

**RECORD OF SOCIETY OF ACTUARIES
1978 VOL. 4 NO. 1**

RISK CLASSIFICATION—EFFECT ON PLAN DESIGN

*Moderator: ANNA MARIE RAPPAPORT. Panelists: DANIEL J. GROSS,
DONALD S. GRUBBS, JR., CATHERINE M. KAMROW**

1. Retirement benefits. Plan design considerations. Implications of federal equal pay act and federal civil rights act. Court decisions. Unisex table? Possible effects of extension of age discrimination laws.
2. Annuity contracts. Design considerations if unisex tables are mandated.
3. Health insurance. Effect of pregnancy legislation in court decisions - handicapped person legislation and regulations. Plan design considerations and costs of benefits.
4. Disability insurance. Effect of pregnancy and handicapped person legislation. Plan design - elimination periods, benefit periods. Cost of benefits.
5. Workmen's Compensation - What if laws are changed not to allow industry ratings?
6. Effect of restricted risk classification techniques for individual life and individual property and casualty coverages.
7. Emerging and future issues.
8. Are experience studies, published statistics and tables adequate? Should the Society of Actuaries and Casualty Actuarial Society be doing more scientific research to support product designers? What should they be doing?

MS. ANNA MARIA RAPPAPORT: During this meeting, we have had an opportunity to talk about many different aspects of the risk classification problem. In this panel, we will be discussing the impact of risk classification on plan design. We are fortunate to have panelists who can present the issues facing the writer of auto insurance, the writer of health insurance, the manager of pension plans, and the writer of life insurance. You will probably be surprised, as I was, to learn how different these problems are. You will also see that the impact of these issues on the future of these businesses varies by line of business.

Before we begin to discuss the problems faced in each product line, we will review the societal context in which we are operating. Twenty-five years ago, it is unlikely that this discussion would have taken place or that the problems would have developed. But our world has changed. This change is reflected in more feeling on the part of the individual of rights, and more enforcement of those rights by government.

*Mrs. Kamrow, not a member of the Society, is Counsel for CNA/Insurance.

Public opinion surveys show the development of a "psychology of entitlement"; more than 90% of the population say that they have a right to an adequate retirement income, to support of survivors on the death of a breadwinner, and to adequate medical care. Availability of coverage is very much an issue, and so is affordability. This helps us to understand why classification has become such a big issue.

The growth and development of active minority rights groups is another force contributing to the emergency of the classification issues. We have in our society the civil rights movement, women's liberation, the aged rights movement, consumerists, and groups protecting the rights of the handicapped. The existence of organized movements to protect the rights of these interest groups leads to the formation of special task forces, in and out of government, and to the creation of laundry lists of "wrongs" and forms of discrimination. These catalogues of issues usually include some insurance, pension and benefit issues. While the insurance and pension issues may not have had top priority, they are there, and the minority rights groups will see that they are not ignored.

We are also changing our view of the role and responsibility of large institutions. Large institutions are increasingly held to be accountable for the impact of their actions on the public interest. I recommend that you read "The New American Ideology", by Professor George Cabot Lodge, of the Harvard Business School for some perspectives of the change in our society. Another good reference is "Trend Analysis Report #12", published by the American Council of Life Insurance.

One aspect of our changing society is the expansion of law and regulation in many areas affecting business. Risk classification is one of many areas where regulation is expanding rapidly.

These issues lead me to ask some questions that we as actuaries should be thinking about: What effects do classification systems have on policyholders and plan participants? What effect do they have on plan sponsors and insurers? How does the view of the plan sponsor differ from that of the insurer? How do classification systems affect price, availability of coverage, options and benefit amounts? Who has the right to define classification systems, and classification criteria? (Traditionally it was accepted that private enterprise could run its business in the most economically viable way, and it was expected that the marketplace would provide incentives for desirable action. In the current environment, with increased regulations, and focus on the rights of the individual, government is playing a larger role. That larger role has led to conflict, and is the reason why we are discussing this topic today.)

If classification systems adversely affect the rights of a group of individuals, what rights do they have? What weight should scientific information be given? What support must be given to classification systems? How much classification is necessary in order to have a viable system of insurance?

MR. DANIEL J. GROSS: The auto insurance classification controversy focusing on high costs is the most serious problem faced by the property and casualty business. In fact, some observers believe the ultimate survival of private automobile insurance rests on solving these problems.

State regulation of auto insurance rates, classification systems and underwriting rules varies widely. It ranges from near laissez-faire capitalism in some states to almost full government control in others. This variation obviously burdens company actuaries and managements, but it has provided a valuable laboratory for experiment in areas like no-fault and hopefully may do so again as we develop approaches to classification problems.

Auto classification is based principally on a few main factors: where the car is kept, how it is used, the driver's age (and, for a young driver, marital status and sex), and the driver's history (whether he has had recent at-fault accidents or moving violations).

Classification can also be more elaborate. Some companies use other factors: number of miles driven, non-smoking discounts, defensive driving discounts and so on.

In general, the major factors in determining rates are territory and age. Thus, the young male living in a high cost territory pays those horrendous premiums we have heard about.

These people also will find it hard to get insurance but, fortunately for them (and perhaps unfortunately for us), society now considers auto insurance a necessity and mandates its provision. So, (while they may use different forms) all states provide a mechanism to enable those risks who cannot find insurance in the voluntary market to obtain it through a residual system. These residual systems are generally inadequately rated and frequently involve serious complaints about service. It is thus in the industry's interest to maintain profitability and a good reputation with consumers and regulators, to minimize the size of these residual markets.

Unlike pensions and health insurance, the classification controversy in auto insurance reflects the generally high cost of the product and the especially high cost for poor risks. Regulators and the legislators are not concerned with, and may not believe, actuarial justifications of these high costs. They are just concerned with the costs and their message is very clear: if the industry cannot figure out how to stop charging \$2,000 for an 18-year-old in their district, they will find it very easy to tell us how to do it.

The problem is confused with discrimination because of a general feeling that anybody charged a high rate is being discriminated against. (Someone with a few drunken driving convictions or 10 accidents a year might be an exception, but most consumers feel their auto insurance rates are too high and if these rates are higher than their friends' or neighbors' they are being discriminated against.) So, the classification and discrimination arguments meld.

Territorial rating is the major area under attack. One argument is that the suburban driver, by causing congestion in the cities, forces the city dweller to pay higher rates. Actually, in most cases, accidents caused by suburban drivers are charged to their territory and will increase suburban rates, not city ones. But, the suburban/city argument is emotionally plausible and believed by some consumers, regulators and members of the media.

Another argument, which is not raised as much but may have more validity, is that underwriters used their judgment about desirable social classes in initially drawing territories. To the extent that territories have not since changed with experience, these judgments may still be creating discrimination.

A closely connected area of controversy involves the traditional industry practice of calculating expense and profit loadings as a percentage of premium. The argument, which sounds valid to those in the life insurance business, is that it costs no more to sell and administer a policy to a high cost class than to a low cost class. Thus, a person in a high cost territory or a bad risk is discriminated against when he pays more for expenses on his policy. This argument obviously creates concern among agents' associations as it questions their principal source of income - the percent of premium commission. However, it must be considered a strong argument against the current classification system.

Some of the other areas of controversy are a bit more confusing. There is the argument that driving history alone ought to determine your rate. It has a lot of appeal and keeps popping up in the press. It ignores territorial differences in accident frequency, theft rates, medical and repair costs and likelihood of litigation (a surprising difference - if you have an at-fault accident, you are three times as likely to be sued in Los Angeles than in one of its suburbs). But, it is an argument which has generated a lot of support and enables the driver who is statistically a high risk to feel he is being discriminated against if he has not had an accident or conviction.

Another area of dispute involves surcharges. Some regulators confuse reducing the cost of the pie (total auto claim payments) and reducing surcharges. They are thus proposing changes such as eliminating surcharges for all moving traffic violations or for tickets for speeding under 70 miles an hour. There is nothing wrong with these changes as a matter of social policy - but regulators do not always understand that they are not lowering the cost of insurance but just allocating it differently, with lower costs to speeders and greater costs to the general public.

A final area involves the general question of social policy. At one time, it was considered socially responsible to find a good risk, isolate him, market to him and charge him a low rate. Some observers now say that is a bad thing. They say it is creaming the market and not serving the public. Thus, there is a real dispute on proper social policy and the role of the insurance industry.

These questions and the high cost of insurance will continue to create pressure on the industry. We will be asked to charge those persons who cannot afford their full actuarial rate less than we need to collect. Companies will fight to maintain an average or below average market share of those persons who are not paying their full rate. (The company that has been socially responsible and ignored the conventional wisdom by insuring young and urban drivers may get hurt more than the company which has been less responsible.) Our big problem will be how to do this.

I have discussed the problems and the controversies; let me try to speculate on the outcome.

It is fairly clear there will be a change in expense loading. Like life actuaries, we will use a system combining per premium and per policy expenses. I doubt it will substantially affect agents' commissions - they effectively represent their interest. While they may end up with a two-tiered commission structure paying less on surcharges or very high rates, I doubt that we will switch to a fixed fee on policies.

There will also probably be some territorial readjustments. Actuaries will review experience to identify and correct poorly aligned territories.

There will probably be some restrictions on surcharging. These restrictions seem to be politically popular and give the appearance of reducing the cost of auto insurance.

I am not willing to predict we can achieve it, but I hope we can work with regulators to develop a good system to make sure that persons who cannot afford the fully priced policy are not charged unaffordable rates. This system of charging rates below those needed should be coupled with an incentive system that provides credits or transfers to companies writing at these rates.

Product change is unlikely to help this area. One product change which might help, however, would be group auto with the employer paying most of the cost and the employee paying a relatively fixed charge. In this case, the employer would take care of variability and defuse the classification issue. This change is unlikely to come soon; Federal tax law currently does not allow the employer deduction for this benefit, and company experience thus far has produced a great degree of antiselection. (Group writers have gotten all the bad risks while low-priced carriers were getting the good ones.) Obviously, employers paying half or more of the cost might make this system workable. In fact, group life insurance succeeds even though some younger employees may pay more for group insurance than they would for individual term insurance.

Another product idea would involve changing coverages to reduce those parts which create wide territorial rate variation and increase those with less territorial variation. It is a theoretical concept that some of us have discussed. Unfortunately, I am not sure we would know how to do it, and, if we could, whether it might not be directly contrary to meeting consumer needs. If we presume that today's product meets consumer needs, revising the product to level territorial costs will produce a product that meets his needs less than the current one.

Overall, our key problem currently is time. We must work with the regulators to develop answers to these problems before we have impractical or unworkable systems imposed on us.

MRS. CATHERINE M. KAMROW: I just updated two analyses for our company dealing with the prohibitions in the risk classification area. One deals with sex, marital status and sexual preference, and the other one deals with age and the medical conditions problem. Each gives the citation, the effective date, the line of business affected and a brief summary. Although this analysis is pretty complete on health and life, I am sure there are pieces

missing on the property/casualty/auto since not all the problems in that area go through my hands.

For accident and health insurance sex, marital status, age, occupation or industry, medical conditions and residence are big factors used in risk classification because of the difference in the morbidity experience. There are some differences between disability income and a hospital medical policy. For example, age has a very great impact on the amount of disability income that will be issued, but it has very little impact generally on the amount of hospital.

There is also a difference between group and individual insurance. In speaking of "group" here, I mean the type of group where all the employees are covered and there is a large spread of risk with no adverse selection, not the 2-9 life group or association type policy where individual underwriting and pricing criteria are applied. In group insurance you really do not look at all of the individual's characteristics; you look at the group as a whole. You apply these same risk factors to try to determine the general composition of the group and from that derive a composite rate; that is, one rate that will be charged for each individual. You normally will not deny anybody coverage. Also, there is experience rating in group insurance whereby, depending upon the amount of claims that had to be paid out in a year, the rate for the next year will be adjusted. So the risk classification factors are based more on group characteristics and do not play as important a part as they do in individual.

Pricing, product design, and underwriting are complex functions of the risk factors and they are very much intertwined. For example, if you cannot price a product because of the magnitude of the probability of say, disability, then that is going to affect the underwriting because you are not going to issue it. On the other hand, certain underwriting actions can be taken such as limiting the benefits, or providing a longer elimination period or deductibles, so that you can reduce the probability of loss and the product can be priced.

The three most prevalent risk classification prohibitions we are facing today in the accident and health field are sex, marital status, and medical conditions. Twenty-eight states have some law or regulation on sex, primarily dealing with the availability of coverage. The products must be equally available. Some of the states do require rate differential justification, but as of now, they are not prohibiting rate differentials. In the area of marital status there are about 21 states, again with the emphasis on availability, which say that you cannot refuse to issue certain coverage or benefits simply because of marital status. In the area of medical conditions, you will find laws affecting both the availability and the rates, and there are about eleven or twelve states that have some type of law.

In regard to sex and marital status the general availability prohibition did not pose too much of a problem. The biggest impact occurs in pregnancy coverage and to a limited extent in dependent coverage. I will talk a little bit about what our company did only to illustrate some of the problems that we looked at and our decisions on how to solve the problems. In the pregnancy complications area this did affect our product design because in most of our products we had excluded loss resulting from pregnancy. The first decision we had to make was whether to define complications of preg-

nancy, and if so, how, and we settled on what is called the New York-Arkansas definition. It had been mandated in New York for a couple of years and had not created too many problems. It was gaining acceptance in the industry and in the states, and our claims, pricing and underwriting people felt that it was explicit enough that they would know how to price and how to pay claims. The second decision regarded the rates. We decided that we did not need to rate up a disability income if there was a 14 day or more elimination period. Our reasoning was that if it lasts longer than this amount of time, it is usually due to some other medical condition that is present and we had already been paying such claims on the basis of this other medical condition that perhaps the pregnancy aggravated. We did rate up our hospital/medical-major-med and catastrophe hospital not as much as basic because of the presence of deductibles which perhaps serve the same purpose as the elimination periods. We also, of course, had to revise the surgical schedule in some of our hospital products to make certain that operations involving complications would be paid according to their relative severity with other operations.

The normal pregnancy presented even greater problems. Except for New York the state insurance laws are not specifically requiring payment for normal pregnancy expense, but there are problems in states like Maryland where, if you do provide a normal maternity benefit, you have to provide it on the same basis as other illness or sickness. States like Illinois, Minnesota, Ohio and others require that if you provide normal maternity benefits, then you must provide them to all females, both spouse and dependents. We also had to consider the fact that if you provide maternity, you could not discriminate against single female insureds. Because we operate in all states, we wanted as nationwide an approach as possible. Then, of course, the biggest factor was the rating problem. No matter how it was done, it would seem to be unfair to some group or another, or you would merely be trading off premium for claims. For example, if you charged all insureds for this benefit it certainly would be unfair to some women and to males. If you decided to charge all females, again this could be unfair to many of the females. If you had an optional benefit, then you had the problem of adverse selection, and you would have to charge on the assumption that practically all that chose the coverage would end up in a claims situation. The CNA solution was that we are no longer providing any normal maternity benefits in individual hospital/medical/surgical products, except, of course, in New York.

With respect to marital status and product design, we simply changed our eligibility requirements for dependent coverage so that we now can offer the same policy either to an individual with dependents or without dependents.

In the area of the medical condition prohibitions, a lot of us in the industry have tried to figure out what is good terminology for this - whether you call it a physical condition or a handicap - but it is based on the medical condition or history of the insured, and this kind of law is posing perhaps the biggest current problem. Unlike, say, age or sex, there are not just a few variables. There are many variables; there are many conditions and types. Certainly we could use more statistics, but because there are so many variables, it would be very difficult to gather statistics on all of them. Even having the statistics is not a full solution because you would have so few people in each of these condition groups that you would not have credible experience.

Another problem in these laws and regulations is that they are often not clear cut. I am asked for my legal opinion on what a law means, and I find it very difficult to tell our underwriting people and pricing people what it really means. What is the meaning of the undefined term "disability," or "handicap"? Is the court going to say that it means what the Webster's dictionary says? Are they going to look to some other section of the code, say, pertaining to health or the treatment of indigents, etc? About all we can say to underwriters is that we have to take a conservative approach, and time will tell. Some of the laws do say that you can exclude loss due to such a condition, but there is a great problem in being able to legally prove that a loss really was caused by this condition.

Even if the meaning of a law is clear - some of these laws are very explicit - it has greatly increased the company's risk exposure. In states where there are restrictions on the classification system in this area we are having the potential rejection sent to the home office where one of the head underwriters looks it over, and, if necessary, he will refer to the medical director. We really do not have any experience in the several states that have such a law, although I understand that a few companies are trying to accumulate statistics on the experience when they issue to people that perhaps before they would not issue to.

I think that the industry will be trying to limit these prohibitions to the extent possible through working with the legislators and with the regulators. For example, the ACLI and the HIAA risk classification sub-committees have been trying to develop a Model Risk Classification Bill. It probably does not go as far as some of the consumers would want. On the other hand there has been opposition from a lot of the companies because they do not want to give an inch on their underwriting privileges until they are really forced to do so by a law. If we could come up with such a model bill, it would turn aside some of the more onerous laws and regulations that we are seeing introduced and passed, but we are going to see a broadening in this area.

Discrimination Prohibitions Overview
Age and Mental or Physical Conditions

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
Arizona	All Lines	R Rule R4-14-213 eff upon filing with Sec. of State after approved by Attorney General		X Blindness, Partial Blindness or Physical Disability	Can't place such persons in different class or consider have different life expectancy for purpose of rates or availability unless such condition is relevant to the expected risk of loss.
California	Life & A&H	L §10143 SB 240(1977) eff 1-1-78			Can't refuse to issue or renew or charge higher rates because person to be insured carries gene which may be associated with disability in such person's offspring but which carries no adverse effects on the carrier. Such genes include but are not limited to Tay Sachs trait, sickle cell trait, thalassemia trait and x-linked hemophilia.
	A&H	L §10123.1 AB 2700(1974) eff 1-1-75		X Physical Handicap	Group policy covering hospital, medical expenses - must offer the same coverage, terms and conditions to physically handicapped members as offered to members without physical handicap. Do not have to cover loss directly arising from handicap.
Delaware	A&H	L §2327 HB 402(1974) eff 3-25-74 also see IDB #75 of Feb. 1975	X		Hospital medical surgical - can't refuse to issue to persons over 65 but can reduce by government programs.

* L Means Law and citations are to the insurance codes unless otherwise indicated
R Means Insurance Department Regulation
PR Means Proposed Insurance Department Regulation

State	Line of Business	Citation * Date	Age	Mental or Physical Conditions	Comments
Florida	A&H	L §§627.644 & 627.6576 HB 4059(1976) eff 7-1-76		X Mental or Physical Handicap	Can't refuse to provide coverage or charge unfairly discriminatory rates for a person solely because mentally or physically handicapped. Do not have to provide coverage for handicap already sustained.
	Life & A&H	L §626.9705 SB 664(1975) eff 10-1-75		X Severe Disability	Can't refuse to issue or renew or charge unfair or discriminatory rate solely on grounds suffers from Severe Disability defined as any spinal cord disease or injury resulting in permanent and total disability, amputation of any extremity that requires prosthesis, permanent visual acuity of 20/200 or worse in the better eye with the best correction or a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees. Do not have to provide coverage for severe disability already sustained.
Iowa	All Lines	R Rules 510-15.80(507B) thru 510-15.83(507B) eff 3-2-77		X Blindness, Partial Blindness or Physical Disability	Persons shall not be considered to be of same class or have same life expectancy solely because of such condition. Persons who are blind, partially blind or have a physical disability may not, solely on that basis be unfairly discriminated against in rates charged or in terms, benefits or conditions of the contract.

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
Maine	All Lines	L §2159-A SB 507(1977) eff 9-12-77 expansion of original blindness prohibition of HB 846(1975) eff 10-1-75		X Blindness, Deafness, Developmentally Disabled	<p>Can't refuse to issue or renew or reduce liability limits or increase premiums solely because applicant or insured is blind, deaf or developmentally disabled. Can exclude payment of benefits arising from losses that would not have occurred except for fact.</p> <p>A person shall be considered deaf-who either has a minimum pure tone average hearing threshold level of 40 decibels in the better ear on an International Standards Organization-American National Standards Institute scale, or is not able to hear and understand more than 40% of the words on a standardized word discrimination test using a list of phonetically balanced words at appropriate intensity levels through a speech audiometer.</p> <p>A person shall be considered developmentally disabled who has a disability which: A. Is attributable to: (1) Mental retardation, cerebral palsy, epilepsy or autism; (2) Any other condition found to be closely related to mental retardation, because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment or services similar to those required for such persons; or (3) Dyslexia resulting from a disability described in paragraph (1) or (2); B. Originates before such person attains age 18; C. Has continued or can be expected to continue indefinitely; and D. Constitutes a substantial handicap to such person's ability to function normally in society.</p>

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
Maryland	All Lines	L §234A(a) eff 1971			Can't refuse to underwrite or renew for any arbitrary, capricious or unfairly discriminatory reason.
	All Lines	L §234A(a) HB 859(1974) eff 7-1-74			Can't refuse to underwrite or renew a particular risk or class of risk except by application of standards which are reasonably related to the insurer's economic and business purposes - burden on insurer to demonstrate refusal is justified under standards demonstrated.
Massachusetts	A&H	L A&H Chp. 175 §108A HB6348(1974) eff 10-6-74		X Blindness	Can't refuse to issue individual policy providing hospital and surgical expense coverage because of blindness.
	Life	L Life Chp. 175 §120B HB 6138(1974) eff 12-31-74		X Blindness	Can't refuse to issue individual policy for sole reason that person is blind.
	A&H	L Chp. 175 §108A HB 6559(1975) eff around 12-7-75		X Deafness	Can't refuse to issue individual policy providing hospital and surgical expense coverage because of deafness.
	Life	L Chp. 175 §120A HB 6317(1972) eff 12-31-72 as amended by HB 2496 eff 2-13-76		X Mental Retardation	Can't refuse to issue individual policy to mentally retarded person who has reached the age of three years if amount of insurance applied for is exactly \$1,500 and there is no other insurance on such life in force or pending.

State	Line of Business	Citation * Date	Age	Mental or Physical Conditions	Comments
Michigan	All Lines	L §2027 HB 4623(1976) eff 4-1-77	X	X Handicap	Can't refuse to insure or refuse to continue to insure or limit the amount of coverage available unless there is a reasonable relationship between the age or handicap and the extent of risk or coverage. Can't charge a different rate for the same coverage based on age or handicap unless the risk differential is based on sound actuarial principles, a reasonable classification system and is related to the actual and credible loss statistics or reasonably anticipated experience in the case of new coverages.
	All Lines	PR R 500 - Rules 43 thru 56	X	X	
Minnesota	Life & A&H	L §72A.20(9) SB 765(1975) eff 8-1-75		X Disability	Can't reject or determine rate class on the basis of a disability unless the claims experience and actuarial projections and other data establish significant and substantial differences in class rates because of the disability.
Missouri	All Lines	PR 4CSR190-170		X Blindness, Partial Blindness or Physical Disability	
New Mexico	Auto	ID Advisory Letter of 9-27-77		X Handicap	Handicapped drivers shall be accorded same treatment as any other category and statistical justification is required to be furnished for putting any driver in a high risk category when there are no other justifications other than being handicapped.

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
North Carolina	A&H	L §168-10 (not Ins. Code) HB 746 (1977) eff 1-1-78		X Handicap	Each handicapped person shall have the same consideration as any other person for individual A&H insurance coverage and the availability of such insurance shall not be denied solely on the basis of such person's handicap. An insurer shall not be prohibited from excluding, by waiver or otherwise, any pre-existing conditions from such coverage. An insurer may charge the appropriate premium for the risk insured on the same basis and conditions as insurance issued to other persons. This section shall not restrict or preclude an insurer from setting and charging a premium based upon the class or classes of risks and on sound actuarial and underwriting principles as determined by the insurer or from applying its regular underwriting standards applicable to all classes of risks.
	Life & A&H	L A&H §58-251.6 HB 475 (1975) eff 7-1-75 L Life §58-195.5 HB 476 eff 7-1-75		X Sickle Cell & Hemoglobin C Traits	Can't refuse to issue coverage for medical treatment nor charge a higher rate because person possesses trait.

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
Ohio	All Lines	L §3999.15 SB 162(1976) eff 7-23-76		X Handicap	Underwriting standards or rates that result in unfair discrimination against any handicapped person may not knowingly be used. This does not prevent reasonable classifications of handicapped persons for determining insurance rates. "Handicapped" means a medically diagnosable, abnormal condition which is expected to continue for a considerable length of time, whether correctable or uncorrectable by good medical practice, which can reasonably be expected to limit the person's functional ability, including but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, sitting, rising, any related function, or any limitation due to weakness or significantly decreased endurance, so that he cannot perform his everyday routine living and working without significantly increased hardship and vulnerability to what are considered the everyday obstacles and hazards encountered by the non-handicapped.
Oregon	Property & Casualty	PR 836-81-105	X		

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
Pennsylvania	All Lines	L 40P.S. §1171.5 (a)(7)(iii) SB 561(1974) eff 7-22-74	X		Unfair discrimination prohibited between individuals of same class and essentially same hazard with regard to underwriting standards and practices or eligibility requirements by reason of age. Underwriting standards and practices and eligibility rules do not include promulgation of rates in accordance with rate regulatory act and insurance department regulations.
	Life & A&H	PR I.D. Rule p. 2179, Pa. Bull. Vol. 4, No. 44 of 10-12-74		X Genetic or other physical or mental characteristic or handicap	Can't refuse to issue or rate up unless prior filing of statistically significant data as to lower life expectancy or other increased risk characteristic to raise rebuttable presumption <u>discrimination justified and proper.</u>
Rhode Island	Life	L §27-4-1 SB 474(1977) eff 5-5-77		X Disability	No company shall make or permit the rejection of any individual's application for life insurance coverage, as well as the determination of the rate class for such individual, on the basis of a disability unless such disability is relevant to the risk of loss.

State	Line of Business	Citation* Date	Age	Mental or Physical Conditions	Comments
Washington	All Lines	L RCW 49.60.030 HB 1508(1974) eff 7-24-74		X Sensory, mental or physical handicap	Civil right to engage in insurance transactions without discrimination because of the named handicaps.
	All Lines	AGO AGLO 1974(No.100) of 11-26-74		X Sensory, mental or physical handicap	Can probably rate up if can justify for legitimate insurance objectives. Can probably exclude pre-existing conditions because definition of scope of coverage applying equally to all applicants. Insurance Department has no right to apply this civil rights law in reviewing policy forms - individuals discriminated against must seek remedy in court.
	All Lines	L §48.30.300 HB 1544(1976) eff 6-25-76		X Sensory, mental or physical handicap	Can't refuse to issue or renew nor restrict benefits because of the presence of such handicap but this shall not prohibit fair discrimination when bona fide statistical differences in risk or exposure have been substantiated.
Wisconsin	Auto Homeowners	R Wis. Adm. Code Ins 6.54 eff 4-1-76 as amended eff 5-1-77	X	X Past Mental Disability	Can't cancel or refuse to issue nor place in rating classification on the basis of such factors without credible information supporting such classification and demonstrating it equitably reflects differences in past or expected losses and expenses.

Also see following new 1978 legislation: Colorado SB 88; Delaware HB 298; Kansas HB 3225

MRS. KAMROW: Discussion Note---

Discrimination Prohibitions Overview
Sex, Marital Status And Sexual Preference

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Compli-cations Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differ-entials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Avail-ability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differ-entials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Avail-ability Of Any Coverage	
Arizona	All Lines	R Rule R4-14-209 eff 6-13-77	X	X		X			
Arkansas	All Lines	L §66-3005(1) SB 406(1975) eff 4-3-75	X						
	All Lines	R Rule & Reg. 19 eff 2-1-76	X	X	X	X			Complications Defined Sec. 3

* L Means Law and citations are to the insurance codes unless otherwise indicated;
R Means Insurance Department Regulation;
PR Means Proposed Insurance Department Regulation.

** The language used in the sources cited is not always specific in the area of maternity and dependent benefits. It is the considered opinion of the Law Department, however, that the prohibitions language is broad enough to require us to treat all applicants on an equal basis in regard to all benefits. If maternity or dependent coverage is available to any applicant under a product, it must be made available regardless of the applicant's sex or marital status.

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials		
California	All Lines	R CAC§§2560 thru 2560.6 Ruling 204, File No.RH-176 eff 1-1-76	X	X				X	Can't discriminate because of residence with person not related by blood or marriage.
	A&H	L §10119.5 AB 521(1975) eff 7-1-76							Must cover involuntary complications (defined) if maternity benefits provided.
	A&H	L §10122.2 AB 1385 eff 1-1-77							Group - employees must be treated no less favorably than dependent spouses.
Colorado	All Lines	L §10-3-1104(1) (f)III HB 1446(1975) eff 7-1-75	X		X	X	X		
	A&H	L §10-8-121 HB 1437(1975) eff 1-1-76		X					

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials		
Connecticut	All Lines	PR §§38-61-20 thru 38-61-27	X	X	X	X	X	Arkansas-New York definition of complications. Can't discriminate because of residence with person not related by blood or marriage.	
Florida	Life & A&H	Rule 4-43 eff 1-1-78	X	X		X			
Georgia	A&H	L 556-2443 HB 2477 eff 7-1-77		X				Group or blanket major medical policy if maternity benefits provided. Complications defined - some deviation from Arkansas - New York definition.	
Idaho	A&H	L §§41-2140(2) & 41-2210(2) HB 589(1976) eff 1-1-77 & R Reg 31 eff 1-1-77		X				Must cover involuntary complication. if maternity benefits provided. Complications defined - some deviation from Arkansas - New York definition.	

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Illinois	Life & A&H	R Rule 26.04 eff 7-1-76	X	X	X	X	X	X	Can't discriminate because of residence with person not related by blood or marriage. For Ins. Dept. position regarding meaning of "complications" see Illinois Insurance Vol. VII No. 5 Sept.-Oct. 1976, p. 6. When maternity benefits are provided, they must be applied to natural or adopted children who are covered as dependents - Sec. 3(B2) last sentence.
Iowa	All Lines	R Rules §510-15.50 (507B) thru §510-15.54 (507B) eff 4-13-76	X	X	X	X			

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials		
Kansas	All Lines	R 40-1-31 eff 2-15-77	X			X			
	All Lines	Bull. 1977-3 of 2-4-77	X	X		X			
	A&H	ID Bull 1977-3 (Addendum) of 2-14-77						This purports to require equal benefits for loss from normal pregnancy but the Ins. Dept. contends issuance of such coverage is strictly a matter of negotiation between the company and applicant although filings must permit such negotiation. See HIAA IDB Kansas No. 1-77 of 3-4-77.	
Kentucky	All Lines	L §304.12-085 HB 529(1974) eff 6-20-74	X			X			

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Maine	A&H	L §2741 & 2832 SB 121(1975) eff 1-1-76							Unmarried female insureds and their covered minor dependents must be provided the same maternity benefits as provided to married female insureds or dependent female spouses.
	A&H	L §2742 & 2833 SB 121(1975) eff 1-1-76							Unmarried female insureds must be provided the option of the same coverage for their dependent children as is extended to married insureds with dependents.
Maryland	All Lines	L §234A(a) eff 1971	X						
	All Lines	L §234A(b) HB 1217(1975) eff 7-1-75							Can't require existence of special conditions, facts or situations as condition to acceptance or renewal based in whole or part on sex unless actuarial justification.

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Maryland (contd.)	A&H	L §223(b)(2) HB 1217(1975) eff 7-1-75			X				
	Property Casualty Surety	L §226c(2) HB 1217(1975) eff 7-1-75			X				
	Life	L §83(3), 414(i) & (j) SB 62(1975) eff 7-1-75							Three year age setback for females in computing life reserves and non-forfeiture values deleted - added requirement that differentials based on sex must reflect actuarial expectancies and shall be subject to approval.
	A&H	L §§470H & 477I HB 433 eff 7-1-75							If hospitalization benefits are provided for normal pregnancy, payment shall be to the same extent as for other covered illness.
	A&H	L §§470I & 477J HB 434 eff 7-1-75							If maternity benefits are provided in any policy form customarily issued on an individual or family basis, the benefits must be offered to individuals regardless of marital status.

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Maryland (contd.)	A&H	L 8477P SB 775 eff 7-1-77							Any group or blanket policy which provides benefits for temporary disability must offer the prospective policyholder the option of providing benefits for temporary disability caused or contributed to by pregnancy or childbirth. Benefits shall be the same as applied to other disabilities except that payment for normal pregnancy or normal childbirth may be limited to six weeks or more.
Massachusetts	Life & A&H	L Chp. 175, §24A HB 6174(1974) eff 10-29-74	X						

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Michigan	All Lines	L §2027 HB 4623 eff 4-1-77	X		X	X	X		
	All Lines	PR R 500 Rules 43 thru 56	X	X	X	X	X		Rule 44(lf) and l(l) would require the offering of benefits for loss from pregnancy to the same extent as other loss.
Minnesota	A&H	L 562A.041 HB 1306(1973) eff 8-1-73 as amended by HB 290(1976) eff 7-1-76							If maternity benefits are provided under a policy, the same benefits must be provided to all females covered under the policy whether they are married or single or whether they are insureds, dependent spouses or dependent children. "Maternity benefits" does not include elective, induced abortion.

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Nebraska	Life & A&H	R Rule 28 eff 10-1-77	X	X		X	X		
Nevada	All Lines	R Reg. M7 eff 1-1-77	X	X	X	X	X		
	A&H	L 88689A.042 & 689B.032 AB 120(1977) eff 7-1-77		X				Complications defined - not identical to Arkansas - New York definition but principles consistent.	
New Jersey	All Lines	R N.J. A.C. §11:1-4.2 eff 9-1-75 Also see ID Circular Letters of 6-6-75 & 3-26-76	X		X	X			
	Life & A&H	R N.J.A.C. §11:1-4.3 eff 9-1-76		X				Complications defined - deviates from Arkansas - New York definition in that hospital confinement can not be required.	

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
New York	All Lines	L §40e AB 6288A(1975) eff 9-1-75	X			X			
	All Lines	R Reg 75 & accompanying report 11 NYCRR §§217.1 & 217.2 eff 6-1-75	X		X				
	A&H	R Reg 62 11 NYCRR §52.16c3 eff 12-1-72		X					Complications defined ID Reg 62, NYCRR §52.2s eff 6-1-73
	A&H	L §§162-a & 164-a SB 10536 eff 1-1-77							Mandatory maternity coverage for hospital-medical-surgical expense- suit in process on constitutional issues

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Deny Availability Of Any Coverage	
New York (contd.)	A&H	R Reg 62 11 NYCRR §52.41 eff 4-27-77			X				Requirements for gross premium differentials based on sex.
North Carolina	All Lines	R Rule 4.0107 eff 5-5-77	X	X		X			
North Dakota	All Lines	L §26-30-04(11) HB 1176(1975) eff 7-1-75	X						
Ohio	All Lines	L §3901.21(L) SB 425(1976) eff 8-31-76	X			X			
	A&H	L §3901.21(N) SB 425(1976) eff 8-31-76							Can't refuse to make disability income insurance available solely because applicant's principal occupation is that of managing a household.

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Compli-cations Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differ-entials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differ-entials		
Ohio (contd.)	A&H	L §3901.21(O) SB 425(1976) eff 8-31-76							If maternity benefits are offered under a policy they must be available for all covered persons. A reasonable waiting period, not exceeding 270 days may be imposed.
Oregon	All Lines	R Rule IC-61 eff 1-1-75	X		X	X	X		
	A&H	L §743.037(2) SB 633(1973) eff 10-5-73							Each policy must provide the same payments for costs of maternity to unmarried women that it provides to married women, including dependent spouses, and the same coverage for the child of an unmarried woman as a covered child of an insured married person receives.
	Property & Casualty	PR Rules §§ 836-81-105 & 836-81-110	X			X			

State	Line Of Business	Citation * Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials		
Pennsylvania	All Lines	L 40P.S. §1171.5 (a) (7) (iii) SB 561(1974) eff 7-22-74	X		X	X	X		
	All Lines	R I.D. Notice, p. 102, Pa. Bull. Vol. 4 No. 3 of 1-19-74	X	X					
	All Lines	R 31 Pa. Code §§145.1 thru 145.5 eff 10-27-77	X	X		X			
Tennessee	All Lines	R Rule 0780-1-34 eff 4-12-76	X	X	X	X	X		Arkansas - New York definition of complications - Sec. 0780-1-34.04 (f). Can't deny maternity benefits to unmarried females covered under a contract if maternity coverage is available to married females under such contract.

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials		
Texas	All Lines	R Rules 059.21.21.101 thru 059.21.21.109 as amended by Board Order 33050 on 12-15-77 eff 1-1-78 except A&H eff 5-1-78	X	X	X	X	X	Arkansas - New York definition of complications - Rule 059.21.21.105 (A)	
Utah	All Lines	L Utah Code Annotated §§13-7-1 thru 13-7-4 eff 5-7-73	X						
Vermont	All Lines	L §4724(7B) HP. 147 eff 7-1-76	X		X	X	X		

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Compli-cations Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differ-entials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differ-entials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Washington	All Lines	L RCW 49.60.030 HB 404(1973) eff 7-16-73 as amended by HB 1508(1974) eff 7-24-74	X		X				
	All Lines	L RCW 49.60.178 HB 404(1973) eff 7-16-73 as amended by HB 1508(1974) eff 7-24-74	X		X	X	X		
	All Lines	L §48.30.300 HB 1544(1976) eff 6-25-76	X			X			
	Ind. A&H	R WAC 284-50-320(6c) & 284-50-355(1c) & ID Bull 77-8 of 11-1-77		X					

State	Line Of Business	Citation* Date	Sex			Marital Status		Sexual Preference	Comments
			Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Cover Loss From Complications Of Pregnancy On Same Basis As Loss From Other Sickness	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage**	Must Justify Or Be Able To Justify Rate Differentials	Can't Discriminate In Insuring Or Renewing And/Or Can't Deny Availability Of Any Coverage	
Wisconsin	All Lines	R Wis. Adm. Code Ins 6.55 eff 6-1-76	X	X	X				
	Auto & Home-owners	R Wis. Adm. Code Ins 6.55 eff 4-1-76				X		X	Can't cancel or refuse to issue or place in rating classification on the basis of these factors without credible information supporting such classification and demonstrating it equitably reflects differences in past or expected losses and expenses.

MR. DONALD S. GRUBBS, JR.: All pension plans may be divided into two main categories, defined benefit plans and defined contribution plans. These two types of plans are entirely different in design, concept and philosophy and take account of sex in entirely different ways.

A. Defined Contribution Plans

A defined contribution plan is one in which the contribution for each employee is allocated to an individual account for his benefit. This includes profit-sharing plans, thrift plans, savings plans and money-purchase pension plans. Contributions are usually made as a percent of pay, independent of age and sex, so that any two employees with the same salary receive the same contribution. These plans are often thought of as a kind of deferred compensation in which part of the individual's compensation for the current year is invested and paid to him at some later point; thus, maintaining the employee's individual equity in the amount set aside for him is inherent in the deferred compensation concept.

Most defined contribution plans are funded on a trusteed basis. One recent survey showed that less than 4% of such funds were insured.

Under defined contribution plans it is ordinarily the employee who bears the risk. The amount of his future benefits will depend upon the future investment return of the fund. Some plans allow him to direct the investment of his own individual account.

A number of such plans allow the individual employee to direct that part of the contributions made to his account be used to purchase an individual life insurance policy. In such a case the premiums do, of course, vary with age and usually with sex. Thus if the same amount is applied to purchase life insurance, younger employees will generally get more insurance than older employees and females will get more insurance than males.

Benefits may be distributed to employees at the time of retirement or earlier termination of employment, or in some cases while still actively employed. The amount distributed to the employee is his account balance. Often plans provide that this account balance may be paid as a lump sum distribution or, if the employee elects, may be applied to purchase an annuity. If an annuity is purchased, of course, the amount of monthly annuity depends upon the age and sex of the employee, with older employees receiving larger monthly payments than younger employees and males receiving larger monthly payments than females.

B. Defined Benefit Plans

A defined benefit plan is a traditional pension plan under which the amount of monthly pension at retirement is defined, such as a pension of \$10.00 per year of service or a pension of 50% of final average pay. Under defined benefit plans the benefit formula is usually adopted with the consideration of providing a suitable amount of retirement income in relation to the individual's salary and years of service. The employer considers the overall cost of the program, but no effort is made to obtain individual equity of contributions in setting the basic benefit formula. The pensions gene-

rally have a higher cost as a percentage of pay for employees hired at older ages than for those hired at younger ages. Under final average pay plans the cost of benefits is higher for employees with rapid salary increases than for those with slower salary increases, higher not only in absolute dollar amounts but as a percentage of pay. Although the cost of providing \$100 of monthly annuity at age 65 is higher for females than for males, many employers find that the cost of providing pensions for females is a lower percentage of pay than for males because of higher turnover rates and lower rates of salary increase. Appropriate monthly benefits rather than equity of cost is the objective.

In most defined benefit plans the entire cost is paid by the employer, who bears the entire risk of fluctuations of cost. Even in those plans where employees contribute part of the costs, employee contributions are specified as a percent of pay and the employer bears the entire risk of cost fluctuation.

In 1976 36% of private pension plan assets were held by insurance companies and 64% were held on a trustee basis. The overwhelming majority of insured plan assets were under group annuity contracts. Most of these group annuity contracts are deposit administration or immediate participation guarantee contracts with a single unallocated fund for the entire plan and no individual employee accounts; under many of these contracts a withdrawal is made at retirement to purchase an annuity providing the pension payments specified under the benefit formula, while other contracts merely make the payments monthly from the unallocated fund as they become due, the same as under a trustee plan. A decreasing minority of group annuity contracts are of the older group deferred annuity type, under which each year the employer pays a premium to purchase a small deferred annuity for each active employee. Under deferred annuity contracts, and after an annuity is purchased under a deposit administration contract, the employer has shifted the mortality and investment risk to an insurance company, although in larger plans the risk is entirely passed back to the employer through the experience-rating process.

Of insured pension reserves, however, about 7% are held under individual policy pension trusts under which an individual insurance or annuity contract is issued upon the life of each active employee; this is an extremely inefficient way to fund pensions even for very small employers. Under these plans the mortality and investment risk has been shifted from the employer to a life insurance company, although cost fluctuations related to turnover and salary increase rates are retained by the employer.

Under defined benefit plans two employees retiring at age 65 with equal work and salary histories will receive equal amounts of monthly pension payable as a single life annuity, regardless of sex. However, there are optional forms of benefits payable based upon actuarial equivalent factors. Plans are required to include a joint and survivor option and many plans also include other optional forms of benefit distribution. Historically such actuarial equivalent factors have been based upon mortality tables which differ by sex, recognizing the lower mortality rates generally experienced by females. In some circumstances this results in larger benefits for females and in other circumstances larger benefits for males. Increasing numbers of plans have shifted to using unisex mortality tables for this purpose, under which the table adopted is designed to reflect the average experience of the entire group. If the table is appropriately chosen, there

is no significant cost effect for such a change. There are no problems to such a change if the plan is funded through a trust, deposit administration contract or immediate participation guarantee contract. However, for those insured plans funded entirely with individual insurance and annuity contracts or with deferred annuity contracts, where prior to the annuity commencement date the insurance company has already guaranteed a benefit, a decision to shift to unisex mortality tables would require modification of the contracts or a change to a deposit administration contract or a trust.

The adoption of unisex tables has generally been for the purpose of equity and good employee relations. Since the underlying benefit formula has been designed to meet the needs of employees regardless of sex, benefits which differ by sex are inconsistent with the basic design of the defined benefit plan.

If an employee elects early retirement before his normal retirement age, he receives a reduced benefit, often determined to be actuarially equivalent to the benefit payable at age 65. Most larger pension funds have abandoned actuarial equivalent factors for determining early retirement benefits, and instead make reductions such as 1/2% per month early. Of those plans which use actuarial equivalent factors for early retirement, most still base these upon mortality tables that differ by sex, although an increasing number have shifted to unisex tables. Sex-differentiated tables typically result in a female retiring at age 55 receiving 12% more pension than an equally compensated male retiring at the same age. The alleged rationale for paying a female age 55 receiving 12% more pension is to preserve the ratio of higher cost which exists at age 65, a rationale entirely inconsistent with basic design considerations for defined benefit plans. Shifting to early retirement factors which do not vary by sex, as most larger plans have already done, does not pose any particular problem for the employer, although plans funded entirely by individual insurance contracts or deferred annuity contracts would need to have such funding media modified.

C. Legislation

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, provides, "it shall be unlawful employment practice for an employer...to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex or national origin." This is generally understood to prevent a pension plan from having sex differences in eligibility to participate, eligibility for benefits, or benefit formulas; almost all plans have eliminated such differences. However, this law has not generally been understood to prohibit using actuarial equivalent factors which differ by sex in determining benefit amounts.

D. The Manhart Case

Marie Manhart was an employee covered by the pension plan of the City of Los Angeles, Department of Water and Power. That is a contributory plan under which employee contributions were originally designed to have the employee pay half the cost of the plan. Contribution rates were developed based upon mortality and interest assumptions which resulted in contribution rates varying by both age and sex. Female employees had to contribute 15% more to the plan than comparable male employees, which resulted in females receiving

less take-home pay. It is extremely unusual in 1978 for a pension plan to have employee contribution rates which vary by sex.

The U.S. District Court ruled that these differing contribution rates, together with their accompanying different amounts of take-home pay, constituted unlawful discrimination in violation of Title VII of the Civil Rights Act. The 9th Circuit Court of Appeals upheld the District Court, and the case is now being considered by the U.S. Supreme Court*.

It matters little whether the Supreme Court prohibits rates of employee contributions which differ by sex, since plans of that sort are almost extinct anyway. But if the Supreme Court's opinion were to be phrased in such broad language as to prohibit any differences by sex whatsoever under pension plans, this could be extremely disruptive. By far the biggest problem would be under defined contribution plans, under which employees may now elect to receive their account balances as a lump sum or to apply their account balances to purchase annuities. Annuities with equal rates for both sexes do not currently exist in the market place. If unequal monthly annuity payments were no longer permitted, many employers might decide to comply by simply eliminating the annuity option completely, forcing all employees to take lump sum payments. Thus, employees could lose the protection of an income payable for life.

Even with respect to defined benefit plans a sudden change to a requirement of unisex tables for determining actuarial equivalent amounts would be disruptive for plans not now using unisex tables. Such a change could be better handled by legislation providing proper lead time, grandfather clauses with respect to individuals previously retired and annuities previously purchased, and other appropriate adjustments. As previously mentioned, a number of defined benefit plans have already made the change to unisex tables voluntarily, and I normally recommend such changes.

E. Adjustments for Insured Plans

Over the years the insurance industry has changed thousands of defined benefit plans from deferred annuity contracts and individual insurance and annuity contracts to the unallocated funding of deposit administration contracts and split funded plans; and with appropriate lead time it could easily handle the transition for the remainder of such plans in order to eliminate sex discrimination. Such changes in funding are generally desirable for plans and employers, regardless of governmental requirements. They do reduce agent commissions, however.

If defined contribution plans were required to eliminate sex differences, the problems for the insurance industry would be more challenging but not insurmountable. It is obvious that insurance companies can issue ordinary life policies to males and females at the same rates, since they did so during most of their history and some companies still do so; but this would tend to raise premium rates from 5% to 20% for females without appreciably affecting rates for males.

*Editor's Note: On April 25, 1978 (after this meeting) the U.S. Supreme Court voted 6-2 to uphold the Appeals Court decision.

If defined contribution plans could only buy annuities at equal purchase rates for males and females, a variety of solutions are possible. For a large group plan the conservative female rates could be used for both males and females; experience rating the entire plan would cause the gains from overpricing of male retirees to be reallocated to active employees. Similarly under individual contracts it might be possible to sell contracts to both males and females at the same high female rates, but pay a dividend to the plan as a whole at time of purchase of annuities for males equal to the difference in usual annuity premium rates (around 12% of the premium). This approach would make the purchase of annuities less attractive for males, however, and tend to decrease the utilization of annuities by males.

MR. GROSS: The problem in life insurance is very unlikely to reach the proportions that it is reaching in auto insurance or elsewhere for two main reasons. First, in the area of sex discrimination, in this case females get a better break than males and perhaps they should be getting an even better break than they do today. So, we can expect pressure to improve the setback for females and change the standard nonforfeiture laws to eliminate any possibility of deficiency reserves. Secondly, few people consider individual life insurance a necessity - thus, the fact that some people pay more than others does not create an affordability crisis. So, while there will be spillover and controversy and (as Anna mentioned in her introduction) there is probably a laundry list of discrimination problems in life insurance, I still expect the impact of classification change to be smaller than in other insurance areas.

MS. RAPPAPORT: Women often move in and out of the labor force, and they do so more frequently than men. Because of this difference in behavior, are typical vesting patterns therefore discriminatory?

MR. GRUBBS: No more discriminatory than all of the other effects which come from women moving in and out of the labor force. All a pension plan can hope to do is to provide equal benefits for people who have equal work histories, rather than to try to control the work history. It does, though, raise a larger question as to whether plans should have earlier vesting than they do now. At the time we established minimum vesting requirements under ERISA, we went to 10-year vesting. Some thought that earlier vesting would be desirable, but it was recognized that this itself was a substantial step forward and all that people are willing to bite off, but earlier vesting is coming.

MR. ARNOLD A. DICKE: If the Equal Rights Amendment (ERA) were to be adopted to the Constitution, what effect would that have on risk classification, if any?

MRS. KAMROW: Since nobody is precisely sure of the effect of the ERA in general, it is particularly hard to tell what the effect will be on risk classification. However, there are a number of states that do have some sort of an ERA amendment in the state. Take, for example, Washington, where it is a civil right not to be discriminated against because of sex. There was an Attorney-General opinion interpreting this law as having different application in insurance than in other civil rights areas. Although generally civil rights deals with individual rights, since insurance deals with group characteristics, the law had to be interpreted recognizing such group characteristics. Now this is not the way other states or the Federal Government would go, necessarily. Passage of the ERA might give some impetus to des-

truction of our right to risk classification, but on the other hand, arguments could be made against it.

MS. RAPPAPORT: I would add that the unisex table issue is an important issue facing all of us now, and it is one that is likely to be settled in the courts, whether we end up with the ERA or not. The same kinds of problems are going to arise irrespective of the ERA, but that might accelerate them.

MS. RAPPAPORT: Cathy, could you tell us about what CNA has done with respect to normal maternity benefits in New York State?

MS. KAMROW: Our experience in New York pointed out some of the problems in maternity. We are out of business in New York on our individual hospital/medical. First of all, we do not have our rates approved; we do not completely agree with the New York Insurance Department theories. They are requiring the application of general population statistics. We think we should be able to use insured life statistics, the intercompany or the intracompany statistics. Certainly we would want to apply in New York, or any state, the given state experience. We would also want in New York or in any other state in which we would have to provide maternity benefits, a rate based on age. For example, in New York there is a decline starting from around age 22. That is where pregnancy peaks, and we would, therefore, like a rate that starts decreasing from that age. Even if we were to get our rates approved in New York, we have not made a decision on whether we are going to go back into business or not. And, of course, everybody is awaiting the outcome of the suit in New York on the constitutional issues of that mandatory maternity law.

MR. GRUBBS: Recently there appeared in the Federal Register a report on products liability, an options paper. Dr. Schwartz who headed the task force that prepared this paper, stated that much of the classification done by insurance companies seems to be done on a seat-of-the-pants basis, without any statistics. Do we need to have more statistical bases for our classifications in the health area and in the auto area? Are there sufficient statistics?

MR. GROSS: In the auto area there are generally sufficient statistics these days. Even in small states and small territories there are statistical agencies collecting enough information from all the companies to get credible data. Unlike the health and life area, the degree of variability between different consumers is so great that you will frequently find problems in gathering statistics, particularly if you get into something like products liability or workmen's compensation. For example, is one plastics company like another plastics company? It might very well not be. There can be scads of different definitions by different kinds of industries in commercial areas, so that gets to be an area where maybe the actuaries cannot always keep up with social change. This is probably why good commercial lines underwriters are well paid and hard to find. In effect, you have to substitute underwriting judgment for statistics.

MS. RAPPAPORT: But hasn't the problem evolved, at least in the auto business, to the point of people saying, "I don't care what your statistics are; this is what you are going to have to do".

MR. GROSS: That is true, but as actuaries we ought to recognize that there

are statistical differences and there are differences in the collection of information. One example in the auto business - the law changed in New York State as of December, particularly on the auto liability side. It takes a few years to pay a claim on auto liability, which means that the claims come in slower. The commissioner in New York would very much like us all to lower the rates if the statistics prove that the new law saves money. So it is a highly political issue and one where it is not as much a credibility problem as a time problem. There really is not any answer. From my understanding of health and life insurance, I doubt if you would find similar kinds of issues where the statistics are not available and there is an awful lot of pressure for a quick response to an outcome which nobody understands.

MS. RAPPAPORT: We have good mortality statistics by sex. We have not done the job that we should have done in the area of disability statistics by sex. A couple of years ago when I looked into this (New York State has since have done an extensive study) I felt that the actuarial profession really had not done the job I would have liked to see it do. We are increasingly facing problems with some of this other legislation and statistics. It may be insurmountable even to get data bases to produce good statistics for some of those groups.

MR. RICHARD G. SCHREITMUELLER: A 1977 study of the Disability Insurance (DI) experience under OASDI is available. You can get a free copy of this (Actuarial study #74) and of the latest Trustees' Report for OASDI from the Office of the Actuary, Social Security Administration, Baltimore, Maryland 21235. It has some fairly good statistics on incidence and terminations by age, sex and duration from disability. In the latest batch of figures that is being used for the DI part of the program they are projecting about a one-third increase in the incidence rate.

MR. GRUBBS: The recent PBGC tables for disabled lives, I believe, were based on those statistics and show substantially lower disablement rates for females in terms of long term disability.

MS. RAPPAPORT: And that really calls into question some of the traditional rating practices.

MR. GRUBBS: For long term disability, certainly.

MRS. KAMROW: Yes, but when you get to the second year of benefits, don't the statistics show that there are very few people that continue on long term disability in comparison to the people insured? So, is it that great a factor over the first year benefits? Our actuaries do not think that it is. When they come up with their rate structure, the biggest factor is on the first year and the incidence and the frequency and duration. But then they assume that very few people remain disabled beyond that first year so that the component for the beyond-the-first-year is the same for male and female. Is this the thinking of other people? Is this how other companies are pricing on their beyond-the-first-year benefit?

MR. GRUBBS: I have not been looking at it from a pricing viewpoint, but from a valuing of the benefits under employer plans. We merely try to adopt realistic assumptions and we do generally use differing disablement rates for males and females.

MR. DANIEL F. CASE: There has been criticism of the premium rate differentials by sex that companies are using in individual disability income insurance. One women's group produced a ten or twelve-page paper challenging those differentials. In the paper they cited just about every type of disability experience one could imagine except the Society of Actuaries experience under individual loss-of-time policies. In other words, they cited just about every experience except for the most relevant.

MS. RAPPAPORT: Do the issues of handicapped classification cause any problems in auto?

MR. GROSS: Yes, certainly some states have forbidden companies to discriminate and underwrite against people who are handicapped. There are two facts here that are important practically. One is the question of whether discrimination against handicapped people always constitutes unfair discrimination. In this area, companies will have to be able to demonstrate that the medical disability will cause a bad driving record.

The second fact is that it would be questionable social policy that enabled known high risk drivers to get insurance and maim and kill the rest of us on the road. This factor protects us against some extremes. For example, in California, an older driver who may have been senile obtained insurance from the assigned risk plan. After an accident in which a young person was killed, the deceased's parents then sued the assigned risk plan for insuring the high risk driver. I do not know how that suit was resolved, but it certainly expresses society's interest in letting the automobile insurance mechanism, as well as the driver licensing mechanism, keep high-risk people off the road.

MR. GRUBBS: Would no-fault change this a lot? If bad driver Grubbs crashes into good driver Gross, under no-fault, as I understand it, that would be assessed against good driver Gross' policy. Doesn't that take away many of the classification differences we have had in the past?

MR. GROSS: Yes, it would under pure no-fault. A pure no-fault system would allow no tort suits, no settlement between us, and no subrogation. In other words even though, in your example, you crashed into me and you were at fault, both of us would be paid by our insurance company. However, this is only a theoretical insurance possibility because no pure no-fault plans exist and many states retain subrogation under their no-fault plans.

MRS. ELSBETH T. ERBE: I understand that we are having to provide more coverages in the health area, irrespective of what handicaps may exist. All of the talk has been with respect to adults at this meeting. Can any of you on the panel or in the audience tell me what is available with respect to coverages for handicapped infants, children who are born with genetic defects that are congenital and probably will involve a great deal of medical treatment either in the first year of life, or in the first year and in continuing years? Are those kinds of conditions presently excluded under medical policies?

MRS. KAMROW: There are perhaps two laws in most states today that impact on this. Perhaps the problem is first of all that you have to have a family policy, but once you have the family policy these types of people will be covered. Most of the states have a law that newborn infants must be covered from birth so that if you have yourself and a dependent covered, then the

newborn child would be automatically covered to the same extent as the other covered children. It does not mean that the policy would necessarily have to pay more than it would provide to others. Also, most of the states require that once a dependent is covered under a policy, if he remains handicapped and dependent upon his parent, you cannot terminate his or her coverage at, say, the normal age of 19; you must continue the coverage so long as the policy remains in force.

MRS. ERBE: Is there a limitation on kinds of services that can be provided for the handicapped child, and if so, what is it?

MRS. KAMROW: Well, as I said, it would be subject to the general limitations of the policy. If you had a comprehensive policy, perhaps a lot would be covered. But if the family had just a basic hospital policy, there might be limits on the hospital room and board or on the surgical operations, etc. Some companies may have special products, but our company has not produced any special products or expanded our underwriting limits to accommodate this problem. You may find more coverage for such persons in the group area, because in group insurance much more major medical and comprehensive coverage is provided.

MRS. MARY H. ADAMS: There were two elements that I thought we might mention in consideration of risk classification for pension plans, and that is with regard to disabled lives. In general we use a different mortality table for those people. When you have two actuarially equivalent reductions for options there is a considerable difference (30-40% for many age combinations) in the amount of benefit payable under each option. To some degree there has been a trend away from using these separate factors, either by having fixed percentage decrements by age for all options, or the latest very sophisticated approach using a blend of male/female plus, based on experience, a blend in disabled lives by age according to incidence. That was one area. The second is the normal retirement classification, regardless of whether the people are disabled or not. Formerly, we would have put a fairly severe penalty in option factors for antiselection. More recently, with more people taking the option (partially due to larger pension benefits), we could see a little less antiselection. With the advent of ERISA, where the option is automatic, I have personally in all my plans eliminated any penalty.

