

# Tobacco Rating: State Solutions

## How States Can Address the Costs of Tobacco Rating

Federal rules indicate that states can protect consumers by:

- Reducing or eliminating tobacco rating
- Reducing the “look-back period” for tobacco use
- Increasing the frequency of use that is required for tobacco rating

See the rules online at <http://www.gpo.gov/fdsys/pkg/FR-2013-02-27/pdf/2013-04335.pdf>.

The Affordable Care Act contains many new consumer protections, including measures designed to reign in the premiums that insurance companies can charge different groups of people. For example, insurers are no longer allowed to charge women more simply because of their gender, or to charge more to people with health issues. However, the health care law (and corresponding regulations) does permit insurers in the individual and small group markets to charge tobacco users premiums that are up to 1.5 times higher than those they charge for people who don't use tobacco, which is known as “tobacco rating.” This could result in higher health insurance costs for many people who need access to affordable coverage. Fortunately, states have the authority to enact policies that can help ensure that tobacco rating does not make coverage unaffordable. Below we list some “fixes” that legislators or other state officials may want to consider to prevent tobacco rating from pricing people out of coverage.

The federal rules on tobacco rating under the Affordable Care Act indicate that states may do the following:

- **Reduce or Eliminate Tobacco Rating**  
States can reduce tobacco rating to less than a 50 percent surcharge, or they can eliminate it in the individual and small group markets altogether.
- **Reduce the “Look-Back Period” for Tobacco Use**  
Federal rules permit insurers to define a person as a tobacco user if he or she has used tobacco within the last six months. States have the authority to shorten this six-month look-back period.
- **Increase the Frequency of Tobacco Use that Is Required for Tobacco Rating**  
Federal rules define a tobacco user as someone who uses tobacco at least four times a week. States have the authority to increase the frequency of tobacco use that insurers must use to define a tobacco user for rating purposes.

States could consider other measures to protect people from being priced out of coverage due to tobacco rating, as follows:

- **Eliminate Tobacco Rating for People in the Individual Market Who Enter Cessation Programs**

Federal rules state that in the small group market, a person can be tobacco rated only if he or she has access to a smoking cessation wellness program (through an employer) and fails to participate in it. States could seek to implement a similar requirement for the individual market, stating that individuals who take advantage of cessation programs offered by their insurer, their employer, or in the community (regardless of whether the cessation services are offered through a wellness program) cannot be tobacco rated.

- **Require Insurers to Readjust Premiums for People Who Quit Smoking**

States could seek to require insurance companies to eliminate tobacco surcharges for people who have quit smoking for a time that is at least as long as the state's look-back period, even if that point comes in the middle of a person's plan year.

- **Prohibit Rate-Ups for Seeking Cessation Services**

States could seek to prohibit insurers from using any claims data or other evidence showing that a person sought out tobacco cessation services in order to retroactively or prospectively tobacco rate that person.

- **Require Insurers to Demonstrate Compliance with Preventive Service Requirements before Implementing Tobacco Rating**

States could seek to prohibit a health plan from applying tobacco rating unless the plan proactively demonstrates to regulators that it covers all tobacco cessation services that have been given an A or B rating by the U.S. Preventive Services Task Force, with no cost-sharing. (This is required by the Affordable Care Act's preventive services regulations. However, there have been reports of inconsistent compliance among insurers, as described in *Implementation of Tobacco Cessation Coverage under the Affordable Care Act: Understanding How Private Health Insurance Policies Cover Tobacco Cessation Treatments*, available online at <http://www.tobaccofreekids.org/pressoffice/2012/georgetown/coveragereport.pdf>.)