INSURANCE DISCRIMINATION

AGAINST VICTIMS OF DOMESTIC VIOLENCE

AUTHORED BY:
Terry L. Fromson, JD, Managing Attorney, Women's Law Project &
Nancy Durborow, MA, Consultant, Futures Without Violence

PRODUCED BY:
The National Health Resource Center on Domestic Violence, a project of Futures Without Violence and The Women's Law Project

FUTURES WITHOUT VIOLENCE

WOMEN'S LAW PROJECT
Safeguarding Rights, Creating Opportunities

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Authors: Terry L. Fromson, JD, Managing Attorney, Women's Law Project and Nancy Durborow, MA, Consultant, Futures Without Violence

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Dedicated with special thanks to the brave victims of domestic violence and insurance discrimination who have come forward with their stories, often risking their own safety to put a stop to this practice.

ABOUT THE NATIONAL HEALTH RESOURCE CENTER ON DOMESTIC VIOLENCE

FUTURES WITHOUT VIOLENCE

For more than two decades, the National Health Resource Center on Domestic Violence has supported health care practitioners, administrators and systems, domestic violence experts, survivors, and policy makers at all levels as they improve health care's response to domestic violence. A project of Futures Without Violence, and funded by the U.S. Department of Health and Human Services, the Center supports leaders in the field through groundbreaking model professional, education and response programs, cutting edge advocacy and sophisticated technical assistance. The Center offers a wealth of free culturally competent materials that are appropriate for a variety of public and private health professions, settings and departments.

For free technical assistance, and educational materials:

- **Visit:** www.FuturesWithoutViolence.org/health
- **Online Toolkit:** www.healthcaresaboutipv.org
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ABOUT THE WOMEN'S LAW PROJECT

WOMEN'S LAW PROJECT
Safeguarding Rights, Creating Opportunities

The Women's Law Project is a legal advocacy organization based in Pennsylvania. Founded in 1974, its mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, the Law Project engages in high-impact litigation, public policy advocacy, and community education. The Women's Law Project has led efforts to improve law enforcement and court response to domestic and sexual violence victims in Philadelphia and to expand the definition of rape in the FBI's Uniform Crime Report system. We also advocate for reproductive freedom; challenge sex discrimination in employment, education, athletics, and insurance; advance the rights of lesbian and gay parents; work for fair and accessible procedures in child custody, child support, and protection from abuse actions; and champion the rights of sexual assault survivors. We take pride in being both a unique resource for Pennsylvania women and a national leader in the field of women's rights.

For information about our work and helpful resources:

- **Visit:** www.womenslawproject.org
- **Call** (M-F 9am-5pm EST): 215-928-9801
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INTRODUCTION

In 1994, the Women's Law Project (WLP) and the Pennsylvania Coalition Against Domestic Violence (PCADV) drew national attention to disgraceful and widespread practices by insurance companies by exposing that insurance companies were penalizing domestic violence victims precisely because they were victims of domestic violence. A Pennsylvania woman approached WLP and PCADV for help when she was denied health, life, and mortgage disability insurance by two insurance companies because she reported to her doctor that she had been abused by her husband.[1] Her experience led to public disclosure of the problem and a campaign to understand the extent to which insurance companies denied coverage based on domestic violence and to stop victim-blaming insurance practices that denied basic life necessities to battered women, discouraged use of available protections, and perpetuated inaccurate information about domestic violence.

The Women's Law Project and the Pennsylvania Coalition Against Domestic Violence responded to the request for assistance by the courageous Pennsylvania woman who came forward when she was denied insurance. Together we led a nationwide effort to end insurance discrimination against victims of domestic violence by collecting documentation of affected individuals, analyzing insurance practices and their impact on battered women, developing model legislation, and providing technical advice to legislators, advocates, and insurance regulators who sought legal reform. The Women's Law Project is continuing that work in partnership with Futures Without Violence.

Significant reform has been achieved. Forty-five states and the District of Columbia have adopted legislation to prohibit insurers from taking domestic violence into account when deciding who to insure, how much to charge, and how much coverage to provide. From a national perspective, the Patient Protection and Affordable Care Act, when fully implemented, will protect victims of abuse from many adverse actions by health insurers.

The new federal health care law addresses health insurance, but health insurance is only part of the picture. More remains to be done to fully end insurance practices based on domestic violence in all lines of insurance. A comparison of the forty-five laws adopted by the states and the District of Columbia reveals enormous disparities in the scope of protection afforded. Comprehensive protection in all lines of insurance — life, disability, property and casualty — and in all states remains a high priority for advocacy.

Terry Fromson, JD
Managing Attorney, Women's Law Project

Nancy Durborow, MA
Consultant, Futures Without Violence

OVERVIEW OF INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

Many insurers have used domestic violence as a basis to determine whom to cover and how much to charge. They have also considered domestic violence in determining what to cover, resulting, for example, in exclusions of treatment of injuries caused by domestic violence and denials of claims arising out of domestic violence. Insurers have also refused to provide employers with group coverage when the employees have included domestic violence victims. Individuals and organizations who assist domestic violence victims have been denied coverage because of their association with victims of abuse. These insurance practices are committed by both insurance companies who sell insurance and employers who self-insure health and other coverage for their workforce. 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).

Because most domestic violence victims are women abused by a male partner, this guide will most often use she, woman, and mother when referring to a victim of domestic violence Regardless of gender, all perpetrators of domestic violence, sexual assault and child abuse should be held accountable. And, all victims of violence deserve safety, support and advocacy, including those in same-sex relationships, male victims abused by female partners, and those experiencing abuse in later life.

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. Including this information in medical records has become 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 nonmedical 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 civil orders of protection.

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 claims for property damage caused by a batterer, 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 co-insured 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 may pay the mortgage company in these cases, thus freeing the batterer from any responsibility. Denying coverage to an innocent victim 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.

HARMS TO VICTIMS OF DOMESTIC VIOLENCE

DENYING BATTERED WOMEN LIFE NECESSITIES

The immediate impact of this discrimination is to deny battered women and their families the life necessities that only insurance can provide. These necessities include health insurance for the women and their children, as well as replacement income in the event of disability or death. Homeowners and auto insurance are prerequisites to home and auto ownership, and car ownership seriously impacts an individual's capacity for employment. The inability to replace a house burned down or damaged by a batterer may result in homelessness for some. For a battered woman seeking to leave the batterer, access to insurance and the life necessities associated with insurance may mean the difference between leaving or remaining trapped in the abusive situation. The knowledge that she may not be eligible for insurance because of domestic violence may prevent a battered woman from leaving.

DISCOURAGING THE USE OF AVAILABLE PROTECTION AND ASSISTANCE

These practices additionally affect battered women's ability to access better legal remedies and services. Significant efforts have gone into improving the response of the justice system and increasing services to domestic violence victims. Advocates and legislators have succeeded in improving the enforcement of existing criminal laws against abusers and creating new legal remedies. Battered women are therefore encouraged to report abuse to the police and courts and to avail themselves of civil remedies and available application of criminal laws to domestic violence. Governmental and private resources have been invested in opening shelters, providing counseling, and developing and encouraging the use of protocols for medical providers to identify, treat, and refer victims of abuse. Battered women are likewise encouraged to use this assistance and report the abuse to their health care providers.

These insurer practices have generated concern that insurer reliance on information in documentation created from help-seeking activities,from the very medical records that both victims and health care providers have been encouraged to develop for the purpose of helping victims protect themselves from further violence,as well as from court or police documents, will deter victims from seeking medical treatment, counseling, legal intervention, and other forms of assistance. The prospect of loss of insurance coverage will cause victims to refrain from identifying the causes of their injuries and filing insurance

claims.[2] Concerned that documentation will harm rather than help their patients by leading to loss of insurance, health care providers likewise have expressed concern about documenting abuse on medical records.[3]

Lack of documentation in turn impairs the victim's ability to qualify for legal remedies. Insurance practices that penalize victims of domestic violence by impeding their ability to receive needed benefits threaten to undermine the principal forwarded by survivors, victim advocates, communities, and state and federal legislators establishing domestic violence as a serious crime for which communities must hold the offender, not the victim, responsible.

PERPETUATING INACCURATE PERCEPTIONS ABOUT DOMESTIC VIOLENCE AND INSURANCE

The justifications given by the industry for its practices have resounded with domestic violence experts as inconsistent with the reality of domestic violence. The view that domestic violence is either a lifestyle or a choice is contrary to what has been learned about the dynamics of domestic violence. No one chooses to be battered or to remain in a violent situation, and leaving is a difficult process, complicated by concerns for safety, children, and economics. Moreover, leaving is not always the safest thing to do, since victims who leave face an increased risk of abuse, including homicide.[4]

In addition, batterers commit domestic violence to achieve power and control, not for money. The industry's perpetuation of inaccurate information about domestic violence represents a lack of awareness about the realities of domestic violence. In order to overcome such misconceptions, countless organizations and individuals have organized to demand justice for victims by working with legislators to address the seriousness of this crime through the establishment of consistent laws and sanctions.

FREQUENCY OF INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

After victim advocates and others learned that insurers consider domestic violence in determining whom to insure, several entities conducted surveys to find out how many insurers engaged in such underwriting practices. The first survey of insurance practices was done in 1994 by the staff of the Subcommittee on Crime and Criminal Justice of the United States House of Representatives Judiciary Committee. An informal survey of the largest insurers in the country revealed that eight of the sixteen largest insurers in the country used domestic violence as a factor when deciding whether to issue and how much to charge for an insurance policy.[5]

State insurance departments followed with voluntary written surveys of insurers doing business in their states. In May 1995, the Insurance Commissioner of Pennsylvania reported the results of a formal survey of all accident, health, and life insurers doing business in the state regarding their underwriting practices relating to domestic violence. Overall, 26% of the 489 responding insurers reported that they considered domestic violence as an underwriting criterion. In response to a separate question about underwriting of new applications, domestic violence was reported to be an underwriting criterion by 74% of the responding life insurers, 65% of the responding health insurers, and 47% of the responding accident insurers. In response to the same question about underwriting the renewal of policies, domestic violence was reported to be a criterion for policy renewal by 34% of the responding life insurers, 19% of the responding health insurers, and 15% of the responding accident insurers.[6]

DOMESTIC VIOLENCE AS AN UNDERWRITING CRITERION IN PENNSYLVANIA

In December 1995, the Insurance Commissioner of Kansas reported the results of a similar survey of 128 accident, health, and life insurers regarding their underwriting practices relating to domestic violence. Consistent with the results of the Pennsylvania survey, 24% of the 114 responding companies answered affirmatively when asked if their company considered an applicant's or recipient's history of domestic violence as an underwriting criterion when issuing or renewing policies. In response to a separate question about underwriting of new business, domestic violence was reported to be used as an underwriting criterion by 65% of the responding life insurers, 56% of the responding health insurers, and 45% of the responding accident insurers. In response to the same question about underwriting policy renewals, domestic violence was reported to be used as an underwriting criterion by 56% of the responding life insurers, 40% of the responding health insurers, and 20% of the responding accident insurers.[7]

Both the Pennsylvania and Kansas surveys found that, of those insurers who reported using domestic violence as an underwriting criterion, few had changed their practices well over a year after those practices had been made public.[8]

DOMESTIC VIOLENCE AS AN UNDERWRITING CRITERION IN KANSAS

Additional state insurance authorities administered less comprehensive surveys. A survey of Arizona's top fourteen health insurers revealed that one insurer overtly requested domestic violence information in its application and others gained domestic violence information from medical records, with two health and five life insurers reporting denials of coverage based on domestic violence.[9] The New Mexico Insurance Department's survey of life and health insurers doing business in New Mexico found that as many as 23% of such companies used domestic violence as an underwriting criterion.[10] A 1996 Illinois Insurance Department survey found that 10% of responding accident, health, life, and disability insurers used domestic violence as an underwriting criterion and that 3% used domestic violence as a deciding criterion in nonrenewal.[11] A survey of Oregon insurers done at the request of members of Congress from Oregon found that domestic violence was used as an underwriting criterion in health and life insurance both at the time of the survey and earlier.[12]

Considering that approximately 1.5 million women in the United States are raped and/or physically assaulted by an intimate partner annually, resulting in an average of 486,151 emergency room visits per year,[13] the reported extent to which insurers use domestic violence as an underwriting criterion potentially impacts a significant number of people.

WAYS INSURANCE COMPANIES DISCRIMINATE AGAINST VICTIMS OF DOMESTIC VIOLENCE

Determining the ways in which insurance practices target and negatively affect victims of abuse has taken some time to comprehend fully. State insurance regulators do not possess such information because state insurance codes do not require the filing of criteria used to decide whom to insure. Nor are insurers required to make this information public, leaving the general population uninformed. Individual consumers of insurance products also do not necessarily know why they are rejected for coverage, as insurers are not generally required to provide consumers with the reasons for rejections or other adverse actions. Even those consumers who know that domestic violence is the reason for action taken against them by an insurance company have very good reasons for not reporting these insurance experiences — fear of further violence to themselves and their children from their batterer, social stigma, and embarrassment.

Reports from individuals discriminated against have informed advocates that insurers discriminate against victims of abuse by denying, canceling, excluding, and rating (charging a higher premium) for health, life, disability, and property insurance due to domestic violence.

EXAMPLES OF INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

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

I. HEALTH INSURANCE

A. DENIAL OF INSURANCE

- In December 2006, Blue Cross Blue Shield of New Mexico denied a woman health insurance because her ex-husband assaulted her four years earlier and she sought medical and counseling services after her attack. New Mexico's insurance laws prohibit denial of insurance based on domestic violence. Following an appeal to the New Mexico's insurance authorities, coverage was provided.[14]
- A Santa Cruz, California, woman was repeatedly turned down for health insurance following review of medical records that detailed beatings by her husband.[15]
- A woman sought the services of Women House in St. Cloud, Minnesota, because the abuse during her twelve-year marriage had escalated to such an extent that she was hospitalized for a broken jaw. She spent two weeks in a mental health unit of a hospital and was denied health insurance by two companies, one saying it would not cover any medical or psychiatric problems that could be related to the past abuse.[16]
- An insurer told a Georgia shelter that was purchasing group health insurance for its staff that it would not cover an employee who had been shot twenty-two times by her abuser.[17]
- 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.)[18]

B. EXCLUSION AND DENIAL OF CLAIMS

- A Lancaster County, Pennsylvania, 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 over $5,000 for treatment not covered by the plan.[19]
- A York County, Pennsylvania, employer that provided health insurance through a self-funded plan excluded expenses for medical treatment arising from or related to a domestic dispute.[20]
- A California hospital reported denial of payment by HMOs for repeated treatment for injuries caused by domestic violence.[21]
- A woman from rural Minnesota who was beaten severely by her ex-husband applied for health insurance after she remarried and was told that she would

not be covered for treatment relating to the pre-existing abuse-related conditions of depression and neck injury.[22]

C. ADVERSE ACTIONS AGAINST THIRD PARTIES ASSOCIATED WITH VICTIMS OF DOMESTIC VIOLENCE

- A Minnesota women's shelter was denied health insurance by three companies because it was considered high risk as a battered women's program.[23]
- A women's shelter in Rochester, Minnesota, was told that it was considered uninsurable because its employees are almost all battered women.[24]

D. DISCLOSURES THAT PLACE VICTIMS AT RISK

- The Medical Information Bureau (MIB) maintains a database of reasons for denials of coverage for member insurance companies. One of the denial factors the MIB tracks is a violence factor, pursuant to which denials based on domestic violence are recorded. Member companies are therefore able to access information about domestic violence insurance denials from the MIB.[25]

II. LIFE INSURANCE

A. DENIAL OF INSURANCE

- 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.[26]
- 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.[27]
- A Nebraska woman was denied life insurance because she had previously been a victim of domestic violence. [28]
- A Cumberland County, Pennsylvania, woman was denied life insurance by two insurance companies based on information in medical records revealing a single instance of domestic violence.[29]

III. DISABILITY INSURANCE

A. DENIAL OF 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.[30]
- 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 1980s, 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.[31]

IV. PROPERTY AND CASUALTY INSURANCE

A. DENIAL OF INSURANCE

- In 2001, a woman was denied auto coverage by Erie Insurance after relocating to a new state and availing herself of a Social Security Administration policy allowing her to change her Social Security number in order to prevent her abuser from finding her. The insurer refused to insure her unless she provided her former Social Security number, which was her driver's license number in her former state.[32]

- 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 was expected to remain in prison for a number of years. The woman and 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.[33]

- A Nebraska woman was denied automobile insurance on the basis of previous abuse-related claims.[34]

B. CANCELLATION OF INSURANCE

- In February 2009, MMG Insurance canceled the homeowner and automobile insurance policies of a Maine woman when it learned she had a restraining order against her abusive husband. MMG ended the policies although the woman was the only person named on the titles of the vehicles and the house, because the woman was still legally married, which also gave her abuser liability coverage under the plans. MMG cited the

"moral hazard" that evolved from their separation as the reason for cancellation.[35]

- In May 1993, Safeco Insurance Companies canceled the homeowner's policy of a Washington state woman in a letter reciting five claims filed over the twelve-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 between individuals who were living with the insured. The ex-wife of the woman's boyfriend's brother damaged her door.[36]

C. CANCELLATION OF INSURANCE AND RATING SURCHARGE

- 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.[37]

D. ADVERSE ACTION AGAINST THIRD PARTIES ASSOCIATED WITH VICTIM(S) OF DOMESTIC VIOLENCE

- 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.[38]

- Women's Supportive Services in Claremont, New Hampshire, had difficulty obtaining coverage when it added a shelter in the mid-1980s. Insurers contacted by the agency said they would not cover a shelter.[39]

- The Women Helping Battered Women shelter in Burlington, Vermont, 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. [40]

- Project Response, a battered women's advocacy organization in Auburn, Nebraska, 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. [41]

- 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. [42]

- The property coverage of a Hardwick, Vermont, domestic violence advocacy program, which provides information, referral, and other supportive services, was canceled in 1995 due to the nature of the program. No claims had been made under the policy. The program remained without insurance, after being told by a number of insurers that they do not provide this type of coverage.[43]

- The Colorado Coalition Against Domestic Violence was denied property insurance by several insurance agencies based on its name.[44]

- Staff members of Advocates, a domestic violence 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.[45]

- Friendship Home, a battered women's advocacy organization in Lincoln, Nebraska, 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 advocacy organizations.[46]

- In November 1997, American Family Insurance Group canceled the homeowner's policy of a woman who volunteered her home as a "safe home." 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.[48]

E. EXCLUSION AND DENIAL OF CLAIMS/ APPLICATION OF INTENTIONAL ACT EXCLUSIONS TO INNOCENT CO-INSURED

- In 2009, Nationwide Insurance Company denied an innocent victim's claim for property damage caused by his estranged wife when she set fire to the family home with herself and both of the couple's sedated children inside. Nationwide denied the claim despite a law adopted in 2006 specifically requiring insurers to pay claims to innocent victims whose homes and automobiles are damaged by the intentional acts of their abusive spouses. After a legal challenge to the insurer's denial, the trial court upheld the denial, which was further appealed. In 2013, the Pennsylvania Superior Court reversed, finding the trial court's interpretation of the law flawed based on its thorough review of the history, plain language, and legislative intent of the statutory provision that the Superior Court itself had called upon the General Assembly to enact in a 1997 opinion.[49]

- In 2000, American National Property and Casualty denied a Pennsylvania woman's claim for property damage

caused by a batterer who set fire to his estranged wife's home. The insurer filed suit in federal court seeking a declaratory judgment that it was not liable for the claim based on the intentional act exclusion in the policy. The husband had battered the woman throughout their marriage and the couple had separated, with the husband moving out of the marital residence. After the family's plight was described in the newspaper, the insurer entered into a settlement that permitted them to restore the house and replace their belongings.[50]

- 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. [51]

- A Tennessee woman whose batterer burned their house down after she fled following an abusive incident not only was 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. 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 paid the claim.[52]

- 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 had 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 said. "How can they treat a victim of violent crime like this?"[53]

- 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 brought. [54]

- 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.[55]

F. DISCLOSURES THAT PLACE VICTIMS AT RISK

- 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.[56]

- A woman in Texas who fled her abusive husband contacted her auto insurer to make sure that the company would not inform her estranged husband of her location. The insurer would give her no assurance, saying there was nothing preventing the disclosure.[57]

- A Pennsylvania woman who was denied life insurance was told that the denial was based on information relating to domestic violence received from the Medical Information Bureau.[58]

REASONS INSURERS GIVE FOR USING DOMESTIC VIOLENCE AS AN UNDERWRITING CRITERION AND WHY THEY ARE INVALID

When the news media first reported on the denial of insurance to battered women, the insurance companies who had denied coverage to the Pennsylvania woman publicly acknowledged that they did not cover battered women. The spokesperson for one of the companies stated that the company would not insure battered women "as long as they continue to stay with the batterer."[59] She "likened it to a diabetic not taking insulin" and stated that "if we were to ignore the fact that there could be other hospitalizations, that wouldn't be a prudent business decision."[60] The other company stated that it refused coverage to battered women because insuring them "might provide an incentive to murder."[61]

These industry statements synthesize the three primary positions asserted by the insurance industry for using domestic violence as an insurance underwriting criterion:

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 insurer should not be responsible. Accompanying this is the argument that insurer practices provide an incentive for a victim to stop risky behavior, in this case, to leave the batterer.

   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. They take a similar position when denying claims for intentional acts to innocent co-insureds, asserting that it is standard industry practice.

   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. 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.

Also, as some insurers have acknowledged, the industry has been covering undisclosed victims of domestic violence for years and has not suffered any financial repercussions.[62] 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 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.

Finally, insurers are not completely free from regulation. Insurance companies are subject to extensive state regulation and restricted by law from using particular classifzications for underwriting and rating, including race, age, ethnic origin, residence, sex, marital status and some physical and mental disabilities.[63] 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

As reflected in numerous governmental and private initiatives, our society has decided domestic violence cannot be tolerated and protection must be offered to victims. For example, the application of intentional act exclusions to co-insureds, a vestige of times when women were not viewed as legally independent persons, has been overturned by some state legislatures,[64] deemed violative of public policy by some state courts,[65] and replaced in liability insurance with the concept of "separation of insureds" as common industry practice. Allowing insurers to deny insurance based on records created when someone obtains assistance will deter victims from seeking help and undo all societal efforts to provide protection and relief for victims of domestic violence.

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

   While some insurers have modified their practices relating to domestic violence,[66] others have not. Some insurers, both those who have changed their standards and those who have not, have become involved in efforts to stop domestic violence, providing support for educational, health, and housing initiatives.[67]

NATIONAL EFFORTS TO MAKE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE ILLEGAL

In 1994, no law prohibited insurers from taking domestic violence into account in determining whom to insure, what to insure, and how much to charge. After the issue became public, efforts to create legal remedies for battered women affected by discriminatory insurance practices immediately commenced at both the state and federal levels.

I. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS MODEL LEGISLATION

The National Association of Insurance Commissioners (NAIC)[68] led the way by creating a working group to develop model legislation to prohibit discrimination against victims of abuse in all lines of insurance. Over a four-year period, from 1995 through 1999, the NAIC developed four model laws addressing practices in each of the four lines of insurance: Unfair Discrimination Against Subjects of Abuse in Health Benefit Plans Model Act; Unfair Discrimination Against Subjects of Abuse in Disability Insurance Model Act; Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act; and Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act.[69]

The NAIC Model Laws are quite comprehensive, including necessary definitions of essential terms, specific prohibited actions, recommended development of protocols for employees to follow to protect the safety and privacy of subjects of abuse, and enforcement. All of the models prohibit insurers from engaging in the following unfair and discriminatory acts with regard to an insurance policy on the basis of the abuse status of an applicant or insured: denying; refusing to issue, renew, or reissue; canceling or otherwise terminating; restricting or excluding coverage; and adding a premium differential. While the health, life, and disability models prohibit insurers from excluding or limiting coverage for losses or denying a claim incurred by an insured, the model applicable to property and casualty insurers is carefully crafted to apply to denial of claims to innocent co-insureds as well. The model laws also carefully delineate limits on insurer disclosure of confidential information.

Omitted from the models, however, was any protection for third parties or organizations that have been harmed by insurance practices which take into account their association with victims of abuse.

2. STATE LEGISLATIVE ACTIVITY

Since 1994, 45 states and the District of Columbia have adopted legislation that prohibits insurance discrimination against victims of domestic violence. Because states started adopting these laws during the years when the types of insurance practices that affect victims were coming to light and the NAIC model laws were in development, the laws vary considerably from state to state with respect to the types of insurance covered under the law, what practices are prohibited, who is protected, and the remedies for discriminated individuals. The chart below lists each state with its corresponding state insurance anti-discrimination law and which types of insurance are covered.

For example, only 25 states and the District of Columbia have laws covering all four types of insurance (health, life, disability, and property and casualty), seven states cover three types of insurance, six states cover two types, and six states cover only one type. Property is the type of insurance least regulated with respect to domestic violence, with 28 states and the District Columbia prohibiting such

discrimination. Thirty-one states prohibit such discrimination in disability insurance; 37 states and the District of Columbia prohibit such discrimination in life insurance. Health insurance is the most covered insurance with 43 states and the District of Columbia prohibiting discrimination against domestic violence victims in health insurance.

STATE LAWS PROHIBITING INSURANCE DISCRIMINATION ON THE BASIS OF DOMESTIC VIOLENCE*

State	Statute	Lines of Insurance Covered
Alabama	ALA. CODE §§ 10A-20-6.16(a)(2), 27-55-1 to -9	Health, Life, Disability, Property
Alaska	ALASKA STAT. § 21.36.430	Health, Life, Disability, Property
Arizona	ARIZ. REV. STAT. ANN. § 20-448G to -L	Health, Life, Disability, Property
Arkansas	ARK. CODE ANN. § 23-66-206(14)(G)(i)	Health, Life, Disability, Property
California	CAL. HEALTH & SAFETY CODE § 1374.75; CAL. INS. CODE §§ 675, 675.5, 676.9, 10144.2, 10144.3	Health, Life, Disability, Property
Colorado	COLO. REV. STAT. ANN. § 10-3-1104.8	Health, Life, Disability, Property
Connecticut	CONN. GEN. STAT. ANN. §§ 38a-816(18), 38a-469	Health
Delaware	DEL. CODE ANN. tit. 18 §§ 2302(5), 2304(24)-(25), 3340	Health, Life, Disability, Property
District of Columbia	D. C. CODE § 31-2231.11	Health, Life, Disability, Property
Florida	FLA. STAT. ANN. § 626.9541(g)(3)(e)	Health, Life, Disability, Property
Georgia	GA. CODE ANN. § 33-6-4(b)(15)	Health, Life, Disability, Property
Hawaii	HAW. REV. STAT. ANN. §§ 431:10-217.5, 432:1¬101.6, 432:2-103.5, 432D-27	Health, Life, Disability, Property
Idaho	None	
Illinois	215 ILL. COMP. STAT. ANN. 5/155.22a-b	Health, Life, Disability, Property
Indiana	IND. CODE ANN. § 27-8-24.3-1 to -10	Health, Life, Disability
Iowa	IOWA CODE ANN. § 507B.4 (3)(g)(3)	Health, Life, Disability, Property
Kansas	KAN. STAT. ANN. § 40-2404(7)(d)	Health, Life Disability
Kentucky	KY. REV. STAT. ANN. §§ 304.12-211, 304.17A-155	Health, Property
Louisiana	LA. REV. STAT. ANN. 22:1078	Health
Maine	ME. REV. STAT. ANN. tit. 24-A, § 2159-B	Health, Life, Disability
Maryland	MD. CODE ANN., INS. §27-504	Health, Life
Massachusetts	MASS. GEN. LAWS ANN. ch. 175, §§ 95B, 108G, 120D; ch. 176A, § 3A; ch. 176B, § 5A; ch. 176 G, § 19	Health, Life, Disability, Property

Michigan	MICH. COMP. LAWS ANN. §§ 500.2246, 500.3406j, 550.1401(3)(d)	Health, Life
Minnesota	MINN. STAT. ANN. § 72A.20 Subd. 8(d)	Health, Life
Mississippi	MISS. CODE ANN. §§ 83-71-1 to -15, 51 to 65, 101 to 115	Health, Life, Disability
Missouri	MO. ANN. STAT. §§ 375.1300, 375.1312	Health, Life, Disability, Property
Montana	MONT. CODE ANN. § 33-18-216	Health, Life, Disability, Property
Nebraska	NEB. REV. STAT. ANN. §§ 44-7401 to 44-7410	Health, Life, Disability, Property
Nevada	NEV. REV. STAT. ANN. §§ 689A.413, 689B.068, 689C.196, 695A.195, 695 B.316, 695C.203, 695D.217, 695F.090	Health
New Hampshire	N.H. REV. STAT. ANN. § 417:4 VIII (f)	Health, Life, Disability, Property
New Jersey	N.J. STAT ANN. §§ 17:23A-13.3, 17:29B-17, 17:48-6t, 17:48A-7s,17:48E-35.18, 17B:26-2.1q, 17B:27-46.1t; N.J. ADMIN.CODE § 11:4-42.5(a)	Health, Life, Disability, Property
New Mexico	N.M. STAT. ANN. §§59A-16B-1 to -10	Health, Life, Disability, Property
New York	N.Y. INS. LAW §2612	Health, Life, Disability, Property
North Carolina	None	
North Dakota	N.D. CENT. CODE §26.1-39-24	Property
Ohio	OHIO REV. CODE ANN. § 3901.21(Y)	Health, Life
Oklahoma	OKLA. STAT. tit. 36 § 6060.10A	Health
Oregon	OR. REV. STAT. ANN. §746.015(4)	Health, Life, Disability, Property
Pennsylvania	40 PA. STAT. ANN. §§1171.3, 1171.5 (14)	Health, Life, Disability, Property
Rhode Island	R.I. GEN. LAWS §§ 27-60-1 to -7, 27-60.1-1 to -8, 27-61-1 to -7	Health, Life, Property
South Carolina	None	
South Dakota	**S.D. CODIFIED LAWS § 58-33-13.3	Health, Life
Tennessee	TENN. CODE ANN. §§ 56-8-301 to -306	Health
Texas	TEX. INS. CODE ANN. §§ 544.151 to -.158	Health, Life
Utah	UTAH CODE ANN. §§ 31A-21-501 to -506	Health, Life, Disability
Vermont	None	
Virginia	VA. CODE ANN. § 38.2-508 (7)	Health, Life, Disability, Property
Washington	WASH. REV. CODE ANN. § 48.18.550	Health, Life, Disability, Property
West Virginia	W. VA. CODE ANN. § 33-4-20	Health, Life, Disability
Wisconsin	WIS. STAT. ANN. § 631.95	Health, Life, Disability, Property
Wyoming	None	

3. FEDERAL LEGISLATIVE ACTIVITY

Legislation prohibiting insurance discrimination against victims of abuse has been repeatedly introduced in the U.S. Congress since 1995. Initial legislation targeted health insurance practices,[70] but initiatives were soon broadened to encompass all lines of insurance[71] and have been reintroduced each Congressional session.[72] Starting in 1998, insurance protection for victims of domestic violence was included as a subtitle in several packages of bills aimed at providing comprehensive solutions to domestic violence.[73] These include the Violence Against Women Acts the Battered Women's Economic Security Act, and the Victims' Economic Security and Safety Act.[74]

If passed, these bills would have provided comprehensive protection against insurance discrimination by prohibiting discrimination in all types of insurance, including health, life, disability and property and casualty insurance, prohibiting all types of adverse actions, extending protection to third parties who experience adverse actions because of a relationship with the victim, including strong confidentiality provisions, and requiring insurers to have protocols to protect the safety and privacy of victims of abuse and to provide written notice of reasons for adverse actions that affect victims of abuse. The enforcement provisions included both an administrative remedy through the Federal Trade Commission as well as a private cause of action that included individual relief.

In 1996, Congress adopted the first legislation to provide some protection against insurance discrimination on the basis of domestic violence. The Health Insurance Portability and Accountability Act of 1996 (HIPAA),[75] addresses health condition underwriting in group health plans, consideration of pre-existing conditions, and portability of coverage. The law specifically prohibits group health plans and health insurers offering group coverage from discriminating on the basis of health factors including, "conditions arising out of domestic violence," in eligibility, benefits, and premiums eligibility or benefits.[76] Also, to the extent that a pre-existing medical condition was caused by domestic violence, HIPAA prohibits the insurer from denying coverage based on pre-existing conditions, regardless of the cause, for more than twelve months.[77] Under HIPAA, states are required to enforce these standards,[78] and have adopted legislation to conform to HIPAA requirements.[79]

While helpful, the HIPAA provisions are limited. HIPAA applies only to group health plans. HIPAA protects access to individual coverage only in the narrow circumstance that someone has lost group coverage in a short window of time and meets multiple eligibility requirements.

It is also limited to enrollment and does not reach coverage content. In addition, the limits on pre-existing condition exclusions only apply to conditions for which treatment was recommended or received within 6 months of the enrollment date. Finally, from the perspective of a domestic violence survivor, it is important to remember that HIPAA addresses only health insurance and provides no protection for adverse actions based on abuse in life, disability, and property and casualty insurance.

Pursuant to HIPAA, confidentiality regulations were promulgated by the Department of Health and Human Services that include protections for domestic violence victims.[80] The Final Privacy Rule includes the right to request health plans to restrict uses and disclosures of individually identifiable information, which is important for a victim of domestic violence who may wish to prevent, for example, an explanation of benefits form with information about treatment for abuse or her address from being sent to her batterer.[81] Health plans are also required to honor reasonable requests to receive communications of protected health information by alternative means or locations if the individual states that the disclosure could endanger her.[82]

In 1999, Congress included insurance discrimination protection in the Financial Services Modernization Act,[83] which permits banks to sell insurance subject to state regulation. This law prohibits banks from considering status as a victim of domestic violence or as a provider of services to victims of domestic violence as a criterion in any decision with regard to insurance underwriting, pricing, renewal, scope of coverage, or payment of claims. It applies to health and life insurance only.

Discrimination against victims of domestic violence in health insurance is most comprehensively addressed by implementation of the Patient Protection and Affordable Care Act, [84] enacted into law in 2010. The importance of addressing insurance discrimination against battered women by health insurers was recognized in the health care reform debate.[85] Fully implemented since January 01, 2014, the Patient Protection and Affordable Care Act's provisions prohibiting preexisting condition exclusions and premium rate discrimination, and guaranteeing availability and renewability of insurance, will protect victims of abuse from many of the adverse actions to which they have been subjected because of domestic violence in health insurance.[86] The Act also specifically provides for non-discrimination in health status by prohibiting eligibility rules based on, among other factors, "[e]vidence of insurability (including conditions arising out of acts of domestic violence)."[87]

Comprehensive protection for victims of domestic abuse subjected to discrimination in other lines of insurance has yet to be enacted.

KEY ELEMENTS FOR A COMPREHENSIVE AND EFFECTIVE LAW TO STOP INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

To fully protect victims of domestic violence from being harmed by insurance practices a law should include the following elements:

___ Apply to all lines of insurance.

___ Apply to all types of abuse, including, in particular, property damage.

___ Apply to victims who are subjected to domestic violence by current or former family members, household members, dating or intimate partners, and caretakers.

___ Apply to third parties who may be at risk because of a relationship with a victim of domestic violence or with domestic violence services generally.

___ Prohibit all actions: denial, cancellation, claims exclusions and limitations, claims denials, and rating surcharge.

___ 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 adverse actions based on abuse, including abuse status, abuse-related medical conditions, and abuse-related claims.

___ Prohibit subrogation of victims for a claim resulting from domestic violence.

___ Require the development of and compliance with protocols to address safety of the victim when the insurer takes actions that might place the victim at risk, such as pursuing subrogation and interviewing the accused.

___ 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.

___ Provide effective means to enforce an individual's rights, including both regulatory hearings and proceedings in court.

___ 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.

___ Provide remedies that will provide individual relief to the victim, including, for example, requiring the insurer to issue the policy or pay the claim or restitution.

While state legislation to address this problem is certainly a step in the right direction, a comparison of the forty-five laws adopted by the states and the District of Columbia reveals enormous disparities in the scope of protection afforded, suggesting that a single federal law applicable to all insurers nationwide would afford the best promise of protection for battered women. As one researcher observed: "A federal approach will be more powerful than state-by-state solutions precisely because it is national. Abuse victims in all fifty states will be protected."[88]

A federal law is important not only for comprehensive coverage but for uniformity of protection. When victims of abuse flee to escape domestic violence, they often go as far away as they can, frequently crossing state lines.[89] In addition, insurance often is determinative of whether they have the financial resources to flee.[90] Since insurance is an economic resource that may figure into a woman's decision to leave—so that she can provide health care and other necessities to her children and herself—battered women should be equally protected from insurance discrimination in every state.

WHAT YOU CAN DO TO HELP PROTECT VICTIMS OF DOMESTIC VIOLENCE FROM INSURANCE DISCRIMINATION

It is important to monitor compliance with existing laws. If you work with domestic violence victims or organizations, routinely survey them to make sure they have not been subjected to discrimination. If you discover violations of insurance law, seek remedies. If no legal protection exists where you live, advocate for legal reform. If your state prohibits insurance discrimination against domestic violence victims, ask your state insurance regulator to do a market conduct exam to verify compliance with the law.

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[56] L.H. Otis, Abuse Victim Claims Raise New Risks, Nat'l Underwriter, Feb. 12, 1996, at 1; Interviews with victim (Dec. 1995).

[57] Letter from victim's daughter to Tex. Ins. Dep't (Dec. 4, 1995); Terry Fromson & Nancy Durborow, Abuse Victims Do Need Confidentiality Protection, Nat'l Underwriter, Feb. 24, 1997, at 25 (letter to the editor).

[58] Letter from Nationwide Ins. Co. to applicant (Aug. 31, 1994); Fishbane & Jurden, Insurance Discrimination, supra note 26; Nightline: Insurance Discrimination, supra note 26; NAIC, Discriminatory Practices Hearing, supra note 26, at 12-13.

[59] Thomma, supra note 5.

[60] Id.

[61] Id.

[62] Glenn Britt, Executive Vice President, State Farm Ins. Co., Remarks at the Meeting of the Committee on Insurance Coverage and Domestic Violence With State Farm Insurance Companies 2 (Jan. 31, 1996) (minutes on file with author).

[63] Most states prohibit insurers from engaging in unfair discrimination, which includes actions based on categories that society has decided as a matter of public policy are unfair classifications, such as race, gender, marital status, religion, and national origin, as well as actions that are not based on differences that can be substantiated through actuarial statistics and experience. Harry Woodman, Principles of Risk Selection and Classification, in Medical Selection of Life Risks 43 (R.D.C. Brackenridge & W. John Elder eds., 3d ed. 1992); see also Deborah S. Hellman, Is Actuarially Fair Insurance Pricing Actually Fair?: A Case Study in Insuring Battered Women, 32 Harv. C.R.-C.L. L. Rev. 355, 381 (1997).

[64] Statutory standard fire insurance policies have been interpreted as requiring recovery by innocent co-insureds. See, e.g., Fireman's Fund Ins. Co. v. Dean, 441 S.E.2d 436 (Ga. Ct. App. 1994); Osbon v. Nat'l Union Fire Ins. Co., 632 So.2d 1158 (La. 1994); Borman v. State Farm Fire & Cas. Co., 499 N.W.2d 419 (Mich. Ct. App. 1993); Watson v. United Servs. Auto. Ass'n, 551 N.W.2d 500 (Minn. Ct. App. 1996).

[65] Courts in at least twelve states recognize that public policy favors recovery for innocent co-insureds. A Delaware court has held that barring recovery by an innocent co-insured because she is the wife of the wrongdoer would be contrary to the public policy clearly mandated by the Married Women's Act. Steigler v. Ins. Co. of N. Am., 384 A.2d 398 (Del. 1978). Courts in Alabama, Florida, Kentucky, Maryland, New Mexico, New York, Ohio, South Carolina, Texas, Utah, and Wisconsin have held that the wrongful act of one spouse should not be attributed to the innocent co-insured and that the marital relationship should not cause an innocent co-insured to be denied recovery. Hosey v. Siebels Bruce Group, S.C. Ins. Co., 363 So. 2d 751 (Ala. 1978); Overton v. The Progressive Ins. Co., 585 So. 2d 445 (Fla. Dist. Ct. App. 1991); Am. Hardware Mut. Ins. Co. v. Mitchell, 870 S.W.2d 783 (Ky. 1993); St. Paul Fire & Marine Ins. Co. v. Molloy, 433 A.2d 1135 (Md. 1981); Delph v. Potomac Ins. Co., 620 P.2d 1282 (N.M. 1980); Krupp v. Aetna Life & Cas., 479 N.Y.S.2d 992 (App. Div. 1984); Attallah v. Midwestern Indem. Co., 551 N.E.2d 619 (Ohio Ct. App. 1988); McCracken v. Gov't Employee Ins. Co., 325 S.E.2d 62 (S.C. 1985); Kulubis v. Tex. Farm Bureau Underwriters Ins. Co., 706 S.W.2d 953 (Tex. 1986); Error v. W. Home Ins. Co., 762 P.2d 1077 (Utah 1988); Hedtcke v. Sentry Ins. Co., 326 N.W.2d 727 (Wis. 1982).

[66] Health Insurance and Domestic Violence Hearing, supra note 2, at 17 (statement of Peg Echols, Assistant Counsel, State Farm Insurance Company, that State Farm concluded it will not use evidence of domestic violence to determine eligibility, level of benefits, or cost of product in life, health, and disability insurance).

[67] See Lisa Holton, Insurance Firm Moves to Cover Battered Spouses, Chi. Sun-Times, May 26, 1995, Financial, at 47 (describing State Farm's change in policy and its formation of the Corporate Alliance to End Partner Violence).

[68] The NAIC is an association of insurance regulators from all states, the mission of which includes protecting the public interest and promoting fair and equitable treatment of insurance consumers. One way in which the NAIC addresses issues of public concern is to develop model laws in a process that permits extensive input by affected persons, both by insurance industry representatives and consumer representatives.

[69] These models are published in the NAIC compendium of model laws.

[70] S. 524, 104th Cong. (1995); H.R. 1191, 104th Cong. (1995); H.R. 1201, 104th Cong. (1995); H.R. 1920, 104th Cong. (1995); H.R. 3145, 104th Cong. (1996); Women's Health Equity Act of 1996, Title II, Subtitles E, F, & G, H.R. 3178, 104th Cong. (1996); Women's Health Equity Act of 1996, Title II, Subtitles E, F, & G, S. 1799, 104th Cong. (1996).

[71] H.R. 2654, 104th Cong. (1995); S. 1630, 104th Cong. (1996); H.R. 3590, 104th Cong. (1996).

[72] S. 467, 105th Cong. (1997); H.R. 1117, 105th Cong. (1997).

[73] H.R. 3514, 105th Cong. (1998); S. 2110, 105th Cong. (1998); S. 51, 106th Cong. (1999); H.R. 357, 106th Cong. (1999); S. 2787, 106th Cong. (2000); H.R. 3171, 109th Cong. (2005).

[74] Battered Women's Economic Security and Safety Act, S. 1069, 106th Cong., Title I, Subtitle C (1999); Victims' Economic Security and Safety Act (VESSA), S. 1249, 107th Cong., Title IV (2001); H.R. 2670, 107th Cong., Title IV (2001); Security and Financial Empowerment (SAFE) Act, S. 1801, 108th Cong. (2003); HR 3420, 108th Cong. (2003); S.1796, 109th Cong. (2005); H.R. 3185, 109th Cong. (2005); S.1136, 110th Cong. (2007); H.R. 2395, 110th Cong. (2007); S.1740, 111th Cong. (2009); H.R. 739, 111th Cong. Title IV (2009).

[75] 29 U.S.C. §§ 1181-82.

[76] 29 U.S.C. § 1182(a)(1)(G) and (b); 42 U.S.C. § 300gg-1(a)(1)(G) and (b).

[77] 29 U.S.C. § 1181(a); 42 U.S.C. § 300gg(a).

[78] 42 U.S.C. § 300gg-22(a)(1).

[79] See, e.g., Ark. Code Ann. § 23-86-306; N.C. Gen. Stat. § 58-68-35.

[80] 45 C.F.R. pts. 160 & 164.

[81] Id. § 164.522.

[82] Id. § 164.522(b)(1)(ii).

[83] 12 U.S.C. § 1831x(e).

[84] H.R. 3590, 111th Cong. (2010), Pub. L. No: 111-148, 124 Stat. 119.

[85] Jenny Gold, KHN Staff Writer Domestic Abuse Victims Struggle To Find Insurance (Oct. 7, 2009) at http://www.npr.org/templates/story/story.php?storyId=113574189.

[86] H.R. 3590, note 83, at Subtitle C, Subpart I, Sections 2701-2706; Subpart II, Section 1253.

[87] Id. Section 2705(a)(7).

[88] Hellman, supra note 62, at 409.

[89] A study of TANF recipients revealed that 55% had moved to a different state to escape abuse. See Jessica Pearson et al., Child Support and Domestic Violence: The Victims Speak Out 15 (1998); see, e.g., Green v. Anderson, 811 F. Supp. 516, 517 (E.D. Cal. 1993) (stating that the three named plaintiffs migrated to California with their children to escape abusive or dangerous living conditions).

[90] Planned Parenthood v. Casey, 505 U.S. 833, 892 (1992) (citing B.E. Aguirre, Why Do They Return? Abused Wives in Shelters, 30 J. Nat'l Ass'n Soc. Workers 350, 352 (1985)); S. Con. Res. 66, 104th Cong. (1996) (enacted).

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Futures Without Violence
100 Montgomery St, The Presidio
San Francisco, CA 94129
Tel: 415.678.5500
www.FuturesWithoutViolence.org

Women's Law Project
125 S. 9th St, Suite 300
Philadelphia, PA 19108
Tel: 215.928.9801
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