

17 *Ibid.*

18 Jasmine McGinnis, Georgia State University and Georgia Institute of Technology, *The Young and Restless: Generation Y in the Nonprofit Workforce* (Working Paper, 2009), http://www.utexas.edu/lbj/rgk/fellowship/2009papers/McGinnis.pdf

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19 In 2008 and 2009, the Law Center did not exclude states that mandate maternity coverage from the calculation.

20 Karen Pollitz et al., Kaiser Family Foundation, *Maternity Care and Consumer-Driven Health Plans* 12 (2007), http://www.kff.org/womenshealth/upload/7636.pdf.

21 *Supra* Note 3.

22 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1557 (2010), *amended by* Health Care and Education Affordability and Reconciliation Act, Pub. L. No. 111-152 (2010) (to be codified at 42 U.S.C. § 18116).

23 Premiums in the small group and individual markets may only vary by age (insurers can charge the oldest person a maximum of 3 times more than the youngest), tobacco use (smokers can be charged a maximum of 1.5 times more than nonsmokers), geography, and whether the coverage is for an individual or a family.

24 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1304(b), *amended by* Health Care and Education Affordability and Reconciliation Act, Pub. L. No. 111-152 (2010) (to be codified at 42 U.S.C. § 18024).

25 In 2017, states may allow large groups (defined as over 100 employees) to buy coverage in the Exchanges. If a state chooses to allow large employers into their state health insurance Exchange, these employers will also have to abide by the new rating rules; Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1312(f)(2)(B), *amended by* Health Care and Education Affordability and Reconciliation Act, Pub. L. No. 111-152 (2010) (to be codified at 42 U.S.C. § 18032).

26 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1302(b)(1), *amended by* Health Care and Education Affordability and Reconciliation Act, Pub. L. No. 111-152 (2010) (to be codified at 42 U.S.C. § 18022).