Helping Consumers Avoid Getting Burned or Blown-Away by Post-Disaster Fraud
The Consumer Impact of Natural Disasters
The Cost of Natural Disaster Fraud – Insured Losses Only

$551 Billion over 10 years

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<thead>
<tr>
<th>Year</th>
<th>In dollars when occurred</th>
<th>In 2020 dollars (2)</th>
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Conservative estimates* put P&C insurance fraud at 10% of all claims paid. For natural disasters the number is generally considered to be far higher.

Using the $551B figure:

- 10% = $55.1 B
- 12% = $66.1 B
- 15% = $82.6 B
- 18% = $99.1 B

*Battelle Seattle Research Center
How Natural Disaster Fraud Occurs

Contractor and Repair Scams
Contractor and Repair Scams

• Requiring an up-front advance then not showing up to do the work

• Promising to “absorb” the policyholders’ deductible then cutting corners on the job

• Substandard work/incomplete work

• Damaging undamaged items to increase the scope and cost of work
Contractor and Repair Scams

- People who claim to be FEMA Housing inspectors but aren’t
- Fake offers of local or federal assistance/People who seek your FEMA # or other personal financial info
- Adjusters/Contractors/Attorneys that take an assignment of insurance benefits but don’t do any work to collect them
- Charging to clean items that should be discarded/can’t be cleaned
How Natural Disaster Fraud Occurs

Insurer actions
Insurer Actions

- Employing inexperienced adjusters without adequate training
- Standing firm on an Xactimate estimate when it doesn’t match up with local pricing on materials and labor
- Applying excessive depreciation when calculating Actual Cash Value
- Discouraging policyholders from hiring professional help
- Pressuring policyholders to use insurer preferred contractor that doesn’t have a good track record or references
- Bulk contracts with engineering firms that aren’t adequate to cover thorough inspections, resulting in “cookie cutter” reports
How Natural Disaster Fraud Occurs

Consumer Fraud
Unintended or Claim Motivated Fraud
“Low-Ball” Offers may force padding of claims

- Contents inventory
- Dwelling repairs/replacement estimates
Disparate Impact of Natural Disaster Fraud
Disparate Impact – Fraudsters & Scammers
Disparate Impact – Insurer Responses
DOI Actions to Protect Consumers
DOI Actions to Protect Consumers

• Advance Planning:
  • Disaster plans in place to address fraud.
  • Emergency approval plans for adjusters and contractors.
  • CSLB coordination.
DOI Actions to Protect Consumers

- Consumer Warnings
- In advance
- Post disaster
DOI Actions to Protect Consumers

• Insurer response plans and anti-fraud plans.
DOI Actions to Protect Consumers

• Prosecution of disaster fraudsters
DOI Actions to Protect Consumers

• Legislative advocacy – “storm chaser laws”
Questions?
THANK YOU
Credit-Based Insurance Scores in the Era of Covid-19: 
Unfair Discrimination

Handout for Presentation to the NAIC Consumer Liaison Committee 
August 14, 2021

1. Birnbaum Declaration, APCIA vs WA OIC, April 2021
2. Birnbaum Presentation to CAS, March 2013

Birny Birnbaum
Center for Economic Justice
I, Birny Birnbaum, declare as follows:

1. I am an economist with 30 years of experience related to insurance credit scoring as a regulator, consultant to public agencies and consumer advocate. I serve as director of the Center for Economic Justice (CEJ), a non-profit consumer advocacy organization dedicated to improving access to basic goods and services, including insurance. (www.cej-online.org)

2. In my role at CEJ, I have been a designated consumer representative at the National Association of Insurance Commissioners for all but two of the last 23 years. CEJ works with consumer organizations around the United States and the world sharing our expertise on insurance issues impacting low-income and minority communities.

3. As Chief Economist at the Texas Office of Public Insurance Counsel and as Chief Economist and Associate Commissioner at the Texas Department of Insurance, I routinely
reviewed insurance rates and filing for compliance with statutory standards – not excessive, not inadequate and not unfairly discriminatory. I have consulted with public agencies on insurance credit scoring and insurance rates, including a report to the Ohio Civil Rights Commission. I have testified before Congress on insurance credit scoring on two occasions. I have been a participant in every major insurance credit scoring debate nationally since 1991. I have been accepted by a number of courts as an expert on economic and actuarial issues regarding insurance rates. I serve on both the Federal Advisory Committee on Insurance of the Federal Insurance Office and Insurance Policy Advisory Committee of the Federal Reserve Board. I have made dozens of presentations on insurance credit scoring and unfair discrimination before insurance regulators, agents’ associations and actuarial associations. I have reviewed actual insurance credit scoring models filed in states where such models are public information.

4. I have two masters degrees from the Massachusetts Institute of Technology in Management and in Urban Studies and Planning with concentrations in finance and applied economics

5. I am not being compensated by any person or organization for my declaration and I have no financial interest in the outcome of the proceeding.

6. I am fully familiar with insurers’ use of consumer credit information for a variety of purposes, including credit-based insurance scores for underwriting and pricing personal auto and residential property insurance.

The Development of Credit-Based Insurance Scores and Their Use

7. Credit-based insurance scores, like any type of scoring model based on consumer credit information, are algorithms or models developed by data-mining historical credit information for correlations to insurance outcomes, like the frequency or severity of a claim. Out of hundreds of possible data points that can be generated by a consumer credit report, a vendor or insurer with access to consumer credit data and insurance outcomes can identify those data
points that best segment the population of insureds. Insurers and vendors like FICO, TransUnion
and LexisNexis use this approach to develop credit scoring models for insurance.

8. The premise behind any underwriting or rating factor used by insurers, including
credit-based insurance scores, is that the scores correlate with or are predictive of insurance
claims by the policyholder. Insurers justify the use of credit-based insurance scores by asserting
that the differences in consumer credit history can be translated into differences in credit-based
insurance scores and different scores will help predict which consumers are more likely to, for
example, file a claim.

9. It should be noted that insurers use consumer credit information for purposes
other than predicting claim costs. Insurers have long used consumer credit information to
segment consumers based on non-cost factors such as likelihood of staying with the insurer or
purchasing multiple products (“consumer lifetime value”) or willingness to accept a rate
increases without shopping (“price optimization”) or willingness to accept a claim settlement
without attorney involvement (“claims optimization”).

10. Like any predictive model, credit-based insurance scoring models are developed
based on an analysis of historical data to historical outcomes. For credit-based insurance scoring
models filed by insurers with the Washington Office of the Insurance Commissioner (OIC) and
in use on and after March 2020, the models were developed using data from periods prior to
March 2020 and, in some cases, data from several years earlier. And like any predictive model,
if the training data are biased, incorrect, incomplete – or not representative of the future
experience – the model will reflect and perpetuate the bias in the data.

11. I have reviewed credit-based insurance scoring models filed in states where the
models are public information. I have seen the credit history information used in a variety of
personal auto and residential property insurance scoring models. Some of the credit report data
used in actual credit-based insurance scoring models and circumstances that might result in lower
or worse scores, include:
• Months since recent delinquency – consumers without a paycheck or on unemployment or with high medical bills are far more likely to have a delinquency. Almost all bankruptcies are a result of medical debt (with the majority occurring for those with insurance, job loss, and divorce)
• Months since oldest trade opened – consumers without a paycheck or on unemployment are far more likely to turn to credit to pay bills
• Utilization of open bank revolving trades
• Number of trades opened in last 6 months
• Number of open credit card trades verified in last 12 months with utilization > 75% – consumers with lower incomes and, consequently, whose credit cards have lower limits may be disproportionately impacted by this type of factor
• Months since most recent collections
• Number of trades 30 or more day past due in last 12 months
• Number of inquiries in last 24 and last 3 months
• Number of home equity trades

Fair and Unfair Discrimination in Insurance

12. When credit-based insurance scores were first being developed and used by insurers in the 1990’s, the practice was very controversial. In response to a variety of complaints about unfair credit scoring practices – such as penalizing consumers who shopped around or for having medical debt collections – many states adopted restrictions or requirements for credit-based insurance scores in addition to the general standard for any property/casualty rating factor that rates not be unfairly discriminatory. Nearly every state requires that property/casualty insurance rates, including rates based on insurance credit scoring models, cannot be unfairly discriminatory as part of the general rate standard.

13. The template for the credit-based insurance scoring statutes found in many states was developed by the National Conference of Insurance Legislators as a model law. I
participated in the discussions when the model law was first developed as well as the discussions
for the revisions to the model law in subsequent years. I have also been involved in discussions
in a number of states when the issue of insurance credit scoring is before the state legislature.

14. In my experience, the credit-based insurance scoring statutory provisions have
always been understood as additional requirements to the basic rate standards of not excessive,
not inadequate and not unfairly discriminatory and have never been intended to supplant these
core statutory rate standards. It would make no sense to carve out one type of rating factor from
the general rate standards because any rating factor can be fairly discriminatory at one point in
time and become unfairly discriminatory at another point in time, just as overall rates can meet
the statutory standard of not excessive at one point in time but become excessive at another point
in time.

15. Like nearly every other state, Washington has a statute, RCW 48.19.020, that
establishes the basic standard for rates – “Premium rates shall not be excessive, inadequate or
unfairly discriminatory.” And like nearly every other state, Washington has a statute, RCW
48.18.480, setting out additional standards prohibiting unfair discrimination – “No insurer shall
make or permit any unfair discrimination between insureds or subjects of insurance having
substantially like insuring, risk, and exposure factors, and expense elements, in the terms or
conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in
the benefits payable or in any other rights or privileges accruing thereunder.”

16. I have extensive experience working with these unfair discrimination provisions
over the past 30 years. I’ll refer to the first standard (found in RCW 48.19.020) for fair
discrimination as the actuarial basis – there must be a demonstrable relationship between the
rating factor and expected claims. I’ll refer to the second standard (found in RCW 48.18.480) as
the similarly-situated standard.
Why Credit Scoring Has Become Unfairly Discriminatory for Insurance Rates

17. Following the onset of the pandemic, changes in underlying economic conditions and credit report accuracy have triggered both the actuarial and the similarly-situated prongs of unfair discrimination. For the actuarial basis, the ability of consumer credit information to predict claims has been severely compromised.

18. As noted above, credit scoring models, like any predictive model, are developed using historical data – historical credit data matched to historical insurance outcome data. The models assume that the future will look like the past – that current and future credit data will look a lot like the historical data and the relationship between credit and insurance claims will remain consistent. Those critical assumptions have not held for credit-based insurance scores – current credit data has changed and will change dramatically for millions of Americans, claims experience has changed dramatically and the relationship between the two has changed.

19. Economic conditions changed dramatically on and after March 2020. Unemployment skyrocketed as businesses were shut down and certain industries – personal services, travel and tourism – were highly impacted. Predictive models are developed based on historical data -- the data are mined to see what factors are most predictive of a particular outcome. If the training data are biased, incorrect, incomplete – or not representative of the future experience – the model will reflect and perpetuate the bias in the data. In the case of insurance credit scoring, historical data will not reflect the current and near future credit experience of many consumers who have been laid off, whose business has closed, or who have major medical bills due to COVID-19, among other reasons.

20. CoreLogic tracks mortgage loan performance and issues a monthly Loan Performance Insight report. The most recent report (https://www.corelogic.com/insights-download/loan-performance-insights-report.aspx) covering performance through January 2021, shows that even though mortgage delinquencies of 30 days or more have declined from the peak of the pandemic, the rate of 5.6% is still 60% greater than the January 2020 rate of 3.5%.
rate of seriously delinquent mortgages – 120+ days past due – has more than tripled from 0.9% to 3.1%.

21. Insurers argue that credit-based insurance scores are one of, if not the most, factors predicting insurance claims. Insurers and vendors also claim that insurance scores have been stable during the pandemic. If the insurer and vendor claim is true, we would expect to see stable incidence of insurance claims. In fact, we have seen a dramatic decline in personal auto claims because of fewer drivers on the road, fewer miles driven as many workers are able to work from home and more consumers are having food and products delivered instead of shopping in stores. And many of these changes are permanent as many businesses, including major insurers, move to permanent work-from-home for some employees. This divergence between credit scores and claims demonstrates that insurance credit scores became unreliable – and unfairly discriminatory on the actuarial basis – because the calibration of credit information to claims was based on vastly different economic conditions and claims outcomes from the period prior to the pandemic.

22. The Center for Economic Justice and the Consumer Federation of America have issued several reports since March 2020, documenting the decline in miles driven and the corresponding decline in personal auto insurance claims. Exhibit A includes some of these studies. This decline in personal auto claims has resulted in huge increases in profits for personal auto insurers – even after accounting for the limited premium relief offered by some auto insurers. Consequently, if, as industry claims, average insurance scores are stable, we would expect to see stable insurance claims. The fact that personal auto claims have dropped dramatically while, according to industry, insurance credit scores have remained stable, indicates that the historical predictive capability of credit-based insurance scores has been compromised. Attached is a true and correct copy of Exhibit A.

23. Stated simply, even assuming that insurance credit scoring had a sound actuarial basis prior to March 2020, it is clear that the actuarial basis no longer held after March 2020. In
the case of insurance credit scoring, current models relied upon historical data from before March 2020 and, consequently, will not reflect the current and near future credit experience of many consumers who have been laid off, whose business has closed, who have essentially stopped driving, and who have major medical bills due to COVID-19 and more. Moreover, as I discuss further below, the use of average credit scores are not a relevant measure of whether credit-based insurance scores have become unfairly discriminatory on the actuarial basis.

24. On the similarly-situated basis for unfair discrimination, there can also be no dispute that key consumer protections related to consumer credit reporting in the federal CARES Act, passed by Congress in 2020, have made insurance credit scoring unfairly discriminatory. Among other provisions of the CARES Act is the requirement for credit bureaus to report any borrower who has gotten some form of forbearance by the lender to be reported as current on the loan. Forbearance can take a variety of forms, including permitting borrowers to miss required payments without penalty. Millions of borrowers have taken advantage of forbearance, although hundreds of thousands more who were eligible for forbearance did not seek this assistance. The Urban Institute Housing Finance Policy Center has tracked forbearance activity which peaked at 6.4% of the tens of millions of loans insured or owned by Fannie Mae and Freddie Mac. https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf The Urban Institute has also concluded that delinquent homeowners in neighborhoods of color are less likely to use or access forbearance protections. https://www.urban.org/urban-wire/delinquent-homeowners-neighborhoods-color-are-less-likely-be-protected-forbearance

25. It is straightforward to show how the CARES Act provisions lead to unfair discrimination with credit-based insurance scores. Consider two similarly-situated consumers – identical in all respects, including missing several monthly mortgage payments – but one has sought and obtained forbearance while the other has not. Although similarly situated, the credit report of the consumer who did not get forbearance shows delinquency while the credit report
of the consumer who got forbearance shows no delinquency. Pre-pandemic, both consumers would have suffered higher premiums due to delinquencies lowering the insurance credit scores. Post-pandemic insurance credit scoring will cause the first consumer to be charged more because of a lower credit score even though the consumers are similarly situated. Using credit-based insurance scores causes similarly-situated consumers to be treated differently, which is unfair discrimination in insurance.

26. Now consider two consumers who are not similarly situated. These two consumers are identical except that one has remained current on loan payments during the past 12 months and the other has failed to make a number of payments. The consumer who has failed to make a number of payments has obtained forbearance with the result that, despite the missed payments, this consumer’s credit reports show the consumer as current with payments. Pre-pandemic, these consumers would have received different credit scores and different insurance premiums because of the different credit scores. Post-pandemic, these consumers now receive the same credit score because the credit data used to generate the score has been compromised by government order. Unfair discrimination has occurred because two consumers who the credit scoring models determine should be treated differently, are now treated the same. Using credit-based insurance scores with the flawed data causes two consumers to be treated the same even though the two consumers are not similarly situated. This unfair discrimination results solely from the now-flawed credit based insurance scores.

27. Insurance credit scoring models, like any rating factor, were developed to distinguish groups of consumers -- and the rates assigned to each group – based on differences in the data for that rating factor. When the data no longer allows identification of the distinctions upon which the rating factor is based, the rating factor has become unfairly discriminatory. I can further illustrate the problem by considering a rating factor for driving record – accidents and violations. Insurers typically charge higher rates for consumers with prior accidents or certain kind of driving violations. Insurers often rely upon Motor Vehicle Reports for some of this
information. Suppose that an insurer had a rating plan that gave clean drivers a 10% discount, a driver with a speeding ticket a 10% surcharge and a driver running a stop sign a 20% surcharge. Now assume that a state’s governor declares an emergency and orders that all MVRs be reported as clean with no violations. By compromising the data that underpinned the basis for distinguishing among groups of consumers, the rating factor no long is able to determine whether consumers are similarly-situated or not and that rating factor has become unfairly discriminatory. And that is precisely what has occurred with consumer credit information and credit-based insurance scores.

Misleading, Irrelevant and Incorrect Information

28. I have reviewed the declaration of Adam Pinchon, the LexisNexis employee who claims that during the pandemic the LexisNexis credit-based insurance scores “have remained stable in the aggregate.” I have also reviewed the LexisNexis “report” cited in the declaration of Andrew Davies which states, “There is no substantial shift in the average Attract score.” Attract Score is the marketing name used by LexisNexis for their credit-based insurance scores. As a preliminary matter, the statements regarding average credit scores are uncorroborated claims by a party with a direct financial interest in the outcome of this proceeding. There is no way for any third party to verify or independently assess the LexisNexis claims.

29. More importantly, the LexisNexis claim that average credit scores have remained stable is irrelevant for assessing whether credit-based insurance scores have become unfairly discriminatory. Insurers do not use average credit scores to rate a policy and calculate a premium. Insurers use individualized credit scores based on the information in that individual’s credit report. Average credit scores say nothing about the changes in individual credit scores that make up that average and it is precisely these changes or lack of changes in individual credit scores that are relevant for evaluating whether credit based insurance scores create unfair discrimination.
30. To illustrate – let’s say that pre-pandemic, the average credit score of consumers in King County was 700 based on 1 million drivers each with a 700 score. Let’s then assume that post pandemic, we have the same 700 average score, but now it is a result of half a million drivers with 550 scores and half a million with 850 scores. The fact that the average score hasn’t changed provided no relevant information about the reliability of credit scores for predicting claims because the average credit score hides the fact that insurance premiums will have changed for all these consumers. Changes in average credit scores or the lack of change in average credit scores offer no insight into whether credit scores remain a valid predictor of claims for individual consumers.

31. Publicly-available data make clear that the pandemic has created vastly different outcomes for different segments of the population and these disparate impacts have been described as a “K-shaped recovery.” Exhibit B includes a number of articles explaining and documenting the vastly different economic impacts of the pandemic on different industries, on workers in those industries and on consumers who were financially vulnerable or financially strong at the beginning of the pandemic. The pandemic has caused greater economic distress on those consumers who were financially vulnerable at the beginning of the pandemic while allowing those who were more financially stable to prosper. Attached is a true and correct copy of Exhibit B.

32. For example, the article “Three charts Show A K-Shaped Recovery” cites research on how people used the original federal stimulus checks in 2020. “The third chart comes from the National Bureau of Economic Research working paper in August. It analyzed what people did with the $1,200 stimulus checks (plus $500 per child) they received. It shows that almost 40% of the respondents did not spend any of the money they received; they saved it or paid down debt. At the other extreme almost 30% spent the entire amount on durables, food, medical supplies, and other consumer products. The remaining 30% had a mixture of spending and saving. Those that needed the stimulus checks to make ends meet or to try and survive spent...
it all, while at the other extreme the payments were a windfall.” The logical outcome of the K-shaped recovery is that one group of consumers’ credit scores improved with their improved financial condition while another group of consumers’ credit scores worsen with their imperiled financial condition. Yet, personal auto insurance claims declined dramatically. It is certainly reasonable to conclude that the actuarial basis for insurance credit scores has been compromised.

**Public Benefit**

33. Although Petitioners have not provided it, there is public information supporting the conclusion that the emergency rule will benefit consumers, generally, and financially-vulnerable consumers, in particular. Studies by Consumer Reports and the Consumer Federation of America (CFA) based on public information conclude that have a significant impact on the premiums charged by insurers, and a drop in an individual’s score can increase their premium by hundreds and even thousands of dollars. In many cases, insurance carriers will impose a larger premium penalty on drivers whose credit score drops from excellent to poor than on a driver convicted of drunk driving. According to a 2015 study by Consumer Reports, on average a Washington State driver with a clean record but a poor credit score pays $1,536 more per year than a driver with the same clean record but an excellent credit score. A driver with excellent credit but also a drunk driving conviction only faces an $847 increase over the excellent credit safe driver. Put differently, Washington State insurers charge a low credit driver with a pristine record almost $700 more than a convicted drunk driver with a high credit score. The Consumer Reports study can be found at https://www.consumerreports.org/cro/car-insurance/credit-scores-affect-auto-insurance-rates/index.htm. Copies of the CFA studies and another study by the National Consumer Law Center and CEJ are found in Exhibit C. Attached is a true and correct copy of Exhibit C.

34. Using 2020 premium data obtained from Quadrant Information Services, LLC for 10 of the largest insurers in Washington State, the CFA similarly found substantial premium
differences for clean record drivers depending upon their driving history. Testing only premiums for good drivers purchasing the minimum state-mandated coverage, CFA found:

- Statewide, safe drivers with Poor credit pay 79%, or $370, more on average than a driver with Excellent credit, all else being equal;
- Premiums increase by 35% ($165) on average statewide for a good driver with Fair credit rather than Excellent credit;
- State Farm charges the highest credit score penalty of 69% for drivers with Fair credit and 185% for drivers with perfect records but Poor credit; PEMCO charges the next highest credit history penalty – 68% for Fair credit drivers and 183% for Poor credit;
- Even the smallest credit score penalty, imposed by American Family, forces safe drivers with Fair Credit to pay 17% higher premiums and those with Poor credit to pay 36% more; and
- In Seattle, the average annual premium rises by $508 for a safe driver with Poor credit, and by more than $700 for customers of either Allstate or State Farm.

35. The Consumer Reports and CFA studies, combined with data on the divergent impacts of the pandemic and K-shaped recovery, suggest that the emergency rule will benefit the vast majority of consumers and the most financially-vulnerable in particular.

36. In addition, there is no question that consumer insurance credit scores for millions of Americans will suffer when the pandemic protections preventing the reporting of certain credit history information are lifted.

Claims of Harm and Burden

37. Insurers routinely file new rates as part of the normal course of business. The Washington OIC has a tool for members of the public to search for rate and policy form filings made by insurers. Using this tool, I found personal auto insurers made 197 rate filings in 2019 and 231 in 2020. Many of these filings covered multiple insurance companies with an insurance group. For example, filing ALSE-132558524 covered Allstate Insurance Company, Allstate...
insurers made 88 filings in 2019 and 70 filings in 2020.

38. Insurers routinely make new rate filings – one or more times a year – to reflect changes in overall expected costs (e.g. an overall rate increase or decrease) and in rating factors (e.g., vehicle values (symbols) or changing rate factor relativities (e.g., higher or lower discounts or surcharges) or to introduce new rating factors.

39. Insurers have the infrastructure in place – fixed costs that do not increase with an additional rate filing – to develop, file and implement insurance rates. This includes data and information systems to collect, store and produce data, personnel for data management and rate development, personnel dedicated to state filings, infrastructure to translate rate changes into automated pricing algorithms used directly by a company or its agents and the overhead for all these activities, such as senior management, buildings, IT and more. The marginal cost of a new rate filing is trivial next to the overall costs of the infrastructure required to develop, file and implement rates.

40. The claim of massive disruption caused by developing rates without credit are not credible. Most insurers operating in the state also operate in other states which prohibit the use of consumer credit information, including California, Hawaii, Massachusetts and Maryland. So, for most insurers, developing rates without credit is not new or novel.

41. The mechanics of developing rates also indicates that a new rate filing excluding credit is not a burdensome or significantly costly activity. Insurers today utilize statistical tools to develop prices – these algorithms are pricing models utilizing multivariate analysis, meaning that the insurer analyzes multiple predictive variables simultaneously. The most common tool today is Generalized Linear Models – a family of multivariate analytic tools that are found in common software and often in software tailored for insurance pricing. To demonstrate that removing credit is not the burdensome act claimed by various declarants, consider the following simplification of a multivariate model used to develop rates. In this model each of the Xs
represents a predictive variable. For example, X₁ is age, X₂ is driving record, X₃ is geographic location, X₄ is credit score and so on.

\[ b₀ + b₁X₁ + b₂X₂ + b₃X₃ + b₄X₄ \ldots + e = y \]

42. Together the variables predict or explain the outcome \( y \). Let’s say that \( y \) is the expected claim cost for a single exposure (e.g. insured auto or insured home). In developing the pricing model, insurers add and remove predictive variables to better predict the outcome, achieve some other business purpose or both. Removing credit means removing one of the Xs (X₄ in our example) and re-running the pricing model without the credit variable. The model then recalculates – instantly – and the remaining variables will likely take on different values than before – meaning that the contribution to the explanation of expected claim cost may change along with the indicated surcharges and discounts associated with the remaining variables. While the interpretation and implementation of the new credit-less pricing model will involve some effort by the insurer, such efforts are routinely associated with the common changes in rates or rating factors that are a normal activity associated with any new rate filing. But the mechanics of developing a new pricing model and set of rates with a new rating factor or without an existing rating factor, like credit, is straightforward and ordinary.

43. I have reviewed the declaration of Norman Niami. He offers two opinions – an estimated range of costs for auto and home insurers and a theoretical explanation of adverse selection. Both opinions are deeply flawed and unreliable. Mr. Niami opines that removing credit scores will “distort the link between risk and price.” Here Mr. Niami offers a variation on the theory of adverse selection – if high risk customers face a price below the true cost of insuring that risk, they will purchase more insurance that they would otherwise purchase which would somehow raise the price for all consumers. Mr. Niami’s theoretical analysis is deeply flawed.
44. Removing credit does not distort the link between risk and price. Insurers will continue to use dozens of other rating factors to accurately group consumers by expected costs. The error of Mr. Niami’s argument is shown by taking it to the logical conclusion – every insurer would have to use every possible rating factor to avoid distorting the link between risk and price. Yet, that obviously is not what insurers do. Not only do different insurers use some common and some different rating factors, but all insurers are prohibited from using certain information for rating that may be correlated with claims – such as race, religion or national origin. The prohibition against the use of a single rating factor will not and has not resulted in the harms claimed by Mr. Niami, as evidenced by the ability of insurers in California, Hawaii, Maryland and Massachusetts to price accurately without credit.

45. Further, the type of adverse selection theorized by Mr. Niami simply cannot occur on a material significant scale, if it occurs at all, by simply removing credit from rating models. The type and magnitude of distortion in pricing necessary to create the adverse selection theorized by Mr. Niami would require not just the removal of credit but removal of virtually all other rating factors.

46. Mr. Niami offers four “methods” of estimating costs for insurers of complying with the emergency rule. None are reliable or meet any scientific standard. He has provided no underlying data or support or documentation for his calculations. He has failed to consider any of the demonstrable cost savings associated with eliminating the use of credit information. He fails to distinguish between fixed costs and marginal costs. While it is any marginal cost associated with the emergency rule that would be relevant, Mr. Niami’s calculations approach incorrectly treats all fixed costs – which will not change because of the emergency rule – as marginal costs.

47. As discussed below, insurers will realize cost savings from not using credit scores. For example, insurers will no longer need to purchase consumer credit reports or pay to license a vendor’s credit-based insurance score model. According to the Federal Highway
Administration, in 2018, there were about 7 million private and commercial motor vehicles registered in Washington (https://www.fhwa.dot.gov/policyinformation/statistics/2018/mv1.cfm) and according to the National Association of Insurance Commissioners, in 2018 there were about 2.258 million insured “house-years.” A home insured for a year is a house-year. (https://www.naic.org/prod_serv/HMR-ZU-20.pdf) If we assume a total of 5 million personal auto and residential property insurance policies issued or renewed annually in Washington and a per-credit report cost of just $5, insurers will save $25 million by not using credit.

48. I have also reviewed the declaration of Andrew Davies in which he claims substantial harm from the rule, including thousands of hours of employee time, reconfiguration of IT systems and operational processes, changes to policy forms, changes to rates and rules, changes to filing documentation, training for agents and opportunity costs. These claims are not credible and fail to account for reduced costs associated with the emergency rule. First, as explained in detail above, removing credit from rating plans requires insurers to remove one factor from their pricing model and algorithms and then recalculating the values of the many remaining rating factors. This type of analysis is routine and does not require “reconfiguring IT systems.”

49. Contrary to Mr. Davies declaration, removing credit from rates does not involve changes to policy forms. Policy forms set out the coverage provided by the insurance policy. Removing credit will change rates, but not the coverage offered, so policy forms are not affected. Further, removing credit results in significant cost savings for insurers from at least three sources. First, insurers will no longer have to pay for consumer credit reports or a license to use a vendor’s credit scoring model. Second, insurers will no longer have to provide adverse action notices, as required by the Federal Fair Housing Act, to consumers who suffered an adverse action. Third, insurer employees and agents will not have to deal with complaints or questions.
Consumer Perspectives on

Insurance Credit Scoring and
Disparate Impact Standard for Unfair Discrimination

Casualty Actuarial Society
Ratemaking and Product Management Seminar

March 2013

Birny Birnbaum
Center for Economic Justice
The Center for Economic Justice

CEJ is a non-profit consumer advocacy organization dedicated to representing the interests of low-income and minority consumers as a class on economic justice issues. Most of our work is before administrative agencies on insurance, financial services and utility issues.

On the Web:  www.cej-online.org
Why CEJ Works on Insurance Issues

Essential Financial Security Tool for Individual and Community Economic Development: CEJ Works to Ensure Access and Fair Prices for These Essential Products and Services, particularly for Low- and Moderate-Income Consumers.

Primary Institution to Promote Loss Prevention and Mitigation: CEJ Works to Ensure Insurance Institutions Maximize Their Role in Efforts to Reduce Loss of Life and Property from Catastrophic Events.
Overview

1. Insurance Credit Scoring (CS) Is Inherently Unfair

2. CS Has A Disparate Impact on Low-Income and Minority Consumers; CS Reflects and Perpetuates Historical Inequities.

3. Consumer Credit Data Quality, Data Variability and Difficulty for Consumers to Fix Errors Are Additional Concerns.

4. CS Undermines Core Public Policy Goals of Insurance: Universal Coverage and Loss Mitigation.

Insurance Credit Scoring is Inherently Unfair

- Penalizes Victims of Medical, Economic Catastrophes
- Penalizes Consumers for Abusive Lending Practices / Broader Economic Conditions
- Arbitrary and Illogical Results – Unrelated to How Well a Consumer “Manages” Her Finances
Consumers Hammered By Financial Crisis and Recession

- Reckless and Abusive Lending
- High Unemployment
- Wage Cuts
- Credit Limit Reductions
- Increases in Loan and Credit Card Fees
- Increasing Medical Costs

Record or Near-Record Highs in
- Delinquencies
- Foreclosures
- Bankruptcies

Following Charts from www.calculatedriskblog.com
Single Family Serious Delinquency Rates (90+ days or in Foreclosure)

Fannie Mae  
Freddie Mac

Percent of Total Number of Single-Family Loans

http://www.calculatedriskblog.com/
Total Debt Balance and its Composition

Historical Totals Prior to 2011Q2 Exclude Student Loans

Trillions of Dollars

Source: FRBNY Consumer Credit Panel/Equifax
BI Pure Premium: Nevada & Multi-State
PD Pure Premium: Nevada & Multi-State

[Graph showing PD Pure Premium trends for Nevada and Multi-State from 2006 to 2011]
Collision Pure Premium: Nevada & Multi-State
BI Pure Premium: Florida & Multi-State
PD Pure Premium: Florida & Multi-State
Collision Pure Premium: Florida & Multi-State
Causes of Bankruptcies

Harvard Study of Bankruptcies in 2001:

- 87% of Bankruptcies Caused by Job Loss, Medical Bills or Divorce
- 46.2% from Medical Problems

Harvard Study of Bankruptcies in 2007:

- 62.1% of Bankruptcies Caused by Medical Problems
- 75% of These Were Families With Health Insurance.
Consumer Credit Data Quality Issues

February 2012 Federal Trade Commission Study

“the study design called for consumers to be randomly selected from the population of interest (consumers with credit histories at the three national CRAs). Ultimately, 1,001 study participants reviewed 2,968 credit reports (roughly three per participant) with a study associate who helped them identify potential errors.”
2013 Federal Trade Commission Study: Findings

- One in four consumers identified errors on their credit reports that might affect their credit scores;
- One in five consumers had an error that was corrected by a credit reporting agency (CRA) after it was disputed, on at least one of their three credit reports;
- Four out of five consumers who filed disputes experienced some modification to their credit report;
- Slightly more than one in 10 consumers saw a change in their credit score after the CRAs modified errors on their credit report; and
- Approximately one in 20 consumers had a maximum score change of more than 25 points and only one in 250 consumers had a maximum score change of more than 100 points.
2013 Federal Trade Commission Study

Findings Understate Number of Errors and Difficulty for Consumers to Fix Errors

Credit Scores impacted as much or more by absence of information than by presence of false information. Consumers are much less likely to identify absence of information as an error.

Automated Credit Report Dispute System: Credit bureau often limits its role in disputes to little more than assigning codes as to what type of dispute is at issue: the credit bureaus do not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute. The vast majority (85%) of credit reporting disputes are passed on to the company (known as a furnisher) that provided the information.
More than half of the trade lines in the credit bureau databases are supplied by the credit card industry: Credit reporting companies get their information from a variety of industries but more than half of the account information is supplied by credit card companies. Specifically, 40 percent comes from bank cards, such as general credit cards, and 18 percent comes from retail credit cards. Only 7 percent comes from mortgage lenders or servicers, and only 4 percent comes from auto lenders.
Consumer Financial Protection Bureau Report

More than a third of disputes have to do with collections: In 2011, consumers reached out to the credit reporting companies roughly 8 million times, resulting in disputes of 32 to 38 million items in their credit files. Almost 40 percent of the disputes relate to debt in collections, and debt in collections is five times more likely to be disputed than mortgage information. According to the industry, some of this may have to do with consumers’ incentive to dispute any negative information on their reports.
Fewer than one in five people obtain copies of their credit report each year: The most effective way for consumers to identify errors in their reports is to obtain copies and review them. But only about 44 million consumers per year, or about one in five, obtain copies of their files.

Most information contained in credit reports comes from a few large companies: Most information contained in credit files comes from a small number of large banks and other financial institutions. In fact, the top 10 data furnishers provide 57 percent of the trade lines coming into the credit reporting companies. The top 50 furnishers provide 72 percent. And the top 100 furnishers provide 76 percent.
Consumer Financial Protection Bureau Report

Most complaints are forwarded to the furnishers that provided the original information: The credit reporting companies resolve an average of 15 percent of consumer disputed items internally, without getting the data furnishers involved. The remaining 85 percent are passed on to the furnishers. Today’s report, however, found that the documentation consumers mail in to support their cases may not be getting passed on to the data furnishers for them to properly investigate and report back to the credit reporting company.
Consumer Credit Data Quality Issues

Scores Vary Significantly by Geographic Area

Differences correlated with income levels, unemployment rates

San Jose-Sunnyvale-Santa Clara, CA. 700
San Francisco-Oakland-Fremont, CA 696
Madison, WI. 694
Honolulu 693
Minneapolis-St. Paul-Bloomington, MN-WI. 691
Bridgeport-Stamford-Norwalk, CT. 690
Boston-Cambridge-Quincy, MA-NH 689
Oxnard-Thousand Oaks-Ventura, CA 685
Portland-South Portland-Biddeford, ME 685
Seattle-Tacoma-Bellevue, WA 685

Memphis, TN-MS-AR. 638
McAllen-Edinburg-Mission, TX 639
Jackson, MS. 642
El Paso, TX 650
Columbia, SC 650
Las Vegas-Paradise, NC 650
Little Rock-North Little Rock-Conway, AR 651
Baton Rouge, LA 651
Lakeland-Winter Haven, FL. 651
Augusta-Richmond County, GA-SC 651

TransUnion, February 7, 2013
Scores Change Significantly Over Short Periods of Time

Roughly 70 percent of credit scores change by up to 20 points in any given 90-day window. Most consumers experience a score improvement rather than a score drop, with 56 percent of consumers shifting higher, 34 percent shifting lower and 10 percent staying the same.

Experian *Credit Cornerstone*, January 23, 2013
Insurance Credit Scoring Not Objective

- Differences across credit bureaus
- Differences within a credit bureau due to lender choices
- Changes in definitions of credit report items – bankruptcy law change
- Public policy initiatives changing credit scores – moratorium on foreclosures
- Timing of report – balance to limits varies by time of the month
- Decisions of lenders – not reporting limits, changing limits
Insurance Credit Scoring Is Subject to Manipulation

- Invitations/Solicitations for Manipulation
- Piggy-Back on another consumer
- Shift balances from one car to multiple cards

Penalizes Consumer for Rational Behavior

- Shop around for best rates
- Cancel a card when lender acts unfairly
- Get a card to get 10% first visit discount
Correlation to Race and Income – The Missouri DOI Study

- The insurance credit-scoring system produces significantly worse scores for residents of high-minority ZIP Codes.

- The insurance credit-scoring systems produce significantly worse scores for residents of low-income ZIP Code.

- The relationship between minority concentration in a ZIP Code and credit scores remained after eliminating a broad array of socioeconomic variables, such as income, educational attainment, marital status and unemployment rates, as possible causes. Indeed, minority concentration proved to be the single most reliable predictor of credit scores.
Correlation to Race and Income – The Texas DOI Study

The individual policyholder data shows a consistent pattern of differences in credit scores among the different racial/ethnic groups. The average credit scores for Whites and Asians are better than those for Blacks and Hispanics. In addition, Blacks and Hispanics tend to be over-represented in the worse credit score categories and under-represented in the better credit score categories.
The Flawed Federal Trade Commission Study

- Failed to obtain a comprehensive and independent data set for analysis.

- One FTC Commissioner voted against issuing the study out of concern for quality of study.

- FTC has since changed approach for homeowners’ analysis.

- Even with limited data, FTC found racial impact.

- Data on scores of applicants – as opposed to data only for policyholders – would show much greater disparate impact.
• Credit Scoring Reflects / Perpetuates Historical Inequities

“Segregation therefore racialized and intensified the consequences of the American housing bubble. Hispanic and black home owners, not to mention entire Hispanic and black neighborhoods, bore the brunt of the foreclosure crisis. This outcome was not simply a result of neutral market forces but was structured on the basis of race and ethnicity through the social fact of residential segregation.”

Undermines the Core Public Policy Goals of Insurance

- Undermines the goal of universal coverage by worsening the availability and affordability of insurance for those consumers with the least means to purchase insurance; and

- Undermines the loss mitigation role of insurance by
  - Placing great emphasis on a rating factor which has no ability to promote loss mitigation by policyholder; and
  - Encouraging consumers to spend time manipulating credit scores instead of true loss mitigation activities.
Insurance Scoring Is Not Needed

- States Which Ban Insurance Credit Scoring, including California and Massachusetts Have Thriving Markets.

- Insurers Entered The Massachusetts Auto Market After Partial Deregulation, Even Though Insurance Credit Scoring Is Banned.

- Insurance Credit Scoring Not Needed to Avoid Adverse Selection.

- Insurance Credit Scoring Not Needed With Modern Risk Classification.
Claims of Consumer Benefits of Insurance Scoring Are Refuted by Objective, Independent Data

“Allows Insurers to Write More Business”

Fact: Uninsured Motorist Rate Has Increased Countrywide While Uninsured Motorist Rate Has Declined in CA and MA where Insurance Credit Scoring is Banned

Fact: Auto Residual Market Has Declined More in CA than Countrywide

Fact: Creditor-Placed (Force-Placed) Insurance Has Skyrocketed in Past 5 Years

No Objective Evidence to Support This Claim
Industry Claim: “Insurance Credit Scores Reflect Personal Responsibility”

Blaming the Victim Claim is Factually Incorrect

- Actual Causes of Financial Distress Typically Beyond Control of Consumers
- Traditional Credit Reports Missing Information on Financial Responsibility, Let Alone Personal Responsibility
- Recent Actions by Credit Scoring Modelers to Utilize Non-Traditional Credit Information Documents Disparate Impact of Traditional Credit Information on Low-Income and Minority Consumers.
Unfair Discrimination: Intentional vs. Disparate Impact

Actuarial Principles and Standards of Practice – primary limitations on risk classifications are statistical relationship to expected costs and statutory or regulatory prohibitions. If race were not a prohibited factor and insurers found a statistical relationship between race and likelihood of claims, insurers would be compelled to use race.

Public policy prohibits use of race regardless of any statistical relationship to claims. Some states prohibit use of other characteristics, including consumer credit information, gender and being a legislator.
Department of Housing and Urban Development

Disparate Impact Rule

(a) Discriminatory effect. A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.
(b) Legally sufficient justification. (1) A legally sufficient justification exists where the challenged practice:
   (i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent . . . and
   (ii) Those interests could not be served by another practice that has a less discriminatory effect.
HUD Disparate Impact Rule: Insurance Trades Apoplectic

NAMIC says that, if allowed to stand, “this rule could undermine the entire process of insurance underwriting, effectively blinding insurers as they attempt to determine potential risks and appropriate pricing, and needlessly raising costs for all consumers."

[NAMIC] interprets the rule as codifying the use of disparate-impact analysis to prove allegations of unlawful discrimination with regards to homeowners insurance, “meaning any factor used by insurers to assess risk could be challenged if it produces statistically disproportionate outcomes among particular demographic groups.”
HUD Disparate Impact Rule: Insurance Trades Apoplectic

Leon Buck, PCI’s assistant vice president, federal government relations, notes, “States already prohibit discriminatory practices and have comprehensive enforcement, but the HUD rule puts in jeopardy the use of longstanding, sound, state-approved actuarial factors that are the foundation of responsible insurance underwriting.”

NAMIC: Businesses should not be penalized "because of a statistical disparity," "As long as it could be shown that there was no intent to discriminate racially or ethnically, there should be no controversy."
Example of Disparate Impact Complaint:
National Fair Housing Alliance against [Company X]

[Company X] refuses to insure homes with flat roofs in and around Wilmington, DE. NFHA sent testers seeking insurance quotes for homes in the Wilmington area to six agencies, two of which were [Company X]. [Company X] agents refused, indicating [Company X] does not insure homes with flat roofs. Other non-[Company X] agencies offered quotes.

NFHA referenced research by University of Delaware Center for Community Research and Service. Research shows very high correlation of percentage of flat roofs in a given area and the percentage of African American or minority owner-occupied units in the area.
NFHA Disparate Impact Complaint 2

“CCRS’s study employed geographic information systems and statistical software to investigate the correlation between race and roof type at the census tract level (by considering the percentage of minority households and the percentage of homes with flat roofs within a given census tract). Demographic and other housing data were obtained from the 2000 Census of Population and Housing. Data on roof type was based on tax parcel information, which included both information on roof type and grid number (a defined, geographic area that is larger than a block but smaller than a census tract). There were a total of 648 grids, with 164,963 dwelling units, that had roof type data within the relevant area.”
NFHA Disparate Impact Complaint 3

Correlation of Key Racial Variables with Percentage of Flat Roof Owner-Occupied Dwelling Units by Census Tract

<table>
<thead>
<tr>
<th>Variable</th>
<th>Pearson Correlation</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling units owned and occupied by African-American and non-Hispanic households as a percent of all owner-occupied dwelling unit</td>
<td>0.723</td>
<td>0.000</td>
</tr>
<tr>
<td>Dwelling units owned and occupied by White and non-Hispanic households as a percent of all owner-occupied dwelling units</td>
<td>-0.753</td>
<td>0.000</td>
</tr>
</tbody>
</table>
NFHA Disparate Impact Complaint 4

Simple Bivariante Regression of Percentage of Owner-Occupied Flat Rood Dwellings and Race/Ethnicity of Housing Unit Households by Census Tract

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Adjusted R2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling units owned and occupied by African-American and non-Hispanic households as a percent of all owner-occupied dwelling unit</td>
<td>0.799</td>
<td>0.518</td>
</tr>
<tr>
<td>Dwelling units owned and occupied by White and non-Hispanic households as a percent of all owner-occupied dwelling units</td>
<td>-0.802</td>
<td>0.563</td>
</tr>
</tbody>
</table>
NFHA Disparate Impact Complaint 5

“Additional analyses demonstrated that homes within Wilmington proper have a disproportionate share of flat roof residences as compared to non-Wilmington census tracts. The researchers inserted a variable to indicate whether a census tract was inside or outside of Wilmington. The adjusted $R^2$ value for each was over 0.84, which establishes that location inside or outside of Wilmington and the race/ethnicity of owner-occupied households together accounted for over 84% of the variation of the percentage of owner-occupied flat roof dwelling units in a census tract. Wilmington’s population was 54% African-American and 36% white as of the 2000 Census (the data relied upon in the study).”
NFHA Disparate Impact Complaint 6

“The statistical evidence proves that [Company X]’s policy disproportionately impacts African-American and minority communities, as there is a statistically significant relationship between minority populations and homes that have flat roofs. Coupled with NFHA’s testing, which illustrates that [Company X] refuses to insure homes with flat roofs in Wilmington, Delaware and surrounding areas, Complainant has established a prima facie case that [Company X]’s no flat roof policy has a racially disparate impact on African-American and minority communities in violation of the Fair Housing Act.”
NFHA Disparate Impact Complaint 7

“NFHA’s testing also reveals the absence of any business justification for [Company X]’s practice of refusing to write insurance policies for homes with flat roofs in Wilmington and surrounding areas. [Company X] agents did not disclose any business reason for [Company X]’s refusal to write homes with flat roofs. Other insurers offered coverage for homes with flat roofs. Finally, NFHA tested [Company X] insurance companies in Washington, DC and Philadelphia, Pennsylvania. NFHA testers, purporting to seek information about homeowners’ insurance for homes with flat roofs, each contacted two, separate [Company X] insurance companies in each jurisdiction. The investigation revealed that [Company X] does not have a policy against insuring homes with flat roofs in these cities.”
Disparate Impact:
A Statistical Test Appropriate for Insurance

If a statistical relationship is justification for use of a risk classification, it makes sense that the same statistical relationship test is a valid measure of discrimination on the basis of protected classes.

As a public policy matter, if insurers are prohibited from intentionally discriminating on the basis of race, it follows that non-intentional discrimination that has the effect of discriminating on the basis of race is also prohibited – unless there is a business justification and no less discriminatory alternative.

How Can Actuaries Identify and Mitigate Disparate Impact?
Regulatory Possibilities for Promoting Equity through Telehealth
• Dedicated to increasing access to health care for people living with HIV, viral hepatitis, and other serious, complex, chronic illness.

• Offices in Tampa FL, and Washington, DC
The Promise of Telehealth

Increase access to care for people in a variety of underserved communities:

- Geographic/Transportation challenges
- Lacking providers
- Racial & ethnic minorities
- Unstably housed/homeless
- Stigma-related barriers
Flexibility is Key

- More flexible scheduling to accommodate people with jobs that do not offer paid leave
- Opportunities to literally “meet people where they are”
- Access to providers who are not nearby
  - Access to specialists
  - Overcome stigma-related barriers
- Faster connection to care
Rapid Expansion During Pandemic

Regulators relaxed restrictions related to:

- Cost-sharing (parity or free)
- Provider reimbursement
- Coverage of audio-only telehealth
- “Origination” and “Distant” sites
- Pre-authorization requirements
Where Do Things Stand?

✓ Telehealth capacity has increased dramatically and quickly

✓ Patients & providers have more experience & comfort

✓ Lessons & data still emerging

✓ Regulators should support payors to build on systems to help telehealth fulfill its promise
Health Equity Solutions

**Vision**
For every Connecticut resident to attain optimal health regardless of race, ethnicity, or socioeconomic status.

**Mission**
To promote policies, programs, and practices that result in equitable health care access, delivery, and outcomes for all people in Connecticut.
Realize the possibilities of telehealth

Expansion ≠ Equity

✓ Utilization
✓ Access
✓ Cultural/situational appropriateness

Considerations for Telehealth Equity: https://www.shvs.org/considerations-for-telehealth-equity/
Utilization: WHO and WHAT?

- More people?
- New people?
- Who is better off?
Access: Technology

- Affordable broadband
- Data/minutes
- Devices
- Tech literacy
Access: Other barriers

- Insurance literacy
- Connecting to provider/s
Cultural/situational appropriateness

Can I opt out?

- Privacy and safety
- Language barriers
- Comfort
Questions?

Contact us:

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Implementation of the No Surprises Act: Implications for Consumer Protections

Natasha Kumar, Policy Analyst
Families USA
What is Surprise Billing?

- Occurs when a consumer is unknowingly, and through no fault of their own, is charged an out-of-network fee for medical services obtained
  - Emergency services
  - Non-emergency services
  - Ambulatory care
  - Air ambulance

- **Key Data**
  - Almost 20% of emergency department (ED) visits to result in a surprise bill.¹
  - An average surprise bill is $600, but bills can exceed $100,000.²
  - 10% of health plan spending can be attributed to surprise medical bills.³

---

State and Federal Protections

Federal No Surprises Act

- Consumers held harmless in surprise billing situations
  - Cost-sharing at in-network rates
  - Protected in emergency situations, ancillary services, certain non-emergency situations
  - Notice and Consent for certain OON care
- Initial payment
  - Insurer and provider/facility negotiate or otherwise insurer pays qualifying payment amount (QPA)
- IDR
  - If provider/payer do not agree on payment, can initiate IDR
  - Arbiter assesses case based on certain criteria
  - Awards “win” to either insurer/plan or provider/facility

• Definitions
  o Facilities
    ■ Includes hospital, hospital outpatient department, critical access hospital, or an ambulatory surgical center
    ■ Seeking comment on urgent care facilities and retail clinics to be included

• Notice and Consent
  o Procedural considerations (when is the notice and consent being provided to consumers?)
IFR 1 (cont)

- Payment mechanism
  - Initial payment to provider is the “recognized amount” which gives deference to state payment rates. If state rates are not applicable, greater of billed charges or QPA
  - QPA determined by the median of in-network contracted rates for the service in the geographical area
- Concerns:
  - Inflation associated with highly concentrated markets

- Geographic region
  - As defined by NAIC, geographic region is taken to mean a metropolitan statistical area (MSA).
  - Air ambulance “geographic region” is considered to be all MSAs in a state
Recommendations for Insurance Commissioners

Consumer Disclosure and Assistance

- **Consumer education**
  - “About” section on website, ensure this is available to all linguistic groups
  - Help consumers obtain and understand advance notices of their potential liability
  - Proactively reach out to consumers, especially BIPOC communities, on new consumer protections

- **Complaints process**
  - Provide phone assistance, including referrals to other agencies that are enforcing this law
  - Help uninsured consumers open an arbitration case for a medical bill
  - Help consumers challenge and take enforcement action to address bills that they did not consent to, and should have been covered under the NSA
Recommendations (cont)

● Notice and disclosure
  ○ Ensure that notice and consent forms reflect the correct set of protections that apply to the specific case of the patient (state preemption applies in most cases)
  ○ In conjunction with other agencies, monitor the provision of consumer notices and consent forms
Recommendations for Insurance Commissioners

Network Adequacy

- Require plans to have updated provider directories and strongly enforce these requirements
- Take specific steps to ensure that health disparities and equity matters are considered in building adequate networks
  - Essential Community Provider (ECP) - should be broadly defined and included in networks
  - Networks should include culturally competent providers
  - Mental health and substance use disorder networks should also comply with parity
- Disaggregated data collection
Questions?

Natasha Kumar, Policy Analyst
Families USA
NKumar@familiesusa.org
DISPARITIES IN INSURANCE ACCESS:
A SURVEY OF STATE AND LOCAL GRASSROOTS CONSUMER ORGANIZATIONS

Presented by:

Yosha P. Dotson, MSW, NAIC Consumer Representative
Brenda Cude, Ph.D., NAIC Consumer Representative
Brenda J. Cude: Professor Emeritus, Department of Financial Planning, Housing and Consumer Economics, University of Georgia

Yosha P. Dotson: Technical and Policy Analyst, Georgians For a Healthy Future
To inform the work of state insurance regulators and the NAIC—especially the Special (EX) Committee on Race and Insurance

Focus on disparities and inequities in intersectional and overlapping systems of oppression

Assess common themes and patterns across demographic groups

Assess familiarity of community organizations with state departments of insurance

Funded by Robert Wood Johnson Foundation

Background
An online survey fielded May 17-June 16, 2021

Sample identified via grassroots sampling, seeking leaders or senior employees of nonprofit and community consumer organizations

Collectively, a mix of focus areas across different lines of insurance
- Geographic diversity
- Population focus diversity
- Robust state and local contact lists

Sample is 72 unique respondents who are leaders or senior employees of consumer organizations, primarily at the state, local, and regional level

Methodology
### Respondents: Organization Profiles

<table>
<thead>
<tr>
<th>Geography</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local city</td>
<td>7</td>
</tr>
<tr>
<td>Local region</td>
<td>14</td>
</tr>
<tr>
<td>Statewide</td>
<td>54</td>
</tr>
<tr>
<td>Region</td>
<td>10</td>
</tr>
<tr>
<td>National</td>
<td>15</td>
</tr>
</tbody>
</table>

### Insurance Line Percent

<table>
<thead>
<tr>
<th>Insurance Line</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health</td>
<td>85</td>
</tr>
<tr>
<td>Disability</td>
<td>54</td>
</tr>
<tr>
<td>Auto</td>
<td>44</td>
</tr>
<tr>
<td>Property</td>
<td>42</td>
</tr>
<tr>
<td>Long term care</td>
<td>40</td>
</tr>
<tr>
<td>Workers' compensation</td>
<td>35</td>
</tr>
<tr>
<td>Life</td>
<td>32</td>
</tr>
<tr>
<td>Liability</td>
<td>29</td>
</tr>
<tr>
<td>Flood, earthquake, or wind</td>
<td>25</td>
</tr>
<tr>
<td>Other</td>
<td>18</td>
</tr>
<tr>
<td>Constituents</td>
<td>%</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>Black or African American</td>
<td>90</td>
</tr>
<tr>
<td>Hispanic or Latino</td>
<td>90</td>
</tr>
<tr>
<td>South Asian</td>
<td>63</td>
</tr>
<tr>
<td>East Asian</td>
<td>64</td>
</tr>
<tr>
<td>American Indian/Alaskan Native</td>
<td>59</td>
</tr>
<tr>
<td>Native Hawaiian/Pacific Islander</td>
<td>53</td>
</tr>
<tr>
<td>Middle Eastern/North African</td>
<td>59</td>
</tr>
<tr>
<td>All of the above</td>
<td>44</td>
</tr>
<tr>
<td>Other</td>
<td>53</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Constituents</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low-income people</td>
<td>89</td>
</tr>
<tr>
<td>Racial and ethnic groups</td>
<td>82</td>
</tr>
<tr>
<td>Working-age adults</td>
<td>79</td>
</tr>
<tr>
<td>LGBTQ people</td>
<td>72</td>
</tr>
<tr>
<td>Women</td>
<td>71</td>
</tr>
<tr>
<td>Young adults</td>
<td>71</td>
</tr>
<tr>
<td>Immigrants or refugees</td>
<td>69</td>
</tr>
<tr>
<td>Senior citizens</td>
<td>68</td>
</tr>
<tr>
<td>People with disabilities</td>
<td>67</td>
</tr>
<tr>
<td>Unemployed</td>
<td>67</td>
</tr>
<tr>
<td>Rural residents</td>
<td>64</td>
</tr>
<tr>
<td>Children and youth</td>
<td>61</td>
</tr>
<tr>
<td>Veterans</td>
<td>60</td>
</tr>
<tr>
<td>Other</td>
<td>51</td>
</tr>
</tbody>
</table>
Challenges in Insurance Access

The most commonly identified challenges were around insurance affordability and literacy

<table>
<thead>
<tr>
<th>Issues</th>
<th>Percent mentioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unaffordable insurance products</td>
<td>58%</td>
</tr>
<tr>
<td>Difficulty understanding coverage</td>
<td>54%</td>
</tr>
<tr>
<td>Difficulty understanding costs</td>
<td>46%</td>
</tr>
<tr>
<td>Available insurance products don’t provide sufficient coverage (e.g., benefits are limited)</td>
<td>39%</td>
</tr>
</tbody>
</table>

Findings
Source of Discrimination /Bias

- Income: 65%
- Race/ethnicity: 58%
- Health status: 40%
- Age: 37%
- Gender: 35%
- Disability: 33%
- LGBTQ+ status: 33%
- Transgender status: 33%
- Other: 32%
How Is Discrimination/Bias Demonstrated?

- Use of discriminatory or biased algorithms in ratings: 51%
- Insurance products unavailable where constituents live: 42%
- The same companies consistently deny claims for constituents: 39%
- Certain agents, brokers, and insurers won't sell to constituents: 26%
- Other: 25%
State Insurance Departments Contact with Constituents

- Provide education about insurance: 26%
- Increase awareness about insurance: 24%
- Ask about opportunities to learn about your organization: 18%
- Discuss department's services: 17%
- Ask about ways to hear about your constituents' insurance issues: 17%
Recommendations
- Develop more expansive partnership networks with community organizations in areas that represent diverse populations

- Embrace active, ongoing engagement with community partners

**NAIC**
- Identify, promote, and replicate best practices across states
- Create minimum community engagement standards

**Regulator/NAIC Recommendations**
- Collect more data to better assess and address systemic inequities
- Examine current industry practices and public policies that disproportionately and negatively impact certain groups
- Prioritize enhanced data collection and reporting of demographic data
- Conduct a deeper review of the algorithms used to set rates

Regulator/NAIC Recommendations
To access the report:

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