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*The Forum for America's Ideas*

## State Laws and Actions on "Gender Rating" in Health Insurance

August 6, 2009
Compiled by Richard Cauchi and Andrew Thangasamy, NCSL Health Program, Denver
For use by the Colorado Health Care Task Force

**What is Gender Rating?** The commercial practice of charging different, usually higher, premiums for female consumers in the individual insurance market. According to several sources, women sometimes are charged 10 percent to 25 percent to 50 percent more than men for insurance providing identical coverage, especially during the age bracket associated with child-bearing years.

**State Laws:** Gender Rating is prohibited in the individual market in **10 states:** Maine (1993), Massachusetts (1996), Montana (1983), Minnesota (1992), New Hampshire, New Jersey (1992), New York (1993), North Dakota (1997), Oregon (1996) and Washington (1993). The prohibitions are in statute in two forms:

a. **Explicit Protections against gender rating**: MN, MT, NH, and ND.
b. **Community Rating**: ME, MA, NJ, NY, OR, WA.
The Community Rating (CR) states prohibit the use of gender as one of several factors that may not be used.

**What is Community Rating?** A rate setting 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 factors (such as) age, sex, health status or occupation. *(Definition adopted from NY law)*[1]

Gender rating is **limited** in 2 additional states: Vermont and New Mexico.
Both states use gender rate bands that set a 20% variation limit between the lowest and highest premium that a health insurer may charge for the same coverage on gender.

In the small group market, **16 states** have some type of regulatory protection:

- **12** states, including Colorado[2], have banned gender rating:
  CA, CO, MI, MN, & MT.
  In ME, MD, MA, NH, NY, OR & WA the ban is part of "community rating"
- 3 states have applied "gender rate bands" which allow a higher rate up to a specific percentage of a basic rate: DE (10%) , NJ (100%) and VT (20%)
- 1 state, IA, prohibits gender rating unless the carrier receives prior approval from the state insurance commissioner.[3]

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[1] N.Y. Ins. Law § 3231(a)

[2] Colo. Rev. Stat. §§ 10-16-105(8)(a), 10-16-102(10)(b) Prohibits small employer insurance carriers from setting premium rates based on characteristics other than age, geographic region, family size, smoking status, claims experience and health status.

**2009 State Legislation:** At least five bills were considered this year --

- California (SB 54) - passed Senate 24y-14n, 5/14; language deleted in Assembly 6/30/09.
- Colorado (HB 09-1224) - amended; passed House as substituted "task force shall examine and make recommendations concerning issues raised by the introduced version."
- Connecticut (SB 822) - Did not pass Insurance Comm. 3/5/09
- New Mexico (HB 110) - passed Health & Government Affairs 2/3/09.
- Montana (SB142) to **repeal** existing ban - passed Senate; did not pass House. *(Current law remains unchanged)*

## NCSL Survey of States: Outcomes of gender rating prohibitions

In July 2009, NCSL conducted an informal telephone survey among states that already have a statute affecting gender rating.

Three questions were asked of the insurance departments in the states:
(1) Since prohibiting gender rating, have premium costs gone up? Gone down? Stayed about the same?
(2) Have health insurance companies left the state?
(3) Have more female consumers obtained insurance through the individual market?

The interviews were conducted over email and phone. The following summary is organized from responses from **7 of the 12 states** that either prohibit or limit gender rating.

### 1. Have costs gone up? Gone down? Stayed the same?

Most of the states that responded have not been able to say anything about how costs were affected as a result of either prohibiting or limiting gender rating. Only **NM** noted that they found no changes. One principal reason cited by the other states was that it was difficult to say to what degree gender rating prohibitions could have influenced costs when there were other changes introduced in their systems such as guaranteed issue, modified community rating and others. Also, the passage of a significant amount of time in some of the states since their gender rating restrictions had taken effect also made it difficult for them to determine specifically whether gender rating prohibitions had affected rates.

### 2. Have Insurance Companies Left the state?

None of the respondents had tracked specific data on this question.
**NM** told us that they observed no change.
**NJ** noted that while they saw insurance companies leaving their state, they did not believe that gender rating prohibitions had anything to do with it. NJ noted that at one

[3] Small group statistics includes material published by the National Women's Law Center in 2009.

time their individual market was heavily subsidized and the removal of such subsidies probably led to the withdrawal of a number of carriers, not gender rating prohibitions.

### 3. Have more female consumers obtained insurance through the individual market?

Again, most of the respondent states had no exact data on this aspect. NM again noted no change.
**NJ** was able to provide some real numbers. NJ noted that in the Standard Individual Market where gender rating is prohibited, there are 31,079 females and 23,210 males. So gender neutral rating has led to a <u>higher percentage of women</u>. This discrepancy is highest in the 60-64 age group, where there are 9,606 women and 4,931 men. The number of men and women is very close in the other age groups. In NJ, in parts of the market[4] where gender rating is permitted, there are 19,962 females and 21,749 males.

### Conclusions:

Most of the states have not kept hard data or done actual studies on this issue.
**OR** appears to have conducted a study, which may be available to us in mid-August when their analyst returns.
Most states are also reluctant to draw a casual conclusion between prohibiting/limiting gender rating and other outcomes in their insurance market because they have had other changes in their markets and can't tell precisely what effect, if any, gender rating has had.
NM again noted that they have not seen any changes in all three questions.
**WA** is confident that any changes have not been adverse on the individual market in that state.
So far **NJ** has been able to present the most comprehensive feedback of the states contacted.

## SELECTED INDIVDUAL STATE RESPONSES

### New Jersey:

<u>Background.</u> There is only one market in which gender rating is prohibited in New Jersey – the individual standard market. Rating by gender is permitted for all other markets – large group, small group, and individual basic and essential policies. Of the approximately 2.4 million people with commercial coverage, less than 100,000 have policies on which gender rating is explicitly prohibited by state law.

<u>Answer to question 1</u>. (*this is not an answer to whether premium costs have changed*)

Gender rating has always been prohibited in NJ for the vast majority of standard individual coverage. Health reform in the early 1990s prohibited gender rating for individual coverage. But, prior to that time, almost all individual coverage was provided by BCBS of NJ, which was prohibited from gender rating.

<u>Answer to question 2.</u>

A number of insurance companies have left New Jersey. Because prohibition of gender rating affects such a small percentage of the market, **we do not think that this is the basis for their decision to leave.** Companies leave through merger, or because they exit the health insurance market everywhere.

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[4] New Jersey law excludes bare-bones basic and essential plans from the modified community rating requirement.

In addition, at one time the individual market in New Jersey was heavily subsidized. Removal of that subsidy led to the withdrawal of a number of carriers.

Answer to question 3

In the Standard Individual Market, where gender rating is prohibited, for 2008 there are 31,079 females and 23,210 males. So, gender neutral rating has led to a **higher percentage of women**. The discrepancy is highest in the 60-64 age group, where there are 9.606 women and 4,931 men. The number of men and women is very close in the younger age groups.

New Jersey law excludes bare-bones basic and essential plans from the modified community rating requirement. In this "B&E" market, where gender rating is permitted, there are 19,962 females and 21,749 males.

**Maine:** Other changes at the same time → (i) guaranteed issue; (ii) modified community rating (younger payers supporting older payers). So, hard to differentiate what effect prohibition on gender rating may have had (small?). [5]

**New Mexico:** no change in any of the indicators after imposing limitations on gender rating. [6]

**Oregon:** will send us information; the Department knew they had "looked" at this issue & they will get back to us. [7]

**Vermont:** Community rating laws (to limit gender rating) were passed in 1992. " I presume that you are referring to Vermont's community rating laws which pertain to our small group and non-group markets. Please note that such laws were passed in 1992, thus changes we have seen in our market place may have more to do with the passage of time as opposed to the imposition of community rating." [8]

**Washington:** "This office has not specifically tracked the data to respond to your questions. We have no reason to believe, however, that the prohibition of gender rating has had an adverse impact on the individual market in Washington State." [9]

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[5] Senior Insurance Analyst, Rate Review, Life and Health Actuarial Unit, ME Bureau of Insurance

[6] Assistant Actuary/Rate Analyst, Life and Health, NM Public Regulation Commission

[7] Manager, Rates and Forms, OR Insurance Division

[8] Assistant General Counsel, Health Care Administrative Division, VT Dept. of Banking, Insurance, Securities & Health Care Administration

[9] Health & Disability Manager, Rates & Forms Division, WA State Office of the Insurance Commission

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Issues & Research » Health » Lawmakers Debate Gender-based Premiums

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# LAWMAKERS DEBATE GENDER-BASED PREMIUMS

Volume 30, Issue 533 February 17, 2009

***Matthew Gever***

Should states allow health insurers to use gender in setting the rates for individual insurance policies? That's the question coming up in a few legislatures.

Lawmakers are reacting to an analysis conducted by the *New York Times* last October 30 which found that women on average pay higher monthly premiums for individual insurance coverage than men. The *Times* looked at data from a variety of insurers and online price comparison sites, and included plans that do and do not cover maternity care. For example, the paper found that in Denver and Chicago, a 30-year-old woman would pay 31 percent more in monthly premiums than a man of the same age for individual policies that provide "ideal coverage for people who want benefits like those provided by big employers." The paper found that the gap in premiums decreased with age up until age 55, but that women still paid higher rates overall.

Part of this disparity is attributed to the costs of maternity care. Additionally, some insurers point out that women tend to use more services, such as doctor visits and prescription medications, and on average, more women than men develop chronic conditions.

Whether gender should be used in setting insurance rates is not a new debate. Over the last two decades, ten states have enacted laws that prohibit insurers from using sex in premium setting.

But the *Times* analysis has re-ignited the debate, raising the ire of some legislators. "Charging women different premiums than men is discriminatory and unfairly puts women at higher risk of not receiving critical health care," said **California** Senator Mark Leno, who introduced SB 54, which would forbid insurers from using gender in rate-setting. State law already prohibits insurers from charging different gender-based premiums, but allows an exception if the differentials are based on "specified statistical and actuarial data." At least three other states are also considering legislation that would also ban the use of gender in rate setting: **Colorado** (HB 1224), **Connecticut** (SB 822) and **New Mexico** (HB 110).

Focused on health insurance, those bills do not address the disparities that exist in other types of insurance. For example, men often pay more for other insurance products, such as car and life insurance.

The California debate coincides with a lawsuit that also would prohibit gender-based differences in health insurance premiums. Filed by San Francisco City Attorney Dennis Herrera, the suit argues that the practice is discriminatory, violates the equal protection clause and could lead to women being priced out of the individual health market and into public programs. "Gender rating doesn't simply discriminate against women, it forces taxpayers to subsidize it," said Herrera.

**Back to the Future?**

At least one of the ten states that already outlaw gender-based rate-setting is considering repealing its ban. In 1983, **Montana** passed the "Human Rights Act," a set of anti-discrimination laws that, among other things, prohibits insurers from using gender as a factor in setting premiums. Some Big Sky lawmakers think the law may have harmed, rather than helped, Montanans.

PRO & CON

"It is my contention, since enactment of the bill we're attempting to revise, that there has been harm, certainly, to the females in our state," said Senator Gary Perry. Because they're prohibited from using gender as a rate-setting factor, fewer insurers are willing to operate in the state, said Perry. The resulting lack of competition means that Montanans have fewer products from which to choose, and it has enabled existing insurers to raise their rates to men *and* women, he added.

In response, Perry has introduced SB 142, which would repeal the unisex provision and allow insurers to set premiums using gender and "approved industry actuarial standards." This legislation would apply to all types of insurance in Montana, including health, life and auto.

"If it is such a good idea and continues to be such a good idea, why then are not all the states following Montana's lead?" asked Sen. Perry, referring to the unisex law and the fact that few other states have this provision.

Opponents of SB 142 say passage would lead to higher health insurance rates for women. "A vote to repeal this law is simply a vote to discriminate based on gender," said Representative Diane Sands. "For 25 years no legislature has overturned it," added Monica Lindeen, current State Auditor and a former Montana representative. "Studies have shown that in states without laws against gender discrimination in insurance products, there is widespread disparity in the cost of health insurance."

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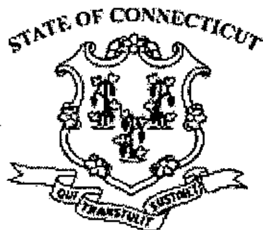


General Assembly

*January Session, 2009*

**Raised Bill No. 822**

LCO No. **2662**

*02662_______INS*

Referred to Committee on Insurance and Real Estate

Introduced by:

(INS)

***AN ACT PROHIBITING GENDER DISCRIMINATION FOR INDIVIDUAL HEALTH INSURANCE POLICIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (h) of section 38a-481 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2010*):

(h) No insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care center or other entity [which] that delivers, issues for delivery, amends, renews or continues an individual health insurance policy in this state on or after [October 1, 2003, may] January 1, 2010, shall: (1) [move] Move an insured individual from a standard underwriting classification to a substandard underwriting classification after the policy is issued; [or] (2) increase premium rates due to the claim experience or health status of an individual who is insured under the policy, except that the entity may increase premium rates for all individuals in an underwriting classification due to the claim experience or health status of the underwriting classification as a whole; or (3) adjust its base premium for any factors or values based on the gender of an individual.

| This act shall take effect as follows and shall amend the following sections: | | |
|---|---|---|
| Section 1 | *January 1, 2010* | 38a-481(h) |

***Statement of Purpose:***

To prohibit different individual health insurance policy rates that are based on gender.

1 ***[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]***

HOUSE BILL 110

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO HEALTH INSURANCE; PROVIDING FOR GUARANTEED ISSUE BY HEALTH INSURERS; ELIMINATING GENDER AS A HEALTH INSURANCE RATING FACTOR; REVISING THE DEFINITION OF "SMALL EMPLOYER".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] HEALTH INSURERS--GUARANTEED ISSUE--PREEXISTING CONDITIONS.--

A. Effective January 1, 2010, a health insurer shall issue coverage to any individual who requests and offers to purchase the coverage without permanent exclusion of preexisting conditions.

B. A health insurer may impose a waiting period not to exceed six months before payment for any service related to

.174682.2GR

underscored material = new
[bracketed material] = delete

1 a preexisting condition.

2 C. A health insurer may continue an individual

3 policy in existence on July 1, 2009 that has a permanent

4 exclusion of payment for a preexisting condition until renewal.

5 Upon renewal of such a policy, an insured, at the sole

6 discretion of the insured, may opt to continue the existing

7 individual policy with the exclusion of payment for the

8 preexisting condition.

9 D. A health insurer shall ensure that an insured's

10 privacy and confidentiality are protected and made applicable

11 to individual policies, similar to privacy requirements

12 pursuant to the federal Health Insurance Portability and

13 Accountability Act of 1996 for other policies.

14 E. For the purposes of this section:

15 (1) "coverage" does not include short-term,

16 accident, fixed indemnity, specified disease policy or

17 disability income, limited-benefit, credit, workers'

18 compensation, automobile, medical or other insurance under

19 which benefits are payable with or without regard to fault and

20 that is required by law to be contained in any liability

21 insurance policy;

22 (2) "health insurer" means a person duly

23 authorized to transact the business of health insurance in the

24 state pursuant to the Insurance Code but does not include a

25 person that only issues a limited-benefit policy intended to





except

## 2009 Montana Legislature

SENATE BILL NO. 142

INTRODUCED BY PERRY *(Died in Committee 4/28/2009)*

A BILL FOR AN ACT ENTITLED: "**AN ACT ALLOWING GENDER TO BE CONSIDERED WHEN ISSUING OR PROVIDING CERTAIN INSURANCE COVERAGE**; DECLARING USE OF ACTUARIAL TABLES TO BE A NONDISCRIMINATORY APPROACH TO SETTING PREMIUMS; PROVIDING AN EXCEPTION FOR PREMIUM RATES ASSOCIATED WITH ~~REPRODUCTIVE HEALTH~~ DISABILITY INSURANCE; AMENDING SECTIONS 33-16-103 AND 49-2-309, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-16-103, MCA, is amended to read:

"**33-16-103. Application.** (1) ~~This~~ Subject to subsection (2), this chapter applies to all insurers and all kinds of insurance~~,~~.

(2) ~~except that nothing contained in~~ Except as provided in [section 3], this chapter ~~applies~~ does not apply to:

~~(1)~~(a) life insurance;

~~(2)~~(b) disability insurance, except medicare supplement insurance subject to the provisions of chapter 22, part 9;

~~(3)~~(c) reinsurance, except joint reinsurance as provided in 33-16-307;

~~(4)~~(d) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

~~(5)~~(e) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine~~,~~ insurance policies as distinguished from inland marine~~,~~ insurance policies; or

~~(6)~~(f) surplus lines insurance as defined in 33-2-301."

**Section 2.** Section 49-2-309, MCA, is amended to read:

"**49-2-309. Discrimination in insurance and retirement plans.** (1) ~~It is an unlawful discriminatory practice for a~~ A financial institution or person ~~to~~ may not 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.

(2) This section does not apply to any insurance policy, plan, or coverage or to any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

(3) It is not a violation of the prohibition against marital status discrimination in this section for an employer to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents."

NEW SECTION. **Section 3. Actuarial tables in setting rates -- exceptions.** (1) A person who uses generally approved industry actuarial standards in establishing insurance premium rates is not discriminating on the basis of gender.

(2) ~~(a)~~ A person may not use industry-approved actuarial standards to establish disability insurance premium rates for persons on the basis of gender ~~for costs associated with reproductive health care for individual and group health insurance policies~~.

~~(b) For the purposes of this section, "reproductive health care" means the prevention or control of a condition or disease of the human reproductive system functions and processes through diagnosis, monitoring, and treatment.~~

(3) This section applies to life insurance and disability insurance and to other insurance as provided in 33-16-103(1).

NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 33, chapter 16, part 2, and the provisions of Title 33, chapter 16, part 2, apply to [section 3].

NEW SECTION. **Section 5. Applicability.** [This act] applies to insurance contracts entered into or renewed on or after [the effective date of this act].

- END -

# CALIFORNIA GENDER RATING BILL
## NON-PARTISAN BILL ANALYSIS

SENATE HEALTH
COMMITTEE ANALYSIS
Senator Elaine K. Alquist, Chair

BILL NO: SB 54
S
AUTHOR: Leno
B
AMENDED: As Introduced
HEARING DATE: April 1, 2009
5
REFERRAL: Judiciary
4
CONSULTANT:
Park/

SUBJECT

Health care coverage: pricing

SUMMARY

Eliminates the exception in current law that allows health plans and health insurers to use gender as a basis for premium, price, or charge differentials, when based on valid statistical and actuarial data.

CHANGES TO EXISTING LAW

Existing law:

Existing law provides for the licensure and regulation of health care service plans (health plans) by the Department of Managed Health Care. Existing law prohibits health plans from charging premium, price, or charge differentials because of the sex of any individual, but makes an exception for differentials based on specified statistical and actuarial data.

Existing law provides for the regulation of life and
Continued---



disability insurers by the Department of Insurance. Existing law prohibits life and disability insurers from engaging in certain discriminatory practices, but specifies that premium, price, or charge differentials because of the sex of any individual are not prohibited when based on specified statistical or actuarial data or sound underwriting practices.

Existing law requires health plans and health insurers (disability insurers providing health insurance) that offer, market, and sell health plan contracts or health insurance policies to small employers (generally defined as employers who employ between 2 and 50 employees) to use only permissible risk categories, which are limited to age, geographic region and family size, as specified. Existing law requires an employee's premium to be determined based on the rate applicable to the employee's risk category, plus an adjustment factor of not more than and not less than 10 percent.

This bill:

This bill would eliminate the exception in current law that allows health plans and disability insurers to use gender to base premium, price, or charge differentials for health care plan contracts and health insurance policies, when based on objective, valid, and up-to-date statistical and actuarial data, and, in the case of disability insurers, when based on sound underwriting practices in addition to the preceding criteria.

By eliminating this exception, this bill would categorically prohibit a health plan from using the sex of



SB 54 Senate Bill - Bill Analysis

any enrollee to base premium, price, or charge differentials, and categorically prohibit health insurance policies from being subject to premium, price, or charge differentials because of the sex of any individual.

FISCAL IMPACT



Unknown.

BACKGROUND AND DISCUSSION

Author's statement
The author states that California law bars health insurance companies from charging higher monthly premiums to individuals on the basis of race, sexual orientation, or religion; yet the same laws expressly permit insurance companies to discriminate on the basis of sex with respect to the amount of premiums charged for health insurance on the individual market. The author states that gender rating results in women being charged substantially higher premiums than men for individually purchased health insurance, even for plans that exclude maternity coverage, and that this practice denies women equal access to health care and violates California's constitutional guarantee that the law applies equally to all persons.

The author believes that by charging different rates purportedly based on the use of preventive care, which some believe account for the actuarial variance in health care costs between men and women, health insurers discourage consumers from being proactive about diseases such as colon, breast, ovarian, and cervical cancers for which early detection and treatment are important.

The author asserts that, while both federal and state law prohibit gender rating with respect to employer-sponsored group insurance plans, women are less likely to receive coverage through their employers, in part because they are more likely to work part-time.

The author contends that ten states - including New York, Oregon, and Washington- that already prohibit gender rating still have robust individual markets for health insurance.

The individual health insurance market
The individual health insurance market, which covers about nine percent of insured Californians or seven percent of non-elderly Californians, is made up of individuals and families who pay for their own coverage, generally because group coverage is not available. In California, health plans and insurers conduct medical underwriting, the process of reviewing an applicant or applicants' medical



history to ascertain the financial risk posed by the applicant or applicants, and may deny an applicant health insurance, limit a benefit package, or charge a higher premium based on the assessed level of risk. Each health plan has its own underwriting guidelines in the individual market, which must be filed with DMHC, but are not publicly disclosed.

In 2005, the three largest carriers offering individual health insurance products in California accounted for over 80 percent of the individual insurance products sold in the state. Sources estimate that approximately 2.6 to 2.9 million Californians are currently covered in the individual market. This represents a substantial increase from the 1.5 million Californians estimated in 2002.

In August 2004, Kaiser Family Foundation issued a report, which documented individual health insurance policies sold nationally through eHealthInsurance, an online source of health insurance for individuals, families, and small businesses, between January and August 2003. The data showed that men accounted for approximately 52 percent of single purchasers of individual insurance, while women accounted for almost 48 percent. Purchasers of single coverage were led by 25-34 year olds (36.1 percent), followed by 18-24 year olds (21.4 percent), and then by 35-44 year olds (17.8 percent). In purchases of individual family coverage, men led women 66.4 percent to 33.6

percent, as the lead policyholder. Individual family coverage was predominately purchased by 35-44 year olds (37.4 percent), followed by 25-34 year olds (29.7 percent), and 55-65 year olds (20.2 percent).

According to a RAND study on consumer decision making in California's individual health insurance market, the individual market in California is an important source of long-term coverage for a sizable fraction of those who purchase it.

National Women's Law Group report
In 2008, the National Women's Law Center (NWLC) released a report detailing its research on the experiences of women seeking coverage in the individual insurance market. NWLC gathered information on more than 3,500 individual health insurance plans between July and September 2008 from eHealthInsurance. For California, NWLC found that, for



plans that use gender as a rating factor, there was a minimum premium difference of 10 percent and a maximum premium difference of 39 percent between 40 year old men and women.

San Francisco City Attorney's lawsuit
On January 27, 2009, San Francisco City Attorney Dennis Herrera filed a suit to strike down provisions of state law that permit gender rating, asserting that the statutes violate the equal protection guarantees of the California Constitution. The suit stated that the city seeks to declare the laws void and enjoin the state from enforcing these laws.

Industry data on cost differentials between men and women
According to the California Association of Health Plans (CAHP), expected health care costs for men and women from the 2008 Milliman Health Cost Guidelines-Commercial Rating Structure show that health care costs for women range from 20 percent to 80 percent higher for women under 50, depending on age, for coverage that excludes maternity. For coverage that includes maternity, costs range between 20 percent higher to two and a half times higher, according to the same source. In the 55-59 year old bracket, costs between men and women are expected to be comparable, while men in the 60 to 64 year old bracket are expected to cost 1.06 times more than females in the same age range.

Related legislation
AB 119 (Jones) is substantially similar to this measure. Pending in the Assembly Health Committee.

Prior legislation
AB 1586 (Koretz), Chapter 421, Statutes of 2005, added additional language to existing anti-discrimination provisions under the Health and Safety Code and the Insurance Code to clarify that state law prohibits insurance companies and health care service plans from discriminating on the basis of gender (including a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth) in the creation or maintenance of service contracts or the provision of benefits or coverage.

Arguments in support



San Francisco City Attorney Dennis Herrera, the sponsor of this measure, writes that gender rating is unconstitutional and is illegal in several states. The City Attorney writes that the measure would prevent health insurance companies from penalizing women for seeking preventive care such as screenings for breast, cervical, and uterine cancer. The City Attorney notes that, in these difficult economic times, as more employers drop health coverage, women are especially hard-hit by the high costs of individual health insurance, as they are more likely to work part-time and are often paid less. The City Attorney asserts that gender rating prices some women out of the individual insurance market and places burdens on the state's already overwhelmed and underfunded public health systems. The City Attorney believes that gender rating is a relatively recent practice, and that halting it should not adversely affect the health insurance industry.



SB 54 Senate Bill - Bill Analysis

The California School Employees Association notes that California's unemployment rate has exceeded 10.5 percent, and now more women are losing their jobs and health care coverage, forcing them into the individual market. The California Nurses Association believes that individuals seeking health insurance in the individual market should have the same protections from gender discrimination as those who have the benefits of health insurance from their employers. Health Access California writes that existing law prohibits discrimination on health insurance premiums on the basis of race, ethnicity, religion and marital status even though there is ample academic literature documenting disparities in the need for care on the basis of race and ethnicity, as well as differences in health care behavior due to marital status. Health Access believes that, like these other types of discrimination, gender discrimination should be prohibited. Physicians for Reproductive Choice and Health writes that maintaining the status quo on gender rating adversely impacts nearly one million women in California who are insured in the individual market.

NWLC writes that the practice of gender rating has serious implications for women's ability to find affordable health insurance in the individual health insurance market. NWLC points to a 2006 Commonwealth Fund study that showed nine out of ten people who shopped for health coverage in the individual market did not ultimately purchase a plan, a



decision largely based on difficulties finding affordable coverage. NWLC asserts that cost is a particular obstacle for women purchasing individual health insurance, because women in California continue to experience higher poverty rates on average and earn significantly less than men. NWLC believes that gender rating is a discriminatory practice, as an individual's sex is an immutable characteristic determined by genetics. NWLC notes that a new federal law-the Genetic Information Nondiscrimination Act-prohibits insurers from using predictive genetic information to set health insurance premiums, and believes that women should not face discrimination based on the biological fact of their sex.

Arguments in opposition
The Association of California Life and Health Insurance Companies (ACLHIC) writes that prohibiting insurers from using gender as a rating factor could result in rate increases for young, healthy men, and older women. ACLHIC contends that young men are most likely to drop coverage when prices increase, and as more of these low-use and low-cost individuals leave the market, the remaining pool of individuals will be higher-use and higher-cost, which will lead to increases in premiums for everyone.

Aetna writes that in the current voluntary insurance market, health insurers need to appropriately and actuarially manage costs for fairness to all individuals who purchase health coverage. Aetna states that it was the first national insurance company to endorse the concept of requiring individuals to purchase coverage, which would make insurance more affordable for everyone and ultimately reduce the need to use many rating or underwriting factors.

The California Association of Health Plans (CAHP) writes that, by requiring some lower risk individuals to pay higher premiums and cross subsidize the cost of higher risk individuals, the bill will make it more difficult to enroll this lower risk population. CAHP believes that the bill moves individual health insurance toward a community rating system that will lead to higher costs for everyone. CAHP notes that one state that previously used community rating, New Jersey, is allowing rating factors, including gender, in its development of rates.

State Farm writes that different people represent different



risks, and in no line of insurance is everyone charged the same price. State Farm writes that a fundamental tenet of fairness in charging for insurance and making underwriting decisions is predicated on an assessment of the risk of a particular insured.

POSITIONS

Support: City and County of San Francisco, City Attorney's Office (sponsor)
American Civil Liberties Union
American College of Obstetricians and Gynecologists, District IX (California)
American Federation of State, County and Municipal Employees, AFL-CIO
California Alliance for Retired Americans
California Communities United Institute
California Medical Association
California Nurses Association
California School Employees Association, AFL-CIO
City and County of San Francisco, Department on the Status of Women
Congress of California Seniors
Equal Rights Advocates
Health Access California
National Women's Law Center
Physicians for Reproductive Choice and Health

Oppose: Aetna
Association of California Life and Health Insurance Companies
California Association of Health Plans
California Chamber of Commerce
State Farm

-- END --

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Issues & Research » Health » States and Individual Health Insurance, 2009 Go 18148

# States and Individual Health Insurance: An Overview

**Updated: May 6, 2009**

Individuals seeking private health insurance face a number of challenges, especially those whose employer does not offer any health insurance coverage. Unlike most group insurance policies, acceptance for individual insurance is not guaranteed in most cases. Applicants often are required to submit several years' worth of medical history before they are either approved or denied insurance. Furthermore, after the issuance of insurance, consumers may face further difficulties. For example, insurance companies have the flexibility in many jurisdictions to cancel health insurance retroactively, if they discover that the individual either knowingly or unknowingly omitted information about her health history in the application for insurance. Retroactive cancellation requires the consumer to pay back to the insurance company any funds the company may have already covered for the consumer's health expenses.

In 2008, it was estimated that there are 18 million people with individual coverage. In light of increasing consumer and policymaker dissatisfaction with the indivdual market choices, states have begun to legislate in the area of individual health insurance to protect consumer rights.

## STATE PROTECTIONS FOR TREATMENT OF PRE-EXISTING CONDITIONS FOR INDIVIDUAL MARKETS.

State law changes and regulation of the small group health insurance market have been heavily influenced by the passage of The Health Insurance Portability and Accountability Act of 1996 (HIPAA). This federal law was designed to increase the access, portability and renewability of private health insurance by setting minimum standards that apply to the individual, small group (including fully insured and self-insured) and large group markets of all states.

All 50 states now have some type of state statutory protection and/or definitions related to coverage (or exclusion) of pre-existing conditions. A much shorter list of states have no waiting period or "look-back" period. In the absence of a waiting period or "look-back" period stipulation, insurance companies can not deny individual health insurance on the basis of pre-existing conditions.

### Individual Market Reforms

Since the individual market was previously not highly regulated, the federal standards affected insurers selling individual policy in several states, particularly those with laws dated after 1996. Individual reforms have three significant differences from the reforms targeting small groups: 1) pre-existing condition exclusion clauses are not allowed; in particular, issuers may not impose pre-existing condition exclusions upon individuals eligible for group-to-individual guaranteed access. 2) a state may opt out of the guaranteed issue provision with "acceptable" alternative mechanisms; and 3) eligibility requirements exist (guaranteed renewal applies to all of those in the individual market, not only HIPAA eligibles).

**TABLE DEFINITIONS:**
The following definitions and abbreviations apply to the table below:

**Guaranteed Issue:** Requires insurance carriers to offer coverage regardless of claims history or health status.

**Preexisting Conditions:** Limits the amount of time a carrier can exclude coverage for a condition that was present before the new coverage began. Also usually limits the amount of time a carrier can "look back" to consider a condition as preexisting. The tables list two numbers indicating first, the maximum exclusion time in months, and second, the look-back time in months (i.e., 12/6). Look-back provisions often use one of two specific standards and definitions:

1. **"prudent person"** definition, meaning that the average layperson would have sought treatment or advice for the given condition. This means that actually consulting a health care provider is not always necessary for a condition to be considered preexisting.
2. **"objective standard"** definition, which includes those conditions for which someone actually received medical advice, diagnosis, care or treatment prior to enrollment to be counted as pre-existing. A portability provision commonly is included so that a waiting period served under a previous policy is credited toward the new policy.

**Guaranteed Renewal:** Requires carriers to renew policies with small groups or individuals regardless of claims

experience. Insurers may discontinue coverage only if the individual or business is at fault (e.g., failure to pay premiums, fraud). Note that the federal HIPAA legislation requires guaranteed renewal. Each state enforces HIPAA requirements with the Centers for Medicare and Medicaid services (CMS) playing an enforcement role under certain conditions. If a state notifies CMS that it has not enacted legislation to enforce or that it is not enforcing HIPAA requirments, then CMS becomes responsible for that function.

*The table below includes laws on the specific topics current to December 2008.*

| STATE | GUARANTEED ISSUE | GUARANTEED RENEWAL | PRE-EXISTING CONDITIONS | DEFINITION OF PRE-EXISTING CONDITIONS |
|---|---|---|---|---|
| **AL** | No | HIPAA | Yes **(24/60)** | Objective Standard |
| **AK** | No | HIPAA | Yes **(no limit/no limit)** | No definition |
| **AZ** | No | Chap 251-431R (SB 1321, 1997) | Yes **(no limit/no limit)** | No definition |
| **AR** | No | HIPAA | Yes **(No limit/60)** | Prudent Person Standard |
| **CA** | Partial[1] | 1997 | Yes 1993 **(12/12)** | Objective Standard |
| **CO** | No | 1996, 1997 | Yes **(12/12)** | Objective Standard |
| **CT** | No | 1997 | Yes 1993, 1997, 2008[1] **(12/12)** | Objective Standard |
| **DE** | No | SB 166 (1997) | Yes **(No limit/60)** | Prudent Person Standard |
| **FL** | No | 1996, 1997 | Yes 1996 **(24/24)** | Prudent Person Standard |
| **GA** | No | 1995, 1997 | Yes **(24/No limit)** | No definition |
| **HI** | No | 1997 | Yes **(36/No Limit)** | No definition |
| **ID** | Partial[2] 1994, 1995 | 1994, 1997 | Yes 1994 **(12/6)** | Prudent Person Standard |
| **IL** | No | 1997 | Yes **(24/24)** | Prudent Person Standard and Objective Standard |
| **IN** | No | 1998 | Yes 1995, 1996 **(12/12)** | Prudent Person Standard |
| **IA** | Partial[3] 1995 | 1995, 1997 | Yes 1995 **(12/12)**, 2008[2] | Prudent Person Standard |
| **KS** | No | 1997 | Yes **(24/No Limit)** | No definition |
| **KY** | Partial[4] 1994, 1998 | 1998 | Yes 1994 **(6/6)**, 1996 **(12/6)** | Objective Standard |
| **LA** | No | 1993, 1997 | Yes 1995 **(12/12)** | Prudent Person Standard |
| **ME** | Yes 1993 | 1993, 1997 | Yes 1993 **(12/12)** | Prudent Person Standard |
| **MD** | No | 1997 | Yes **(24/84)** | Prudent Person Standard |
| **MA** | Yes 1996 | HIPAA | Yes 1996, 2006 **(6/6)*** | Objective Standard |
| **MI** | Partial[5] | HB 5571 (1996) | Yes 1996 **(12/6)**** | Objective Standard |
| **MN** | No | 1992 | Yes **(18/6)** | Objective Standard |
| **MS** | No | 1997 | Yes 1997 **(12/12)** | Prudent Person Standard |
| **MO** | No | HIPAA | Yes **(No Limit/No Limit)** | No definition |
| **MT** | No | 1997 | Yes 1995 **(12/36)** | Objective Standard |
| **NE** | No | 1997 | Yes **(No Limit/No Limit)** | Prudent Person Standard |
| **NV** | No | 1997 | Yes **(No Limit/No Limit)** | Objective Standard |
| **NH** | Partial[6] 1994 | 1994, 1998 | Yes 1994 **(9/3)** | Objective Standard |
| **NJ** | Yes 1992 | 1992, 1997 | Yes 1997 **(12/6)** | Prudent Person Standard |
| **NM** | No | 1998 | Yes 1994 **(6/6)** | Prudent Person Standard |
| **NY** | Yes 1992 | 1992, 1997 | Yes 1992 **(12/6)**, 1997 | Objective Standard |
| **NC** | No | 1997 | Yes **(12/12)** | Objective Standard |
| **ND** | No | 1995, 1997 | Yes 1995 **(12/6)** | Objective Standard |
| **OH** | Partial[7] | 1993, 1997 | Yes | Prudent Person Standard |

| | | | | |
|---|---|---|---|---|
| | 1993 (capped enrollment) | | 1993 **(12/6)** | |
| **OK** | No | HIPAA | Yes **(No Limit/No Limit)** | No definition. |
| **OR** | Partial[8] | 1995, 1997 | Yes **(24/6)** | Objective Standard |
| **PA** | No | 1997 | Yes **(12/60)** | Objective Standard |
| **RI** | Partial[9] | 1995 | Yes **(12/36)** | Prudent Person Standard |
| **SC** | No | 1997 | Yes **(24/No Limit)**. | Prudent Person Standard |
| **SD** | Partial[10] 1996 | 1997 | Yes 1996 **(12/12)**, 1997 | Prudent Person Standard |
| **TN** | No | 1997 | Yes **(24/No Limit)** | No definition. |
| **TX** | No | 1997 | Yes **(24/60)** | Prudent person standard |
| **UT** | Partial[11] 1995 | 1995, 1997 | Yes 1995 **(12/6)** | Objective Standard |
| **VT** | Yes 1992 | 1997 | Yes 1992, 1997 **(12/12)**, 2006 | Prudent Person Standard |
| **VA** | Partial 1998 | 1996, 1997 | Yes 1995 **(12/12)** | Prudent Person Standard |
| **WA** | Partial[12] 1993 | 1993, 1995 | Yes **(9/6)** | Prudent Person Standard |
| **WV** | Partial[13] | 1995, 1997 | Yes **(12/24)** | Prudent Person Standard |
| **WI** | No | 1997 | Yes **(24/No Limit)** | Prudent Person Standard |
| **WY** | No | 1995 | Yes 1995 **(12/6)** | Objective Standard |
| **TOTAL STATES** | **19** | **50** | **50** | Objective Standard = **19 states** Prudent Person Standard = **24 states** |
| | **GUARANTEED ISSUE** | **GUARANTEED RENEWAL** | **PRE-EXISTING CONDITIONS** | **DEFINITION OF PRE-EXISTING CONDITION** |

**Source:** Kaiser Family Foundation, State Health Facts, "*Individual Market Portability Rules (Not Applicable to HIPAA Eligible Individuals), 2008*"

***Footnotes for Guaranteed Issue*:**

**Note**: Details and updated data provided by "Health Policy Institute, Georgetown University" as published by Kaiser State Health Facts- December 2007.

1. **California**: Insurers for the individual markets and HMOs must guarantee issue a standardized policy to those exhausting High Risk Pool coverage (36 months).

2. **Idaho**: Individual market insurers must guarantee issue standardized policies to the medically uninsurable. Insurers must offer basic, standard and catastrophic policies. These policies are called High Risk Pool Policies.

3. **Iowa**: Iowa provides a high risk pool for those who cannot afford coverage in the private markets. The Iowa Individual Health Benefit Reinsurance Association (IHBRA) has been merged into HIPIOWA effective January, 2005.

4. **Kentucky**: Beginning in 1998 with HB 315, the standardized plans and guaranteed issue requirements were replaced by a complex "pay or play" system that was named the Guaranteed Acceptance Program. In 2000, HB 517 created a high risk pool called the Kentucky Access. These measures were specifically taken to encourage more people to return to the individual markets.

5. **Michigan**: HMOs, after 24 months in existence, are required to guarantee issue to a limited number of applicants during one, 30 day open enrollment per year.

6. **New Hampshire**: There were many flaws with the 1994 law on guarantee issue. The greatest conflict being that the law did not require individual policies issued before the law to comply with the new laws. Therefore, the impact of the reforms were dampened. Due to declining enrollments, the guaranteed issue was repealed in 2002. Instead, a high risk pool was created.

7. **Ohio**: Individual market insurers must guarantee issue standardized policies on a periodic basis. Non-HMOs are required to guarantee issue standardized policies (up to a limited number determined of enrollees as determined by the state) for one 30 day period, annually. HMOs are required to guarantee issue standardized policies annually until reaching a state determined limited number. For HMOs, this period could extend beyond 30 days.

8. **Oregon**: Individual market insurers must guaranteed issue portability policies to individuals with 6 months of prior coverage.

9. **Rhode Island**: Individual market insurers must guarantee issue all products to those with 12 months of continuous creditable coverage, provided the applicant is not eligible for alternative group coverage, Medicare or any other state health insurance plan.

10. **South Dakota:** The South Dakota Risk Pool was created in 2003 to provide coverage to people who have lost coverage and have previous creditable coverage. However, unlike most high-risk pools, the program does not serve uninsured individuals who have a pre-existing condition or illness that causes them to be declined by private insurers unless the person recently lost creditable coverage.

11. **Utah**: Individual market insurers that have not met enrollment cap must guarantee issue at least one individual market policy to those that are otherwise not eligible for any other type of health insurance coverage (i.e group, HRP, etc.)

12. **Washington**: The insurers must guarantee issue all products to their applicants, who receives a minimum score on the state mandated health status questionnaire. The applicants that not eligible for guarantee issue are referred to the high risk pool.

13. **West Virginia**: HMOs with greater than 5 years in the market or with enrollment not less than 50,000, must guarantee issue during annual 30 day open enrollment period.

***Footnotes for Pre-existing conditions*:**

* Cannot be applied to guaranteed issue products.

**Commercial insurers: 6/12, BCBSMI and HMOs: 6/6

1. **Connecticut**:

-HR 2833: the legislation would allow insurers to look back only a period of 30 days on medical records of applicants. Furthermore, the legislation **extends the HIPAA protections** to individuals who are insured through employer-based private plans and non-group, individual plans.

-Charter Oak Plan: The plan would require managed care companies to provide health coverage to residents who have been uninsured for at least six months and are ineligible for publicly funded health plan and charge only the premium.

2. **Iowa**: The HF2539 legislation would prevent private insurance companies from using preexisting health conditions against its applicants.

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## LEGISLATIVE HISTORY of INSURANCE REFORM

Before HIPAA was enacted, there was significantly less regulation of the individual market. **South Carolina** took the first steps in 1991 by enacting portability and rating bands. Since then, 14 states enacted guaranteed issue laws (with the most recent law passed in 1998 in **Virginia**), 42 required guaranteed renewal (which HIPAA requires), 30 place limits on preexisting condition exclusion clauses and 18 have rating restrictions.

**2007-08 STATE ACTIONS:** Prompted by numerous consumer complaints and lawsuits against insurers, state lawmakers are taking action. Among their efforts:

**New Mexico:** The Legislature has passed bills requiring insurers to show that applicants deliberately gave incorrect information on an application. Current law allows cancellation if the error or omission was inadvertent. The governor has not said whether he will sign the bills, says spokeswoman Caitlin Kelleher. Without the law, "the consumer has no ability to defend" against a cancellation, says Melinda Silver, attorney with the state's Managed Health Care Bureau. (SB 226 Signed into law as Chapter 87, 3/4/08)

**Connecticut:** In October 2007, a new law took effect requiring approval from the state insurance commissioner before an insurer can cancel an existing policy.

**California:** California state regulators have announced cancellation-related fines against some insurers, including Blue Cross, Kaiser Permanente and Blue Shield of California. Legislation introduced in February 2008 would require insurers who want to cancel a policy to first win approval from the state's Department of Managed Health Care. Last year, legislators adopted a law requiring insurers to pay for any medical treatment they approve, even if they later cancel the policy.

**Washington:** In March 2008, the Washington state legislature enacted SB 5261, which was signed into law the following month by the governor. This legislation restores state oversight of the individual health insurance market. Specifically, the law authorizes the Insurance Commissioner to disapprove unreasonable rate increases and establishes a sliding-scale medical loss ratio for insurers (Medical loss ratios require insurers to spend a certain amount of premium revenue on direct medical care. These laws help ensure more of the premiums are used on medical care and less on administrative costs, including profits and bonuses).

**Sources:** *Table updated August 2006 and June 2008 by the NCSL Health Program; selected text adopted from a longer issue brief on HIPAA, originally published 10/3/00 by Health Policy Tracking Service and updated in 2003. Data also* has been compared to online material by Kaiser Family Foundation, at

http://www.statehealthfacts.org/comparetable.jsp?ind=353&cat=7 or http://www.statehealthfacts.org/.

## STATE ACTION PERTAINING TO GUARANTEED ISSUE

Although all 50 states have some regulations on preexisting conditions, currently, five states, have laws that ban insurance companies from rejecting insurance coverage for applicants on the basis of preexisting conditions. The legislation requires insurers to sell coverage to all applicants regardless of their past medical history. This concept is also known as guaranteed issue. Since many insurance companies consider caesarean section and even pregnancies as preexisting conditions, the insurance companies in these five states would cover the expenses, without future repercussions to the mother. The policies in the following states are Modified Community Rated, which guarantees insurance applicants will not be denied coverage or affect insurance rates due to pre-existing conditions, as long as the applicant has previously maintained continuous coverage.

| State | Details |
|---|---|
| **ME**<br>Title 24-A M.R.S.A. §§ 2736-C and 2808-B | Requires an insurer to make available to all individuals any individual policy being marketed to Maine residents. A carrier may deny coverage to individuals if the carrier has demonstrated to the Superintendent's satisfaction that the carrier does not have the capacity to deliver services adequately to additional enrollees within all or part of its service area because of its obligations to existing enrollees. |
| **MA**<br>Chapter 58 of the Acts of 2006 | Pre-existing condition is defined as "a condition present before the date of enrollment for the coverage, whether or not any medical advice, diagnosis, care or treatment was recommended or received before that date. Genetic information shall not be treated as a condition in the absence of a diagnosis of the condition related to that information." Carriers can not exclude applicants for insurance on the basis on the definition of pre-existing condition as defined above. |
| **NJ**<br>S 1870 | S 1870 is an addition to the innovation health insurance law that was enacted in 1992 that "provided guaranteed-issue, guaranteed-renewal coverage, with a prohibition against rating on the basis of health status and limiting preexisting condition exclusions in policies". |
| **NY**<br>A 02609 | No pre-existing condition provision shall exclude coverage for a period in excess of twelve months following the enrollment date for the covered person and may only relate to a condition (whether physical or mental), regardless of the cause of the condition for which medical advice, diagnosis, care or treatment was recommended or received within the six month period ending on the enrollment date. |
| **VT**<br>§ 8086 | No long-term care insurance policy or certificate may exclude coverage for a loss or confinement which is the result of a preexisting condition, unless such loss or confinement begins within six months following the effective date of coverage of an insured person. |

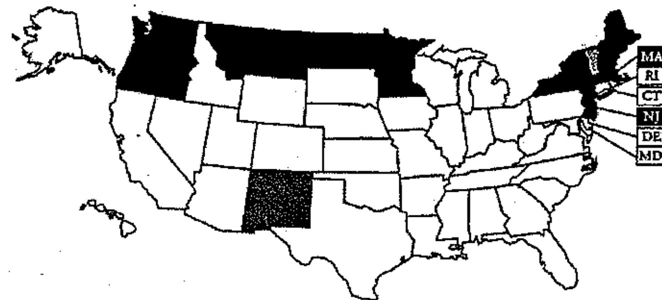
## GENDER DISTINCTION IN INDIVIDUAL INSURANCE RATES

Insurance carriers are able to charge men and women different premiums for individual insurance under a practice known as gender rating in 38 states. Ten states - Washington, Oregon, Montana, North Dakota, Minnesota, Massachusetts, Connecticut, New Hampshire, Maine, and New Jersey have protections against the use of gender to set premiums in the individual health insurance market. Two other states - New Mexico and Vermont limit the use of gender to set premiums in the individual health insurance market with a rate band. Gender rating has been criticized for creating financial barriers for women seeking to obtain health insurance. On the other hand, gender rating has been defended on the basis that it is actuarially justifiable - that women have higher cost health expenses than men and therefore premiums reflect that difference in costs to providing health care to men and women generally. In any case, many states that allow gender rating require that any difference in premium rates for men and women be

"justified by actuarial statistics". Thus, these states require proof of actual differences in cost of providing health care to women and men generally for insurance carriers to use gender rating.

**GENDER RATING IN THE INDIVIDUAL INSURANCE MARKET**

## Gender Rating Laws in the States, 2009

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### NCSL ONLINE RESOURCES

Health Insurance and the States, NCSL online publication.
State Legislation and Actions on Health Savings Accounts (HSAs) and Consumer Directed Health Plans, 2004-2008.
State use of 'Cafeteria Plans' to provide health insurance.
Lawmakers Debate Gender-Based Premiums, by Matthew Gever, NCSL Staff, State Health Notes, vol.30, issue 533, February 17, 2009.
Individual Coverage - Lawmakers Digest - 2005.

### NON-NCSL ONLINE RESOURCES

Individual Market Rate Restrictions by State, 2007. Kaiser State Health Facts.
Individual Health Insurance 2006-2007: A Comprehensive Survey of Premiums, Availability, and Benefits. AHIP Center for Policy and Research. (Dec 2007)
Nowhere to Turn: How the Individual Health Insurance Market Fails Women. National Women's Law Center. (2008)

### ADDITIONAL EXPERT RESOURCES AND OPINIONS

Monheit, Alan et al (2004) "Community Rating and Sustainable Individual Health Insurance Markets in New Jersey," Health Affairs, vol. 23, number 4, pp. 167-175.
For a critical assessment of state consumer protections see: "Failing Grades: State Consumer Protections in the Individual Health Care Market," Families USA (2008).

### MEDIA ARTICLES

"States Act to Protect Individual Health Coverage," Julie Appleby, *USA Today*, 2/21/08.
"Shifting Careers: Finding Health Insurance if you are Self-Employed," Marci Alboher, *New York Times*, 3/27/08.
"Premera surpluses here subsidize Arizona losses," Brian Slodysko, Seattle Post-Intelligencer, 2/24/08. Article publicizing insurer profits and the push for individual market reform in WA state.
"Women buying health policies pay a penalty," Robert Pear, *New York Times*, 10/28/08.

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## Bans In the Small Group Market

- **12** states, including Colorado, have banned gender rating:
  CA, CO*, MI, MN, & MT.
  In ME, MD, MA, NH, NY, OR & WA the ban is part of "community rating"
- 3 states have applied gender rate bands: DE, NJ, VT.
- * Colo. Rev. Stat. §§ 10-16-105(8)(a), 10-16-102(10)(b) Prohibits small employer insurance carriers from setting premium rates based on characteristics other than age, geographic region, family size, smoking status, claims experience and health status.

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## Example of Ban: Minnesota

- MN Section 62A.65, subdivision 4, is amended to read:
  Subd. 4. **Gender rating prohibited.**
  **(a) 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. This subdivision prohibits the use of marital status or generalized differences in expected costs between principal insureds and their spouses.**

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## Opposition to Bans:

Examples from California

- "by requiring some lower risk individuals to pay higher premiums and cross subsidize the cost of higher risk individuals, the bill will make it more difficult to enroll this lower risk population."
  - The California Association of Health Plans (CAHP)
- "different people represent different risks, and in no line of insurance is everyone charged the same price. State Farm writes that a fundamental tenet of fairness in charging for insurance and making underwriting decisions is predicated on an assessment of the risk of a particular insured."
  - State Farm Insurance, CA

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## Some states have a statutory requirement that higher rates be based on "sound actuarial principles"

- **Colo. Rev. Stat.** Ann. § 10-3-1104(1)(f)(III)

(defining "**unfair discrimination**" as
**"Making 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"**)

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The New York Times

## Health Insurers Agree to End Higher Premiums for Women

**May 6, 2009** BY ROBERT PEAR

**WASHINGTON — Insurance companies offered Tuesday to end the practice of charging higher premiums to women than to men for the same coverage.**

**Karen M. Ignagni, president of America's Health Insurance Plans, a trade group, made the offer in testifying before the Senate Finance Committee.**

**It was the latest concession by insurers as Congress drafts legislation to overhaul the $2.5 trillion health care industry.**

......

**In interviews last fall, insurance executives said they had a sound reason for the different premiums: Women ages 19 to 55 tend to cost more than men of the same age because they typically use more health care, especially in the childbearing years. Moreover, insurers said women were more likely to visit doctors, to get regular checkups, to take prescription medications and to have certain chronic illnesses.**

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# GENDER RATING IN HEALTH INSURANCE

Colorado Health Care Task Force

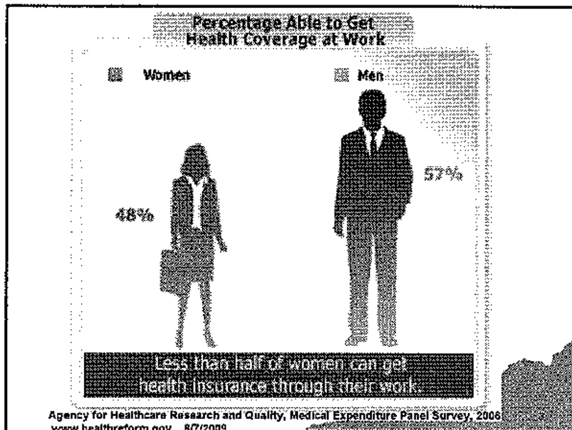
August 10, 2009

By Richard Cauchi
Program Director, Health Program - Denver
National Conference of State Legislatures

rev. 8/8/09

## What is Gender Rating?

- The commercial practice of charging different, usually higher, premiums for female consumers in the **individual insurance market**.
- According to several sources, women sometimes are charged 10 percent to 25 percent to 50 percent more than men for insurance providing identical coverage, especially during the age bracket associated with child-bearing years.




## Segments of U.S. Health Insurance

- **26 million people (8.9%) in "individual market"** or direct purchase health insurance
- **177 million people (59.3%) in employer based insurance**
- **83 million (27.8%)** covered by some form **of government or "public" insurance**
- 2007 Census, reported Aug 2008.

## Employer Group Insurance already bans gender rating (Federal Court)

- In the employer-sponsored group insurance market gender rating has been effectively banned for over 30 years. The US Supreme Court cited a court holding in 1978 that :
  "Title VII (of the Civil Rights Act of 1964) requires employers to treat their employees as *individuals*, not 'as simply components of a racial, religious, sexual, or national class.'"

## State Law Bans on Gender Rating:

- Gender Rating is prohibited in the individual market in **10 states:**

  Maine (1993), Massachusetts (1996), Montana (1983), Minnesota (1992), New Hampshire, New Jersey (1992), New York (1993), North Dakota (1997), Oregon (1996) and Washington (1993).
- 2 have "rate bands" with 20% variation: Vermont and New Mexico.