

INSURANCE DISCRIMINATION

**AGAINST VICTIMS
OF DOMESTIC VIOLENCE**

**Developed by
the Pennsylvania Coalition
Against Domestic Violence
and the Women's Law Project**

Insurance Discrimination Against Victims of Domestic Violence

Q How do insurance companies discriminate against victims of domestic violence?

A Many insurance companies deny victims of domestic violence access to insurance by using domestic violence as an underwriting criterion (i.e., a basis for determining who to cover, what to cover, and how much to charge). They also deny coverage on the basis of abuse-related medical conditions and claims. Such discrimination occurs in all lines of insurance — health, life, disability, and property and casualty (i.e., homeowners, personal automobile, and commercial property and automobile).

Q How do insurers learn that someone is a victim of domestic violence?

A When applying for insurance, individuals often sign a release to permit the insurer to obtain medical records. Usually, it is those medical records that reveal the abuse information. This is becoming more common because health care professionals have been encouraged to follow protocols to identify and document abuse for the purpose of providing help and referrals.

There are also companies, such as the Medical Information Bureau (MIB) and Equifax, that maintain databases on risk factors, including medical and non-medical factors. Insurance companies that become members of these databases are required to report client risk factors and are entitled to request risk-related information on an applicant or insured. Property and casualty insurers also maintain databases on claims history.

Information relating to domestic violence can be reported and disclosed through these databases. Insurers can also get information from other records, such as police reports, public court documents, and credit reports, which are becoming popular underwriting tools and often contain information about court orders, including *Protection From Abuse* orders.

Q How does insurance discrimination hurt victims of domestic violence?

A Insurance discrimination puts victims at risk by denying them the benefits that insurance provides and by discouraging them from seeking help because it may lead to loss of insurance. Without insurance, victims are unable to obtain health care for themselves and their families or provide for their families in case of death or disability. If unable to obtain health and other insurance, victims may feel they have no alternative but to stay in an abusive situation.

Victims will stop seeking appropriate and necessary medical treatment, counseling, legal intervention, and other forms of assistance as they learn that insurers use information in their records to deny insurance. Victims will also refrain from disclosing that domestic violence is the cause of their injuries.

Furthermore, doctors, health care workers and other service providers who have started identifying and documenting abuse may stop if it puts their patients at risk of losing their insurance. This will significantly undermine the enormous efforts made over the past 20 years to create new sources of assistance and avenues of relief for victims of domestic violence.

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Q How do property and casualty insurers discriminate against victims of abuse?

A In addition to using the fact that an individual is a victim of domestic violence as an underwriting criterion, property and casualty insurers engage in other practices that penalize and harm victims of domestic violence.

One such practice is underwriting on the basis of past claims. Property and casualty insurers look at past claims history to determine whether to issue coverage because they consider the past claims to represent an underlying risk associated with the property or person. When insurers deny coverage to a victim of domestic violence on the basis of past abuse-related claims, they consider the underlying risk to be the abuse. So, in essence, insurers are really denying coverage on the basis of abuse. The effect of this practice is to punish the victim for the batterer's acts.

Another practice is the denial of abuse-related claims on the basis of exclusions in the insurance policy for intentional acts. A common example is the situation in which the batterer sets the family home on fire to hurt his partner. Even though it is the batterer's act that is intentional and caused the fire, insurers deny the claim made by the innocent victim of abuse by **applying the intentional act exclusion in the policy to all persons included in the policy definition of "insured."** By leaving the victim without a home or the means to replace it, insurers guarantee the accomplishment of the batterer's goal of harming the victim.

In addition, insurers pay the mortgage company in these cases, thus freeing the batterer from any responsibility. This practice in no way supports the intentional act exclusion — which is intended to prevent wrongdoer's from benefiting from their wrongful acts — and perpetuates outdated notions that women have no identity separate or apart from their husbands.

Many insurance companies discriminate against victims of domestic violence and many people are victimized.

Q Does insurance discrimination against victims of domestic violence occur frequently?

A Yes. An informal survey in 1994 by the staff of the Subcommittee on Crime and Criminal Justice of the United States House Judiciary Committee revealed that eight of the 16 largest insurers in the country used domestic violence as a factor when deciding whether to issue insurance and how much to charge.

In May 1995, the Insurance Commissioner of Pennsylvania reported the results of a formal survey of accident, health, and life insurers regarding their underwriting practices relating to domestic violence. Overall, 24% of the responding insurers reported that they took domestic violence into account in determining whether to issue and renew insurance policies. Broken down by line of insurance, domestic violence was reported to be a criterion in deciding whether to accept new applications by 74% of the responding life insurers, 65% of the responding health insurers, and 47% of the responding accident insurers.

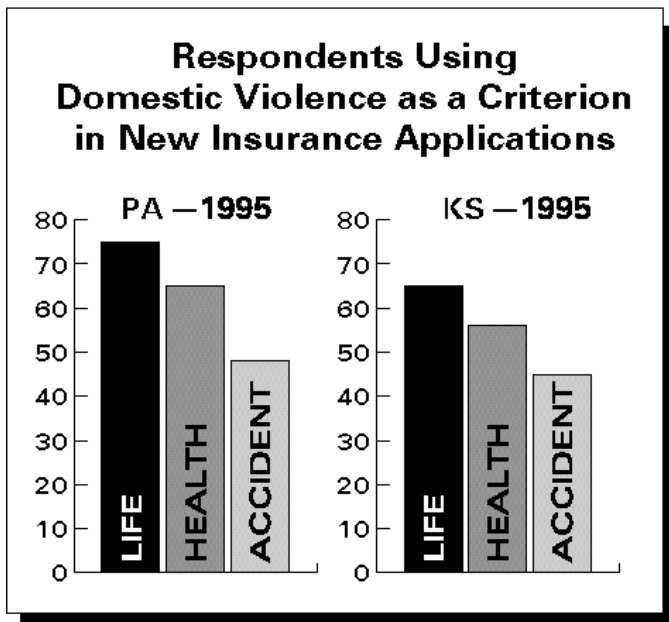
In December 1995, the Insurance Commissioner of Kansas reported the results of a similar study of accident, health, and life insurers regarding their underwriting practices relating to domestic violence. Consistent with the results of the Pennsylvania survey, 24% of the responding companies reported using domestic violence as an underwriting criterion when issuing and renewing insurance. Broken down by line of insurance, domestic violence was reported to be a criterion in deciding whether to accept new applications by 65% of the responding life insurers, 56% of the responding health insurers, and 45% of the responding accident insurers.

Well over a year after these practices had gained unfavorable public attention, both the Pennsylvania and the Kansas surveys found that, of those insurers who reported using domestic violence as an underwriting criterion, few had changed their practices.

A 1995 review of health insurer underwriting guidelines by the Texas Office of Public Insurance Counsel revealed a variety of ways in which health insurers use domestic violence as an underwriting

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criterion. Some treat victims of domestic violence as if they had a mental illness. Some insurers consider domestic violence as a symptom of unreported or undiagnosed alcoholism and require consideration of family stability. They instruct those evaluating applications to look for victims of domestic violence by identifying particular symptoms and mental health treatment and to reject as an unacceptable risk an applicant who is in current treatment or in recovery for less than 12 months. Some correlate domestic violence with lower socio-economic class and substandard living conditions and require an evaluation of environmental factors and family and occupational stability.



Q How many people are affected by these practices?

A We know that many insurance companies discriminate against victims of domestic violence and many people are victimized. (A July 1994 study by the Commonwealth Fund in New York reported that almost four million American women were physically abused by boyfriends and husbands in 1993.)

For many reasons, it is difficult to say just how many people are affected by these practices. Insurers are not

required to tell applicants the reasons for rejections or other adverse actions, so victims may not know that domestic violence was a consideration. Those who know that domestic violence is the reason have very real concerns for not reporting discriminatory insurance practices; they fear further violence to themselves and their children from the batterer as well as social stigma and embarrassment. Finally, insurers are not required to file the criteria they use in deciding who to insure with state insurance departments — nor must they disclose that information to the public.

Q What are some examples of insurance company discrimination against victims of domestic violence?

A The following are examples of discrimination against victims of domestic violence

Health Insurance

- A Santa Cruz, CA, woman was repeatedly turned down for health insurance following review of medical records that detailed beatings by her husband.
- A California hospital reports denial of payment by HMO's for repeated treatment for injuries caused by domestic violence.
- A woman from rural Minnesota was beaten severely by her ex-husband. After remarrying, she applied for health insurance and was told that she would not be covered for treatment relating to the abuse-related pre-existing conditions of depression and neck injury.
- Three insurance companies denied health insurance to a Minnesota women's shelter because, as a battered women's program, it was considered high risk.
- A women's shelter in Rochester, MN, was told that it was considered uninsurable because most of its employees are battered women.
- A Washington state child was twice denied health insurance because he had been sexually abused in a day-care facility.

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- A woman sought the services of Women House in St. Cloud, MN, because the abuse during her 12-year marriage had escalated. She was hospitalized for a broken jaw and spent two weeks in a mental health unit in a hospital. Subsequently, she was denied health insurance by two companies, including one that stated it would not cover any medical or psychiatric problems that could be related to the past abuse.
- A Washington state man, who was physically attacked by his wife, was denied over \$1,500 worth of health coverage for injuries he sustained. He was told that his wife, who owned the company that purchased the group coverage, instructed the insurer not to cooperate with him. The individual policy he obtained after his divorce included exclusions for pre-existing conditions relating to domestic violence.
- A York County, PA, employer provides health insurance through a self-insured plan that excludes expenses for medical treatment arising from or related to a domestic dispute.
- A Lancaster County, PA, woman was unable to obtain reimbursement for emergency room treatment for injuries resulting from domestic violence under her employer's self-insured health plan. She was billed for over \$5,000.
- An insurer told a Georgia shelter purchasing group health insurance for its staff that it would not cover an employee who had been shot 22 times by her abuser.

Life Insurance

- In October 1993, a resident of Cumberland County, PA, was denied life, health, and mortgage disability insurance by State Farm Insurance Company and life insurance by First Colony Life Insurance Company because of information in medical records revealing a single incident of domestic violence. (State Farm has since stated that its policy has changed and the company no longer considers domestic violence in the issuance of life, health, or disability insurance.)
- A Nebraska woman was denied life insurance because she had previously been a victim of domestic violence.

- In August 1994, Nationwide Insurance Company denied an application for life insurance in Delaware based on medical records "indicating an unstable family environment" because they included documentation of three assaults by the husband against the wife, as well as marital counseling.
- Prudential Insurance Company denied an Iowa woman a life insurance policy in November 1993, because the woman had a history of multiple assaults from her ex-boyfriend.

Disability Insurance

- An Iowa woman was sexually abused as a child and received counseling. Despite a record of good health since that time, she was turned down for disability insurance on the basis of earlier treatment.
- A Washington state woman was twice denied insurance due to treatment received for physical, emotional, and sexual abuse inflicted on her by her family during her childhood and by her spouse during marriage. In the late 1980's, her employer's disability insurance carrier denied her coverage because of a nervous condition related to abuse. In 1993, Cigna denied her application for an increase in life insurance coverage provided through her employer based on a diagnosis of a dissociative disorder related to counseling for abuse. Although she suffers from obesity, Type II diabetes, and a seizure disorder, the abuse-related counseling is the only reason given by the insurer for denial. She has divorced her abuser, has no further contact with her family of origin, and is not on any medications.

Property and Casualty Insurance

- In November 1997, American Family Insurance Group canceled the homeowners policy of a woman who volunteered her home as a "safe home." (Safe homes are private homes used for short-term emergency housing for victims of abuse referred by shelters when the shelter is fully occupied.) In the 18 months that she had provided a safe home, the woman had assisted approximately eight or nine women, for a maximum of 72 hours each time.

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- In 1997, Safeco Insurance Company denied the claim of a Washington state woman whose estranged husband deliberately set fire to her home after agreeing to give it to her in a property settlement. She had left the marriage following years of battering. After being arrested for the arson, the former husband remarked that he would gladly go to jail in order to keep her from getting the house. She described feeling punished by the insurer for choosing to leave her husband and flee domestic violence and remarked, "And you wonder why people don't leave domestic situations!" She sued to recover under the policy, but a Washington state court reluctantly upheld the denial under state law and made a plea to the legislature to take action to stop this practice. After nation-wide negative publicity, Safeco eventually settled the claim.
- A Tennessee woman whose batterer burned their house down after she fled following an abusive incident not only denied coverage but also was sued by her insurer to recover the monies paid to the holder of a second mortgage on the house. The husband was arrested and is likely to be convicted. The woman was born and raised in the home, held title to the property, and was the sole named insured on the policy. Following the intervention of the state insurance commissioner, the insurer has now paid the claim.
- A Washington state landlord's policy was canceled because the insurer learned that the landlord intended to rent a home to a women's shelter.
- In 1996, a Colorado woman's estranged husband choked her until she lost consciousness and then set fire to their home. She came to, crawled out of the house, and ran to the neighbors for help. Farmer's Insurance Group said it would pay only half the repair bill. Since a family can't live in half a home, the woman has been camping in a tent outside her charred home. She has documents showing the company repeatedly threatened to evict her when she was living in an apartment the insurer was paying for. "They just appear to be heartless," she says. "How can they treat a victim of violent crime like this?"
- The Colorado Coalition Against Domestic Violence was denied property insurance by several insurance agencies due to its name.
- In 1994, Allstate Insurance Company canceled the fire insurance policy of an Oregon woman after her former spouse broke in and set multiple fires around her home. She had been abused by the former spouse throughout the marriage and left in 1992. Initially, Allstate refused to pay the claim on the basis of the former marital relationship even though the arsonist, the woman's former spouse, was not on the policy. After Allstate canceled her policy, the woman sought other coverage and was repeatedly denied because of the arson, although the arsonist was convicted and in jail. She was also referred to the Oregon Fair Plan but was quoted a price for insurance that was eight times what she had previously been paying.
- Women's Supportive Services in Claremont, NH, had difficulty obtaining coverage when it added a shelter in the mid-80's. Insurers contacted by the agency said they would not cover a shelter.
- In 1993, Safeco Insurance Companies canceled the homeowner's policy of a Washington state woman in a letter reciting five claims filed over the 12-year life of the policy. The letter noted concern that the latest three claims occurred over a span of four months, but more importantly, the most recent one involved a domestic violence situation of individuals who were living with the insured. The angry ex-wife of the woman's boyfriend's brother damaged her door.
- Project Response, a battered women's advocacy organization in Auburn, NE, was denied general liability and workers' compensation insurance by Farmers' Bureau and Davidson's Insurance and Real Estate. The advocacy organization had never filed any previous claims.
- A victim of domestic violence in Dekalb, IL, was not able to obtain homeowner's insurance.

Domestic violence is a crime — not a career, a lifestyle, or a choice. Leaving a violent domestic situation is a difficult process, complicated by concerns for safety and economics.

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- The Women Helping Battered Women shelter in Burlington, VT, had been insured by a company for a few years when the insurer sent a letter to the shelter's broker stating that it would not renew the shelter's policy. The letter stated "this is a [sic] undesirable risk due to life safety issues, this class is on our prohibited list and security of location is a concern." The shelter had no history of security-related claims. After being rejected by at least three insurers, the shelter obtained coverage from a non-profit insurer the day before its coverage ran out.
- In January 1997, State Farm Insurance Company denied a Georgia woman home and auto insurance on the grounds that her abusive ex-husband might possibly burn, bomb, or cause damage to her home, as well as run her off the road or in some way cause damage to her car. Her former husband had unilaterally canceled the insurance policies on Dec. 31, 1996, and severely beat her on Jan. 1, 1997. A *Protection From Abuse* order had been issued against him the previous July. He was arrested and incarcerated for the beating and is expected to remain in prison for a number of years. The woman, sole occupant of the home for the previous six to seven months, received no notice of the insurance cancellation and only learned about it through a phone call to her agent. State Farm refused reinstatement and told her, if she applied to other insurance companies, she must inform them that she was a victim of domestic violence. If she did not, she would risk being denied claims for obtaining insurance under fraudulent terms. She was also told that she would be rated high risk for auto insurance. The agent later said State Farm would not insure the auto but would insure the home without medical and liability coverage. Subsequently, the agent informed her that State Farm would not insure the home or auto as long as the ex-husband still owned part of the property. The woman owned the auto and, pursuant to the divorce settlement, continued as sole occupant of the home. Another company accepted her application for auto insurance, but required a notation on the application about the recent divorce and animosity from her ex-spouse.
- In September 1995, Farmer's Insurance Companies denied a property claim to a Washington state woman whose former abusive boyfriend broke into her home and stole over \$5,000 worth of personal property. The woman previously had been subjected to two years of abuse, including physical assault, stalking, and property damage. During the claim investigation, the insurer disclosed to the abuser that he was suspected of stealing property. He retaliated by breaking into the woman's home and beating her, shoving her head-first into the fireplace, rendering her unconscious, and threatening her life if she pressed charges. The woman fled the state with her children.
- Staff members of Advocates, a battered women's advocacy organization in Wisconsin, requested additional personal auto insurance coverage for transporting clients to and from services. Some insurance companies would not even consider extra coverage.
- A community advocacy program serving victims of abuse in rural Minnesota purchased an automobile in order to provide transportation to its office for people in need of its services. When the program contacted its insurance company, the agent told the program that the car could not be added to the program's liability policy due to the risk of increased claims — since the vehicle would be used to transport victims of abuse who might be chased by abusers.
- In 1995, the property coverage of a battered women's advocacy program in Hardwick, VT, which provides information, referral, and other supportive services, was canceled due to the nature of the program. No claims had been made under the policy. Having been told by a number of insurers that they do not provide this type of coverage, the program is still without insurance.
- A Nebraska woman was denied automobile insurance on the basis of previous abuse-related claims.
- In October 1995, Prudential Insurance Company denied a claim for bodily injury under a homeowner's policy to a New Jersey woman who was set on fire by her husband and sustained serious injury. Prudential based its denial on policy provisions excluding coverage for claims for bodily injury to any insured and for claims arising out of intentional/criminal conduct by the insured.

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- In 1994, Austin Mutual Insurance Company denied the claim of a Montana woman whose abusive husband had burned down her home. The woman was living in the home with her son at the time. Nine months earlier, she had separated from her husband and obtained a restraining order. Just prior to the fire, she filed for divorce. The insurance company denied the claim for loss to the residence, personal property, and additional living expenses to both co-insureds (the woman and her estranged husband) pursuant to a provision of the policy that excludes payment for losses resulting from the intentional acts of any insured.
- Friendship Home, a battered women's advocacy organization in Lincoln, NE, was told by its insurance company, St. Paul, that the rates for property, liability, and professional liability insurance would be doubled and that it should expect its coverage to be phased out soon. St. Paul said it would no longer be providing insurance for domestic violence organizations.
- In November 1995, Allstate Insurance Company denied the claim of an Ohio woman whose house had been damaged by fire. The company conducted a background check and discovered the woman's husband was on probation after pleading guilty to a domestic violence charge six months before the fire. Allstate denied liability by concluding that the fire was started by arson. However, scientific tests at the state fire marshal's arson crime lab found no evidence that any substance was used to set the blaze and no criminal charges relating to the fire were ever made.

Q What reasons do insurers give for using domestic violence as an underwriting criterion, and why are they invalid?

A 1. *Some insurers say that a victim of domestic violence makes a voluntary lifestyle choice, similar to skydiving or riding a motorcycle, and liken battering to a career choice, such as washing skyscraper windows, for which an insurance company should not be responsible.*

Domestic violence is a crime — not a career, lifestyle, or choice. No one chooses to be battered, and leaving a violent domestic situation is a difficult process complicated by concerns for safety and economics.

Victims justifiably fear that their batterers will pursue and harm them and/or their children if they leave. Studies show that violence does not stop and may increase after leaving. Often, without sufficient financial resources, it becomes impossible for a victim to get away, establish a new home, and feed children. Housing is a problem; shelters offer only temporary housing, often for 30 days or less, which is a very difficult time-frame in which to create a new life.

2. *Others argue that domestic violence is a risk factor that needs to be considered by insurers and that limiting their ability to take domestic violence into account will impair their ability to offer affordable insurance.*

Domestic violence is a crime, and a person's likelihood of being a victim should not be used as a basis for underwriting insurance.

Furthermore, insurers have produced no actuarial studies showing that domestic violence is a particular risk that changes the overall cost of insurance. We know that there are insurers who do not use domestic violence as an underwriting criterion and they are able to stay in business and provide affordable products.

Even those companies with policies requiring denial of coverage to victims of domestic violence cover resulting injuries when, as is often the case, the abuse remains unidentified. Domestic violence is therefore already factored into the pricing of insurance without impairing the market.

In addition, insurers do not, in a scientific and consistent manner, take into account all so-called risk factors when underwriting and rating (setting the premium for) insurance. Although there are numerous risk factors insurers can choose to use, they do not use all of them and their selection is not based solely on risk. Some risk factors are not used because it is more cost-effective to pay the claims than to identify the information needed to use them as underwriting criteria. Others may not be used because they would negatively impact on marketing. Even when risk is the driving force behind criteria selection, the determination of risk is often based on assumptions and stereotypes rather than any scientific assessment.

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Insurers are not completely free from regulation. They are subject to extensive state regulation and restricted by law from using particular classifications for underwriting and rating, including race, age, ethnic origin, residence, sex, and some physical and mental disabilities. Despite potential or actual statistical correlation to various health claims and morbidity or mortality, these classifications are legally unacceptable criteria for determining insurance risks. Many laws prohibit redlining — the practice of refusing to insure or raising the cost of home-owner's insurance in high crime areas — even though one could expect more crime or damage to homes in those areas. Yet, with respect to domestic violence, insurers are essentially redlining particular homes.

By virtue of government and private initiatives, we as a society have decided domestic violence cannot be tolerated and protection must be offered to victims. Allowing insurers to deny insurance based on records created when someone obtains assistance will deter victims from seeking help and undo all our efforts.

3. *Life insurers argue that insuring the life of a victim gives the batterer an incentive to kill and collect on the policy and, if the insured is killed, the insurer could be sued for issuing a policy with knowledge of a history of domestic violence.*

Insurers have failed to provide any evidence that insurance acts as an incentive to encourage domestic violence or that denying insurance deters abuse. Batterers abuse for power and control, not profit. Any hypothetical danger posed by providing coverage is outweighed by the known cost of denying insurance to a domestic violence victim — inability to care for herself and her family, perpetuation of violence, and increased health care costs imposed on society.

Insurers are already fully protected from suit by contract and law. Insurance policy provisions typically

prohibit beneficiaries from recovering when the death or injury is a result of intentional misconduct. Furthermore, state laws regulate and limit the rights of a slayer from inheriting real and personal property and receiving benefits from insurance policies arising out of or as a result of the death of the person slain.

As long as insurers issue policies only with the consent of the insured and follow all applicable laws and procedures, they should be protected from improper suit. Insurers have not identified any situation in which they have paid on a policy or been successfully sued for a homicide that resulted from the issuance of a policy with knowledge of domestic violence.



Isn't insurance discrimination against victims of domestic violence already illegal? If not, is something being done to make it illegal?



Until very recently, no laws specifically outlawed such discrimination. However, beginning in 1994, insurance regulators and legislators at both the federal and state levels began introducing legislation to stop insurance discrimination against victims of domestic violence. With the participation and support of state insurance officials and battered women's advocates, 31 states have now taken action to prohibit such discrimination in insurance.

The National Association of Insurance Commissioners (NAIC), an association of all state insurance regulators, has completed work on four model laws that prohibit insurers from discriminating against victims of abuse in health, disability, life, and property and casualty insurance. These models are available from the NAIC — the *Unfair Discrimination Against Subjects of Abuse in Health Benefit Plans Model Act*, the *Unfair Discrimination Against Subjects of Abuse in Disability Insurance Model Act*, the *Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act*, and the *Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act*.

In addition, federal legislation has been introduced in Congress.

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STATE LEGISLATION TO PROHIBIT INSURANCE DISCRIMINATION ON THE BASIS OF DOMESTIC VIOLENCE

STATE (ADOPTED)		HEALTH	LIFE	DISABILITY	PROPERTY
Alaska	Alaska Stat. §21.36.430, §21.36.440, §21.36.450	✓	✓	✓	✓
Arizona	Ariz. Rev. Stat. Ann. § 20-448F	✓	✓	✓	
California	Cal. Health & Safety Code § 1374.75; Cal. Ins. Code §§ 676.9, 10144.2, 10144.3	✓	✓	✓	✓
Colorado	Colo. Rev. Stat. §§ 10-3-1104.8, 10-3-1108	✓	✓	✓	✓
Connecticut	Conn. Gen. Stat. § 38a-816(18)	✓			
Delaware	Del. Code Ann. tit. 18 §§ 2302(5), 2304(24), (25)	✓	✓	✓	✓
Florida	Fla. Stat. Ann. § 626.9541(g)(3)	✓	✓		
Illinois	215 Ill. Comp. Stat. 5/155.22a	✓	✓	✓	
Indiana	Ind. Code Ann. § 27-8-24.3-1 et seq.	✓	✓	✓	
Iowa	Iowa Code § 507B.4(7)(c)	✓	✓	✓	✓
Kansas	Kan. Stat. Ann. § 40-2404(7)(d)	✓	✓	✓	
Maine	Me. Rev. Stat. Ann. tit. 24-A, § 2159-B	✓	✓	✓	
Maryland	Md. Code Ann., Ins. A, § 234D	✓	✓		
Massachusetts	Mass. Gen. Laws ch. 175, §§95B, 108G, 120D, ch. 176A, §3A, ch. 176B, §5A, ch. 176 G, § 19	✓	✓	✓	✓
Minnesota	Minn. Stat. § 72A.20 Subd. 8(a)	✓	✓		
Montana	Mt. Code Ann. §33-18-242	✓	✓	✓	✓
Nebraska	L.B. 1035, 95th Leg., 2nd Sess. (Neb. 1998)	✓	✓	✓	✓
Nevada	Nev. Rev. Stat., §§ 689A.413, 689B.068, 689C.076, 689C.015, 695A.195, 675B.316, 695C.203, 695D.217, 695F.090	✓			
New Hampshire	N.H. Rev. Stat. Ann. §417:4(f)	✓			
New Jersey	N.J. Admin. Code tit. II, § 4-42.5	✓	✓		
New Mexico	N.M.Stat. Ann. §59A-16-1 et seq.	✓	✓	✓	✓
New York	N.Y. Ins. Law §2612	✓	✓	✓	✓
Ohio	Ohio Rev. Code Ann. § 3901.21(Y)	✓	✓		
Oregon	Or. Rev. Stat. §746.015(4)	✓	✓	✓	✓
Pennsylvania	Pa. Stat. Ann. tit. 40, §§1171.3, 1171.5 (14)	✓	✓	✓	✓
Rhode Island	R.I. Gen. Laws §§ 27-59-1 et seq. and 27-60-1 et seq.	✓	✓		
Tennessee	Tenn. Code Ann. §§ 56-8-301 et seq.	✓			
Texas	Tex. Ins. Code Ann. § 21.21-5	✓	✓		
Utah	Utah Code Ann. § 31A-21-501 et seq.	✓	✓	✓	
Washington	1998 Wash. Legis. Serv. 301 (S.S.B. 6565)	✓	✓	✓	✓
West Virginia	W. Va. Code §§33-4-20, 33-25A-24	✓	✓	✓	
STATE (INTRODUCED)		HEALTH	LIFE	DISABILITY	PROPERTY
Alabama	House Bill 654	✓	✓	✓	✓
Connecticut	House Bill 5615				✓
Missouri	Senate Bill 722	✓	✓	✓	✓
New Jersey	Senate Bill 706	✓			
South Dakota	Senate Bill 229	✓	✓	✓	
Wisconsin	Assembly Bill 456	✓	✓	✓	✓

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Federal Legislative Activity

Congress has also considered several bills that will provide protection for domestic violence victims whose health insurance plans are not governed by state insurance laws. (ERISA, the federal law regulating pensions and other employee benefit plans, preempts state insurance laws from governing certain employer-sponsored health plans.) When states are slow to pass legislation, federal legislation may offer a quicker, more comprehensive approach, assuring the same protection from insurance discrimination wherever victims reside.

In 1995 and 1996, Senators Wellstone (MN) and Wyden (OR) and Representatives Schumer (NY), Morella (MD), Sanders (VT), Molinari (NY), and Pomeroy (ND) sponsored eight different bills to prohibit insurers from discriminating against victims of domestic violence. A 1995 hearing before the Senate Committee on Labor and Human Resources also focused on such discrimination.¹ Although the 104th Congress ended before these bills became law, protections against discrimination on the basis of domestic violence were specifically included in the *Health Insurance Portability and Accountability Act* of 1996.² This law restricts health insurer use of pre-existing condition exclusions and prohibits denial of group health insurance. In narrowly defined circumstances, the law also prohibits the denial of individual policies on the basis of health status.

In 1997, Senators Wellstone (MN), Murray (WA), Wyden (OR), and Dorgan (ND) and Representatives Sanders (VT), Morella (MD), DeFazio (OR), and Schumer (NY) introduced companion bills to prohibit discrimination against victims of domestic violence in all lines of insurance.³ These bills have been included in the *Violence Against Women Act II* introduced in 1998.⁴

References

- ¹ *Health Insurance and Domestic Violence, 1995: Hearing Examining Proposal to Prohibit Insurers From Denying Health Insurance Coverage, Benefits, or Varying Premiums Based on the Status of an Individual as a Victim of Domestic Violence, Including Related Provisions of S. 524, S. 1028, and H.R. 1201 Before the Senate Committee on Labor and Human Resources, 104th Cong., 1st Sess. (1995).*
- ² Pub. L. No. 104-191, 110 Stat. 1936 (1997).
- ³ S. 467, 105th Cong., 1st Sess. (1997); H.R. 1117, 105th Cong., 1st Sess. (1997).
- ⁴ H.R. 3514, 105th Cong. 2nd Sess. (1998); S. 2110, 105th Cong. 2nd Sess. (1998).



What do the new laws and legislative proposals do?



Most prohibit insurers from using domestic violence as a basis for underwriting or rating insurance, meaning that they prohibit an insurer from refusing to insure someone or charging them a higher premium because that person is, has been, or might become a victim of domestic violence. They may also prohibit insurers from writing policies that exclude coverage for injuries resulting from domestic violence.

Some include important provisions requiring that abuse-related information be kept confidential and that insurers develop protocols for employees, agents, and contractors to make sure their interactions with victims do not either endanger the safety of the victim or result in disclosure of confidential information.

They also include definitions of necessary terms, enforcement mechanisms, and remedies to assure that a person experiencing insurance discrimination can obtain appropriate relief.



How are insurance companies reacting to legislative proposals to prohibit discrimination against victims of domestic violence?



Some insurers have changed their practices voluntarily. Some say they will only deny in the most egregious cases.

All health, life, and disability insurers say they must continue to look at medical conditions regardless of cause. Property and casualty insurers vehemently oppose non-discrimination legislation. They resist any attempt to restrict particular insurance practices for victims of domestic violence such as prohibiting insurers from denying, canceling, or refusing to renew a victim's insurance based on past abuse-related claims and denying payment of claims to innocent victims when such claims are caused by the abuse of a co-insured.

Some insurers voice support for legislation protecting victims of domestic violence, but with limitations, urging a number of amendments and provisos to pending legislation. These include language that would allow insurers to underwrite and rate on the basis of

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mental and physical condition regardless of the underlying cause, protect an insurer from liability for any injury resulting from compliance with the legislation, and allow insurers to deny life insurance to abusers.

Other insurers simply oppose any limitation on their ability to consider abuse in underwriting and rating, stating that insurers should have leeway in considering this type of information.



What is wrong with allowing insurers to underwrite on the basis of medical conditions caused by abuse?



The purpose of the protective legislation will be undermined if it allows insurers to underwrite on the basis of medical conditions caused by abuse. Such an exception would allow an insurer to deny insurance to a victim based on medical records that document bruises or broken bones resulting from the abuse — thus having the same effect as allowing an insurer to deny insurance based on the domestic violence itself. Consideration of the medical records in any way will deter victims from seeking help and leaving the abusive situation. The only way to end the cycle of violence is to make sure that battered individuals are able to freely seek assistance for abuse.

Permitting underwriting on the basis of abuse-related medical conditions will also enable insurers to discriminate indirectly against victims of domestic violence. Insurers will be able to deny an applicant and refuse to renew an insured based on a medical condition that is frequently associated with abuse. They will also be able to apply particular medical criteria selectively to victims of abuse — for example, determining only victims of abuse ineligible for insurance because of treatment for bruises and black eyes.

Because insurers are subject to little regulation in their selection and use of medical underwriting criteria, no one will know about or stop them from selecting and applying medical underwriting criteria with the express intent of weeding out abuse victims. Furthermore, allowing insurers to consider the health status of victims of domestic violence is inconsistent with the trend toward limiting the insurer's consideration of health status in both issuance and rating of health insurance through "community rating" and "guaranteed issuance."

At the very least, any legislation permitting insurers to underwrite on the basis of abuse-related medical conditions or claims must contain safeguards to prevent discriminatory application of underwriting standards. It also requires notice to the applicant or insured of the reason for any adverse insurance action. If that insurance action is challenged, this language properly places the burden of proof on the party who has the information, the insurer. Similar language has been included in the NAIC model laws to prohibit insurance discrimination and has been incorporated into the laws adopted in some states (see suggested language on page 12).



If legislation prohibits insurers from considering medical conditions caused by abuse, doesn't this create a special class of individuals who get special treatment?



No. Prohibiting discrimination on the basis of domestic violence will assure that these victims are treated like all other applicants. It is insurers who have created the special class, singling out domestic violence as a special classification of uninsurability.

protection for victims of domestic violence will not create inequity in the system of underwriting. Insurance industry practices are not premised on equity, fundamental fairness, or uniformity. Insurance companies currently treat people differently regardless of how compelling their circumstances.

For example, timing and pre-existing condition clauses may result in one pregnant woman being covered while another is not. A violent neighborhood will not be taken into account, but a violent household will be in determining whether to issue insurance. Some companies cover some conditions, while others do not. In this context, it is disingenuous to argue unfairness with respect to legislation that is necessary to end discrimination against victim's of domestic violence.

Insurance Discrimination Against Victims of Domestic Violence



What key elements should be included in a comprehensive and effective law to stop insurance discrimination against victims of abuse?



A comprehensive and effective law should:

- apply to all lines of insurance: health, life, disability, and property and casualty (i.e., homeowners, personal automobile, and commercial property and automobile)
- prohibit all harmful practices including: denying, terminating, canceling, refusing to renew, restricting, limiting, or excluding coverage; charging a higher premium or denying claims because the person is, has been, or is perceived to be a victim of domestic violence; or because a medical condition or claim resulted from domestic violence
- prohibit property and casualty insurers from engaging in harmful practices including: taking any of the above actions on the basis of abuse-related claims and refusing to pay claims to innocent victims of abuse when the claim is caused by the intentional act of abuse by another insured (as defined by the policy)
- prohibit these same practices because of an association with victims of domestic violence including: individuals and organizations that provide shelter and other services to victims of domestic violence, as well as employers and others with an association with victims of domestic violence
- provide for the confidentiality of information about abuse and the victim's location. In addition, since abuse is a prohibited insurance consideration, it should not be communicated to others through insurance databases or other means. It may also require protocols to protect the victim's location, which is essential to safety
- not prohibit actions "solely" based on domestic violence — this permits actions based on domestic violence in combination with other reasons

- provide safeguards if insurers are permitted to consider abuse-related medical conditions and claims. We recommend the following language:

An insurer taking action on the basis of a medical condition or other underwriting information that the insurer knows or has reason to know is abuse-related shall explain the reason for the action to the applicant or insured and shall be able to demonstrate that the action taken:

- A) *Is otherwise permissible by law and is applied in the same manner and to the same extent to all applicants and insureds with similar medical conditions or other underwriting information without regard to whether the medical conditions or other underwriting information are abuse-related.*
 - B) *Does not have the purpose or effect of avoiding the intent and prohibitions of this Act or any other provision of law and is not based on any actual or perceived correlation between a medical condition or other underwriting information and abuse.*
 - C) *Does not have the purpose or effect of treating abuse status as a medical condition.*
 - D) *Is based on a determination made in conformance with sound actuarial principles and supported by reasonable statistical evidence that shows a correlation between the medical condition or other underwriting information and a material increase in insurance risk.*
- provide an enforcement mechanism that allows an individual to obtain a meaningful remedy for a single violation of the law. A person denied coverage because of domestic violence should have an opportunity to obtain an order requiring the issuance of coverage, without having to prove a pattern or practice or intent to discriminate by the insurer. It is also critical that the law does not require such a burden of proof.

Information/Technical Assistance

For additional information or technical assistance, please contact:

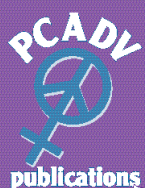
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