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Colorado Health Care Task Force
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Good afternoon Madame Chair and members of the Health Care Task Force. Thank you for this opportunity to provide testimony on behalf of the National Women's Law Center. The Law Center is a non-profit organization dedicated to expanding the possibilities for women and girls in this country since 1972. I am here today to convey the critical need for states like Colorado to pass legislation that would prevent insurance companies who offer individual health insurance plans from discriminating against women by charging them higher premiums for their health coverage. On behalf of the National Women's Law Center, I strongly encourage the Task Force to advance such legislation.

The Problem of Gender Rating in the Individual Health Insurance Market

Report findings

Last fall, the National Women's Law Center issued a report entitled *Nowhere to Turn: How the Individual Health Insurance Market Fails Women.* Our report examined the practice of gender rating in the individual market, where insurance companies charge women and men different premiums for the same coverage. In contrast to employer-sponsored health insurance, people often struggle to obtain coverage in the individual market. When available, coverage sold in the individual market is often expensive and more limited than insurance offered by employers. Insurers are also free to reject applicants for having any health history.

I should also note that while not the subject of our report, gender rating is also permitted in the group market in a number of states. But Colorado is among the states that prohibit insurance companies from gender rating insurance sold in the small group market – which is for small businesses with less than 50 employees.[1] Thus, in Colorado, gender rating occurs in the individual health market and in the group market for businesses with more than 50 employees.

For our report, which focused on the practice of gender rating and the availability of maternity coverage in the individual market, we gathered and analyzed information on over 3,500 individual health insurance plans available through e-health insurance, the leading online source of health insurance for individual, families, and small businesses. Our research found that gender rating is a pervasive problem in the individual health insurance market. In addition, we found that this practice often resulted in wide variations in rates charged to women and men for the same coverage.

1. Wide Variations in Gender Rating Across the Country

The vast majority of insurers that gender rate charge women more than men until they reach around age 55, at which point some, although not all, insurers charge men more. Additionally, our report found huge and seemingly arbitrary variations in each state and across the country in the difference in premiums charged to men and women. The Center found that insurers who practice gender rating charged 25-year-old women anywhere from 6% to 45% more than 25-year-old men; charged 40-year-old women from 4% to 48% more than 40-year-old men; and charged 55 year-old women premiums that ranged from 22% less to 37% more than 55 year-old men.

2. Wide Variations in Gender Rating Within a State

Our analysis found wide variations in the different premiums charged to women and men within a state. NWLC analyzed the plans identified as "best-sellers" offered in the capital city in each state for a 40-year old woman and man. We found one insurer in Missouri charging 40 year-old women a whopping 140% more than men, while another charged just 15% more than men. In Arkansas, all ten of the best-selling plans gender rated, and the difference in premiums ranged from 13% to 63% more for women. And while we did find plans among best sellers that did not gender rate, the overwhelming majority did. And the wide variation in premiums showed how arbitrary this practice can be.

3. Wide Variations in Gender Rating Among Similar Plans

In a separate analysis we attempted to determine if, perhaps, differences in plan features that contributed to the wide variation in the different premiums charged to women and men. We compared premiums among health plans that shared a set of similar features: all three plans had a $2,500 deductible, 0% coinsurance, no maternity coverage, and included prescription drug coverage. However, even among plans with the same features, there was wide variation in the gender-rated premium differences. Our findings from state to state showed that there was still wide variation from plan to plan – all with these similar features. To give you a few examples, this chart shows a few states: Colorado, Kansas, Missouri, Wyoming, and Utah. In Wyoming, for example, one plan charged 25 year-old women 12% more, while another plan with the same features charged 42% more. In Missouri, one plan charged 40 year-old women 15% more while another plan with similar features charged women 45% more. And in Colorado, one plan charged 55 year-old women 9% less, while another charged them 5% more.

4. Maternity Coverage Does Not Explain Variations In Cost

One might reasonably think that perhaps maternity related costs contributed to gender rating. Our research, however, indicated that maternity coverage fails to explain why women face higher premiums. In fact, of the 347 identified "best-selling" plans we examined that used gender rated premiums, just 6% included comprehensive maternity coverage.

Colorado-specific findings

I will now turn to our Colorado-specific findings. In 2007, approximately 185,000 Colorado women purchased health insurance in the individual market.[2] I'll refer now to the slide, where we have provided the differential in premiums between women and men in Colorado's individual health insurance market market. Our original report looked only at Denver, but in preparation for this testimony, we expanded and updated our analysis to include three additional Colorado cities: Colorado Springs, Grand Junction and Fort Collins. We examined the top ten so-called "best-selling" plans offered through e-healthinsurance.com in each of the four cities. In our research of the best-selling plans in these four cities, we found that only one insurer, Kaiser Permanente, offering coverage in Denver, did not gender rate. With the exception of the Kaiser plan offered in Denver, the only consistency we found, once again, was the wide variation in the different premiums charged men and women. For 25-year-olds, women across the four cities were charged between 10 – 56% more than men for the same coverage. Women at age 40 in each of the four cities were charged anywhere from 15 – 59 % more than 40 year-old men. Finally, 55 year-old women were charged anywhere from 9% less,

to 2% more, than 55 year-old men. I would like to underscore again the fact that a woman's significantly higher premiums cannot be explained by maternity-related costs. None of these best selling plans we examined in each of the four cities we examined included maternity coverage. In fact, none of the over 100 plans offered in each city included maternity coverage.

In a separate analysis we once again attempted to determine if, perhaps, differences in plan features that contributed to the wide variation in the different premiums charged to women and men. We compared premiums among health plans that shared a set of similar features: all three plans had a $2,500 deductible, 0% coinsurance, no maternity coverage, and included prescription drug coverage. However, even among these plans with the same features, there was wide variation in the gender-rated premium differences.

At age 25, women were charged from 10% more for Plan A to 33% more than men for Plan B. At age 35, they were charged 22% for Plan A to 54% more for Plan B; at age 45, women were charged 10% more for Plan A to 27% more for Plan C; and finally, at age 55, we begin to see the differences even out with women being charged from 5% more for Plan C to 4% less than men for Plan B. The significant range of difference in premiums charged between women and men across both the best-selling plans and similar plans demonstrates the arbitrary nature of gender rating in practice.

Some would say the practice is not discriminatory as evidenced by the fact that at around age 55, men are charged more than women for the same coverage. In our analysis of the best-selling plans in the four cities we examined, we found that insurers charged 55-year-old men no more than 3% more than 55-year-old women, a relatively slight

differential. For the next ten years of their lives, men are charged incrementally more than women. However, at age 65, the vast majority of individuals receive their insurance through Medicare, a program in which men and women pay the exact same premiums. Thus, men face higher premiums for no more than ten years, whereas women potentially face higher premiums for a significantly greater number of years. While it is our position that any and all discrimination should prohibited, regardless of whether suffered by women or men, but it is also clear that women in the individual health insurance market disproportionately suffer the costly and discriminatory effects of gender rating.

We should note that, of the plans we examined in our research, we found only one insurer, Kaiser Permanente of Colorado that did not practice gender rating. It is important to note that in 2007, Kaiser held the third highest market share of the individual health and accident insurance market.[3] Thus, Kaiser Permanente of Colorado has proven that discriminating against women by charging them more than men is not essential to the operation of a successful insurance company.

Gender Rating versus Status as a Smoker

In the Spring of 2009, the National Women's Law Center learned anecdotally that non-smoking women were being charged higher premiums than male smokers in some states. Tobacco use, like gender, age or health status, is a factor used by insurance companies to vary premiums. The National Women's Law Center advocates for community rating where risk is spread across a large pool of individuals, and does not believe that premiums should vary based on tobacco usage. However, it is not

unreasonable to think that males engaging in a behavior with proven health risks would be charged higher premiums than women who do not smoke.

So we decided to check: in the individual market, are you charged more as a woman, or as a smoker? The sad answer, upon further research, is that in some states, including Colorado – women are charged more than smokers; that is, non-smoking women, are charged more than smoking men. Our analysis showed that non-smoking females are still charged higher premiums than male smokers. In Denver, seven of the 10 best-selling plans charge 30-year-old non-smoking women higher premiums than 30-year-old male smokers, with women being charged up to 48% more. At age 40, half of the best-selling plans still charge women up to 48% more than their male peers who smoke. These numbers simply serve to reinforce the inherent inequity of the current system.

Affordability challenges

Of course, the difficulties women experience finding coverage in the individual market exacerbate the affordability challenges women already face. Studies have demonstrated that the individual market, in general, is a difficult place to find affordable coverage. Nationally, nine out of ten people who seek health insurance in the individual market do not ultimately purchase coverage, with a primary reason being that the coverage is prohibitively expensive.[4] We also know that women are more likely to face cost-related barriers to accessing health care; on average, women in Colorado are more likely to work in part-time jobs, experience higher poverty rates, and earn significantly less than men. Women in Colorado with a bachelor's degree, for instance, still earn only

64% of the amount that men with a bachelor's degree earn.[5] Thus the practice of gender rating only compounds the affordability challenges women face.

Gender rating constitutes discrimination

Gender rating should be eliminated not only for its harmful effects on women's access to affordable coverage, but simply because it is a discriminatory practice. An individual's sex is an immutable characteristic determined by genetics. A recent federal law—the Genetic Information Nondiscrimination Act—prohibits insurers from using genetic information to set health insurance premiums. Similarly, women should not face discrimination based on the biological fact of their sex.[6]

Additionally, over forty years ago, the insurance industry voluntarily abandoned the practice of using race as a premium rating factor, and many states enacted legislation that prohibits race rating.[7] Indeed, many years ago, Colorado passed a law that prohibited insurers from basing premium rates on an individual's race or ethnicity.[8] As with classifications based on race, generalizations on the basis of sex are unfair to individuals. The health insurance industry's primary justification for gender rating is "actuarial statistics" - that claims experience shows that at younger ages women *generally* use more health care than men. But rating based on gender is no less repugnant than gender rating based on race. If it were determined that white applicants used more health care services overall than other races, then insurance companies would still not charge white applicants higher premiums and they similarly should not charge women higher rates. Finally, actuarial statistics are cold comfort to women who face these higher and wildly variant prices in the individual market.

Conclusion

I strongly encourage the Health Care Task Force to take the first critical step towards making the individual insurance market more equitable for the nearly 185,000 women in Colorado who currently have an individual health insurance plan, and providing the 270,000 Colorado women who are uninsured with a more feasible option for coverage. Eliminating gender rating in the individual market would build on Colorado's having eliminated gender rating in the small group market.

Certainly eliminating gender rating is just one part of comprehensive health care reform that is required to ensure that all women – and men- have access to high-quality and affordable health care. In Washington, as all of you know, Congress has been working to enact comprehensive reform. And we are certainly hopeful for comprehensive legislation that meaningfully addresses the health care challenges women face. However, the women of Colorado should not have to wait for Congress to remedy this harmful and discriminatory practice. States like Colorado must move forward with their own agendas, pushing for equity in insurance coverage, rather than waiting on federal reform to occur.

Every day insurance companies discriminate against women in Colorado in the individual market. I urge the Task Force to advance legislation that would ban the practice of gender rating. A ban on gender rating would ensure that women are no longer the subject of unfair insurance practices that make it even more difficult for them to find quality, affordable health insurance coverage. Thank you.

[1] *See* Colorado Rev. Stat. Ann. § 10-16-1105 (2009) (not including sex as an allowable characteristic upon which to vary premium rates).
[2] National Women's Law Center analysis of 2007 data on health coverage from the Current Population Survey's Annual Social and Economic Supplement, using CPS Table Creator, http://www.census.gov/hhes/www/cpstc/cps_table_creator.html.
[3] See Colorado Division of Insurance. *Colorado Insurance Industry Statistical Report* (2007). http://www.dora.state.co.us/Insurance/StatisticalReports/StatReport2.htm.
[4] Sara. R. Collins et al., Commonwealth Fund. *Squeezed: Why Rising Exposure to Health Care Costs Threatens the Health and Financial Well-Being of American Families* (September 2006), http://www.commonwealthfund.org/Content/Publications/Fund-Reports/2006/Sep/Squeezed--Why-Rising-Exposure-to-Health-Care-Costs-Threatens-the-Health-and-Financial-Well-Being-of.aspx.
[5] Population is workers ages 16 and over. NWLC calculations from the American Community Survey 2006, U.S. Census Bureau.
[6] Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff (2008).
[7] For many years, life insurers charged blacks and whites different rates for life insurance to reflect the shorter average life expectancy among blacks. See Jill Gaulding, Note, *Race, Sex, and Genetic Discrimination in Insurance: What's Fair?*, 80 CORNELL L. REV. 1646, 1658-59 (1995); Robert H. Jerry II & Kyle B. Mansfield, *Justifying Unisex Insurance: Another Perspective*, 34 AM. U.L. REV. 329, 334 (1985).
[8] *See* Colorado Rev. Stat. Ann. § 10-3-1104(f)(II) (2009).