



# — 2017 UT SYSTEM — LEGAL CONFERENCE

*presented by the Office of General Counsel*

THE UNIVERSITY of TEXAS SYSTEM | FOURTEEN INSTITUTIONS, UNLIMITED POSSIBILITIES.

## Session 11b

# HHS: An Overview and Update on Federal Healthcare Reform

*Presented by:*

**Jeff Wurzburg**

Attorney

HHS Office of the General Counsel

September 29, 2017 | 1:00-2:00 pm

# HHS: An Overview and Update on Federal Healthcare Reform

Jeff Wurzburg

HHS Office of the General Counsel

2017 UT System Legal Conference

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# Disclaimer

The views expressed in this presentation do not necessarily represent the views of the United States Department of Health and Human Services. This presentation is intended solely to provide general information and does not constitute legal advice.

# Roadmap

- Getting to Know HHS
- The Current State of Healthcare Reform
- Regulatory Changes for 2018
- ACA Litigation



It is the mission of the U.S. Department of Health & Human Services (HHS) to enhance and protect the health and well-being of all Americans. We fulfill that mission by providing for effective health and human services and fostering advances in medicine, public health, and social services.

# National Disaster Response

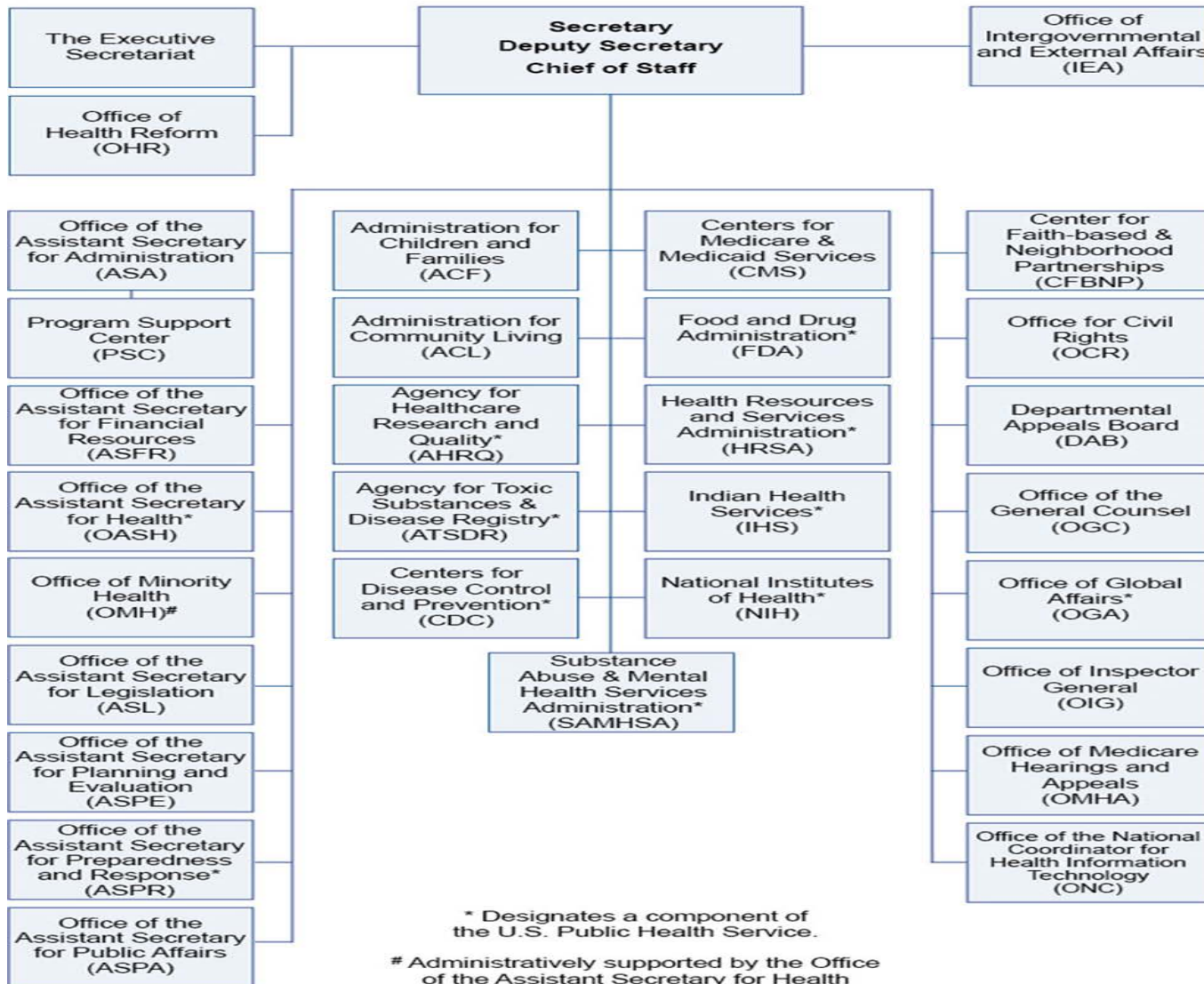
- HHS declared a public health emergency for Hurricanes Harvey and Irma
- Provided waivers under section 1135 of the Social Security Act
- Published a HIPAA Bulletin
- Emergency Personnel
- Temporary Medical Sites
- Disaster Distress Helpline



<https://www.cms.gov/About-CMS/Agency-Information/Emergency/Hurricanes.html>

<https://www.phe.gov/emergency/pages/default.aspx>

# HHS Organization Chart



<https://www.hhs.gov/about/agencies/orgchart/index.html>

See Also: <https://www.hhs.gov/about/agencies/hhs-agencies-and-offices/index.html>

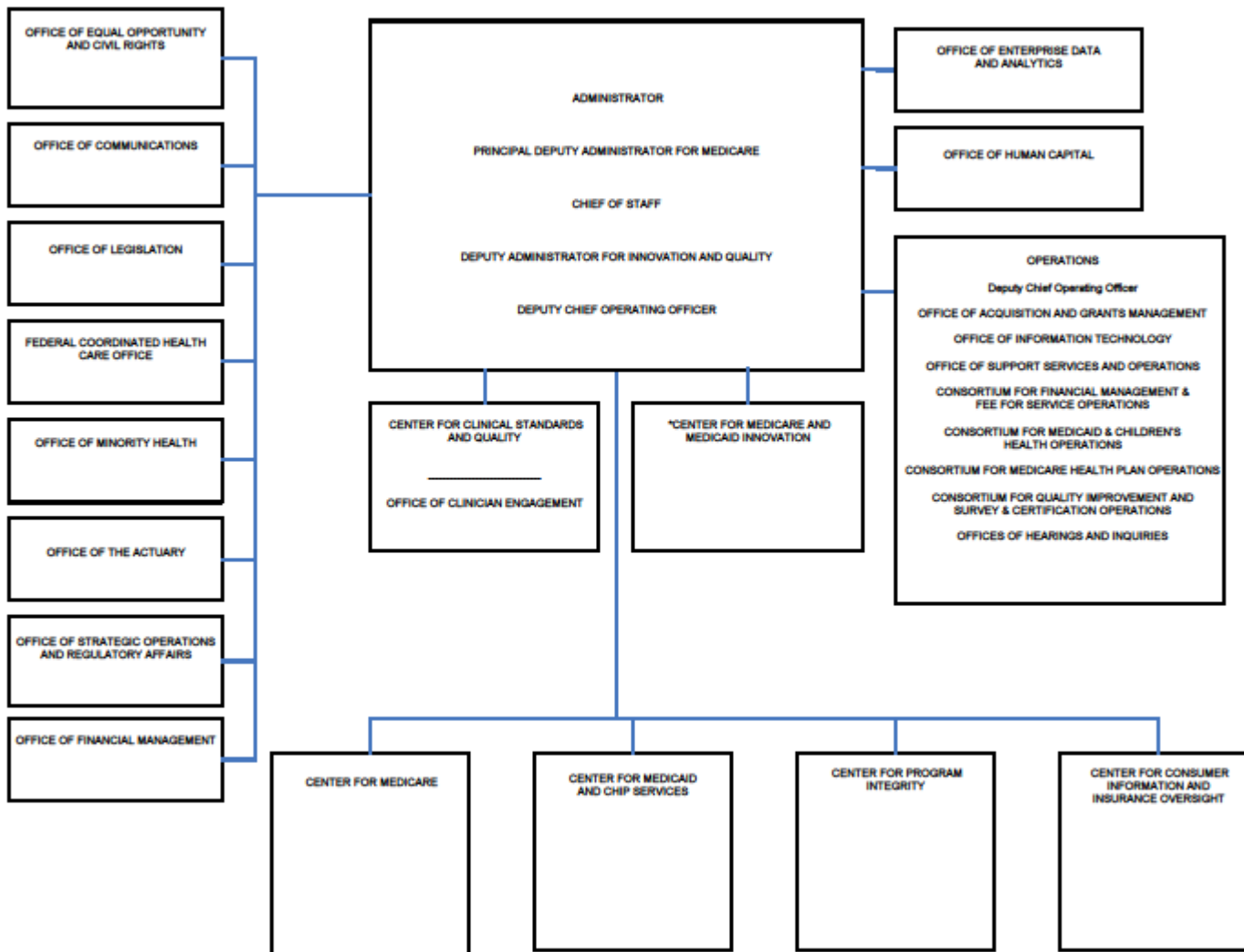


Central Office Org Chart Text Version

Consortia Org Chart Text Version

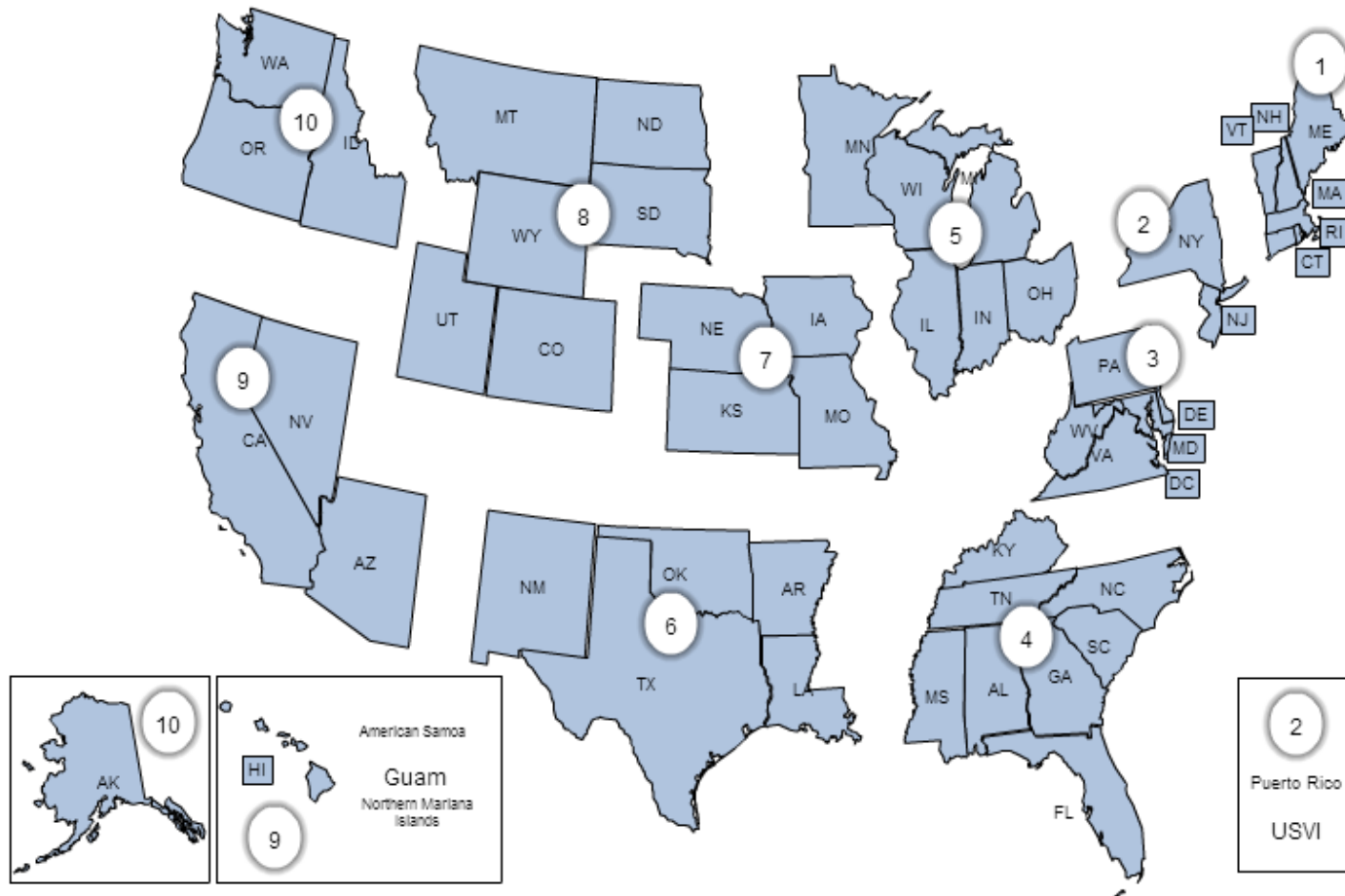
### DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR MEDICARE & MEDICAID SERVICES

APPROVED  
\*Reports to Deputy Admin. for Innovation and Quality





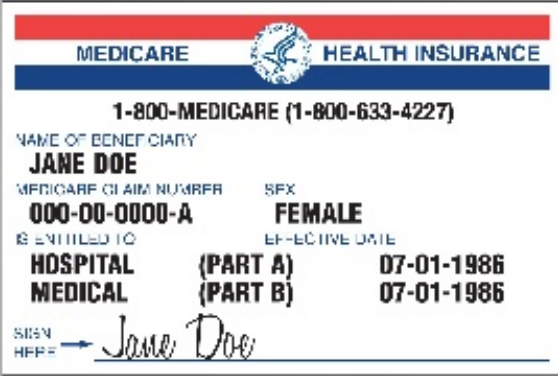
# CMS Regional Map



<https://www.cms.gov/About-CMS/Agency-Information/RegionalOffices/RegionalMap.html>

# New Medicare Card

### Current Medicare Card



**MEDICARE HEALTH INSURANCE**

1-800-MEDICARE (1-800-633-4227)

NAME OF BENEFICIARY  
**JANE DOE**

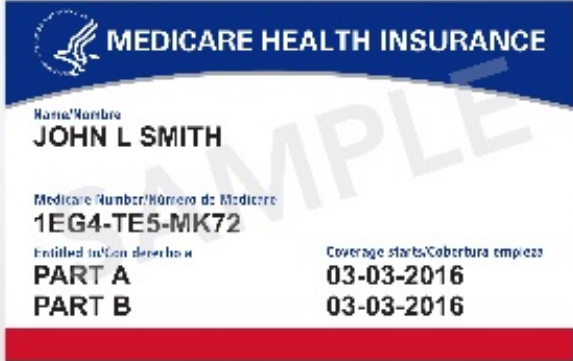
MEDICARE CLAIM NUMBER      SEX  
**000-00-0000-A**      **FEMALE**

ENTITLED TO      EFFECTIVE DATE

<b>HOSPITAL</b>	<b>(PART A)</b>	<b>07-01-1986</b>
<b>MEDICAL</b>	<b>(PART B)</b>	<b>07-01-1986</b>

SIGN HERE → *Jane Doe*

### New Medicare Card



**MEDICARE HEALTH INSURANCE**

Name/Nombre  
**JOHN L SMITH**

Medicare Number/Número de Medicare  
**1EG4-TE5-MK72**

Entitled to/Con derecho a	Coverage starts/Cobertura empieza
<b>PART A</b>	<b>03-03-2016</b>
<b>PART B</b>	<b>03-03-2016</b>

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-09-14.html>

# HHS Invests in Texas



## HHS Invests in Texas

HHS invested **\$348.5 Billion** in Texas to enhance the health and well-being of Americans at every stage of life by delivering and financing effective health and human services and fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.

### Investment Highlights FY2009-2014



#### Safe and Strong Families

HHS invested **\$11.7 Billion** in Texas to help provide low income families, people with disabilities, and older adults with the opportunity to live with dignity, independence, and participate fully in American life.



#### Early Childhood Development

High-quality early child care, education opportunities, and parent support help prepare our nation's youngest learners for entry into formal schooling. HHS invested **\$6.82 Billion** in Texas to help children birth to age 5 living in low-income families achieve a path to success.



#### Health Care Services

HHS works to improve access to health care services for people who are medically underserved and fulfill tribal obligations, and invested **\$4.09 Billion** in Texas. Programs emphasize primary and preventive care, address health disparities, reduce the impact of substance abuse and mental illness, improve the quality of care, and build the workforce.



#### Public Health and Emergency Preparedness

HHS invested **\$2.21 Billion** in Texas to conduct surveillance and provide health information that protects our nation against expensive and dangerous health threats, and responds when these arise.



#### Science and Health Research

HHS invested **\$6.87 Billion** in Texas to support biomedical and health services research to improve human health, sustain jobs in science and medicine, and ensure that health care is safer, more affordable, and highly effective.



#### Health Care Financing

Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and health insurance reforms delivered **\$316.8 Billion** in Texas to provide high quality health insurance coverage for the elderly, children, low income families, people with disabilities, and people seeking private health insurance plans.

### About Texas

Life expectancy for a child born in TX today is **77.04** years.

The 2013 infant mortality rate was **5.84** deaths per 1,000 live births.

In 2013, of those people in Texas with health insurance, approximately **57.9%** percent were covered by private insurance, **12.6%** by Medicare, and **17.4%** by Medicaid. Approximately **22.1%** of Texas' population had no health insurance.

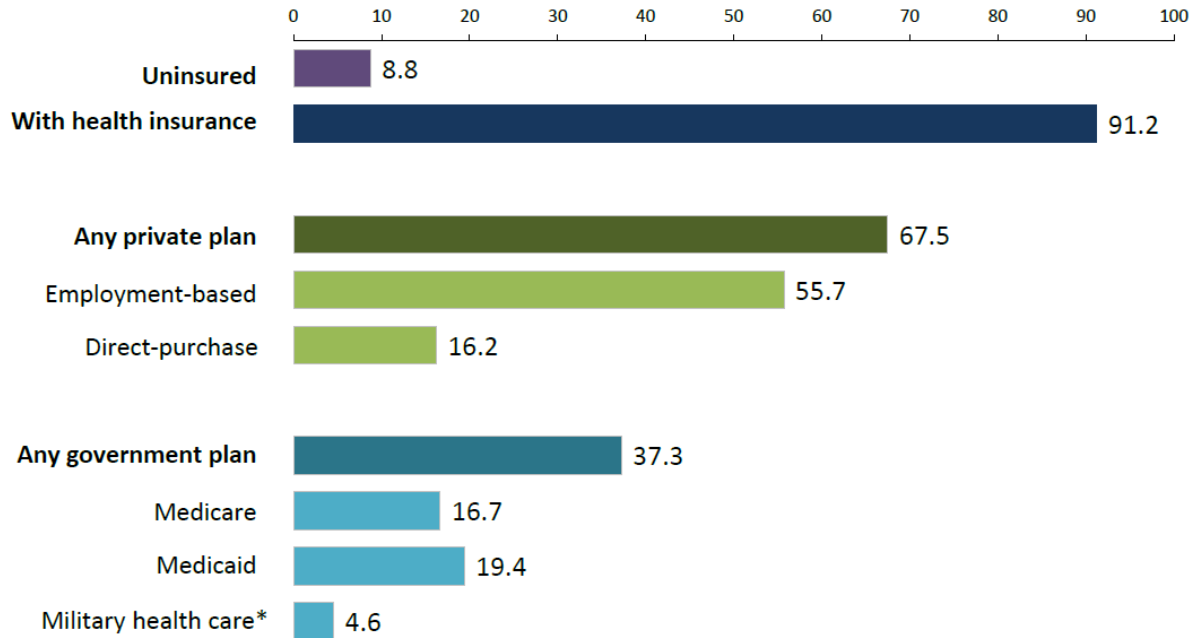
For the 2015 open enrollment period, **966,412** Texas residents enrolled in the Marketplace, of whom **86%** received federal subsidies to reduce their premiums and/or cost sharing requirements. The average monthly premium after tax credit is \$105.

401 community health centers were funded to deliver primary care and serving over **1,124,022** patients.

In 2013/14, Head Start and Early Head Start enrolled **71,465** children.

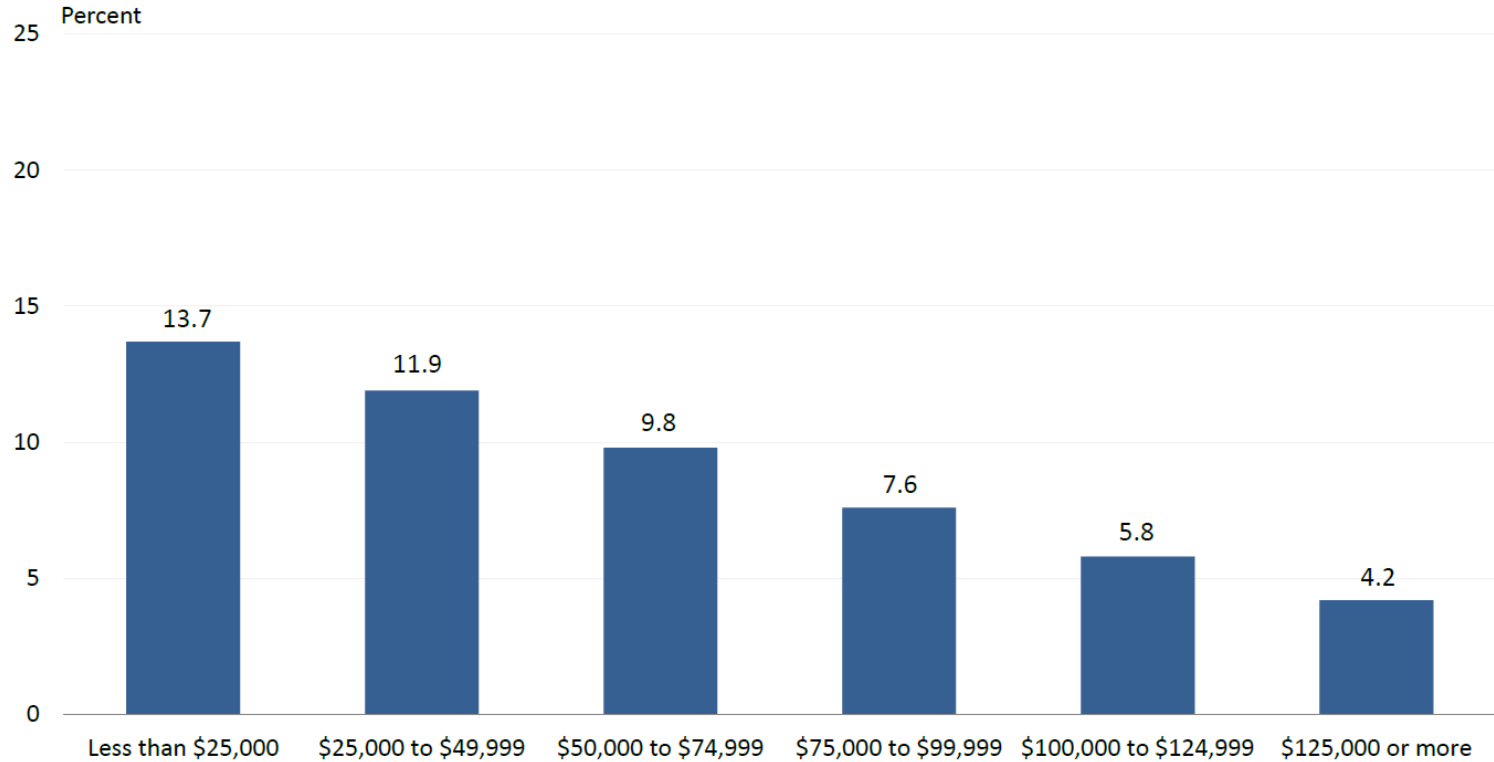
In 2013, **42.6%** of office-based physicians in Texas met criteria for meaningful use of electronic health records.

# Percentage of People by Type of Health Insurance Coverage: 2016



\*Military health care includes TRICARE and CHAMPVA (Civilian Health and Medical Program of the Department of Veterans Affairs) as well as care provided by the Department of Veterans Affairs and the military.  
Source: U.S. Census Bureau, Current Population Survey, 2017 Annual Social and Economic Supplement.

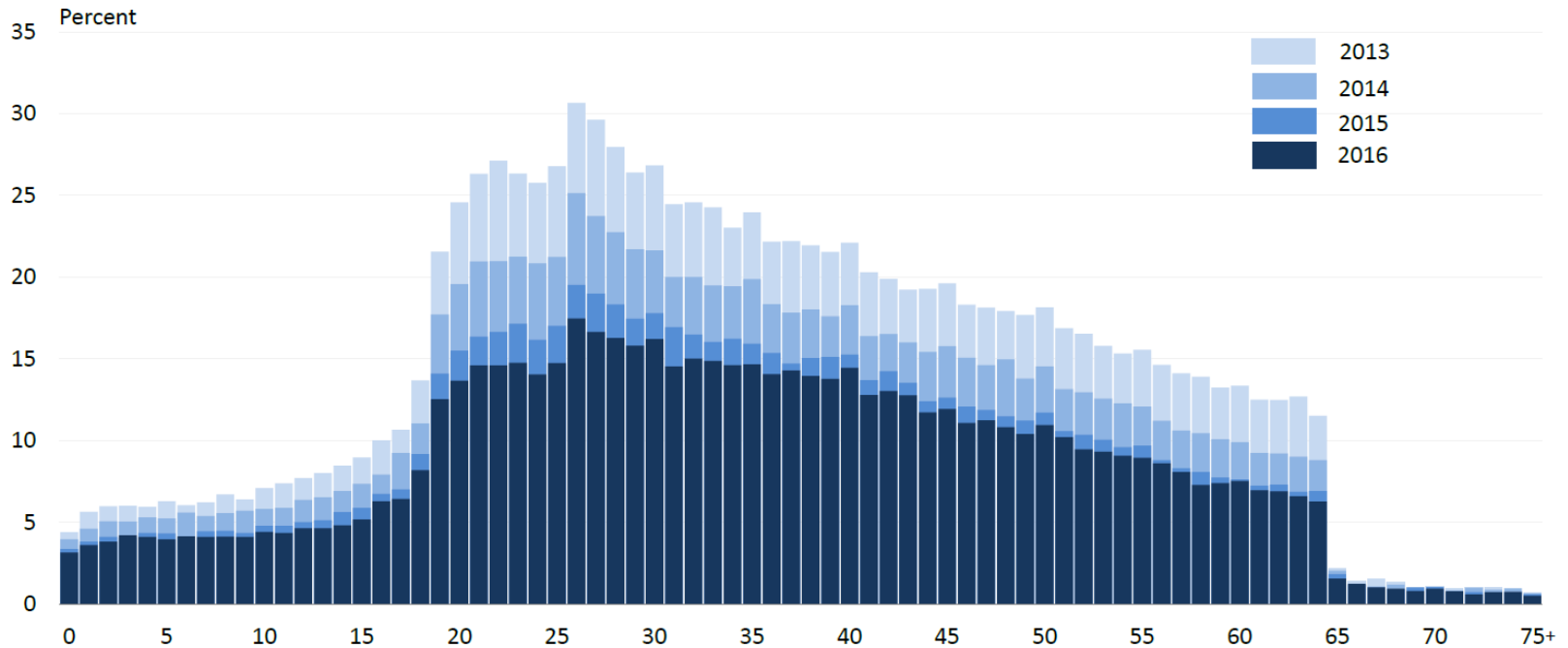
# Uninsured Rate by Household Income: 2016



U.S. Department of Commerce  
Economics and Statistics Administration  
U.S. CENSUS BUREAU  
[census.gov](https://www.census.gov)

Source: U.S. Census Bureau, Current Population Survey,  
2017 Annual Social and Economic Supplement.

# Uninsured Rate by Single Year of Age: 2013 to 2016



U.S. Department of Commerce  
Economics and Statistics Administration  
U.S. CENSUS BUREAU  
[census.gov](http://census.gov)

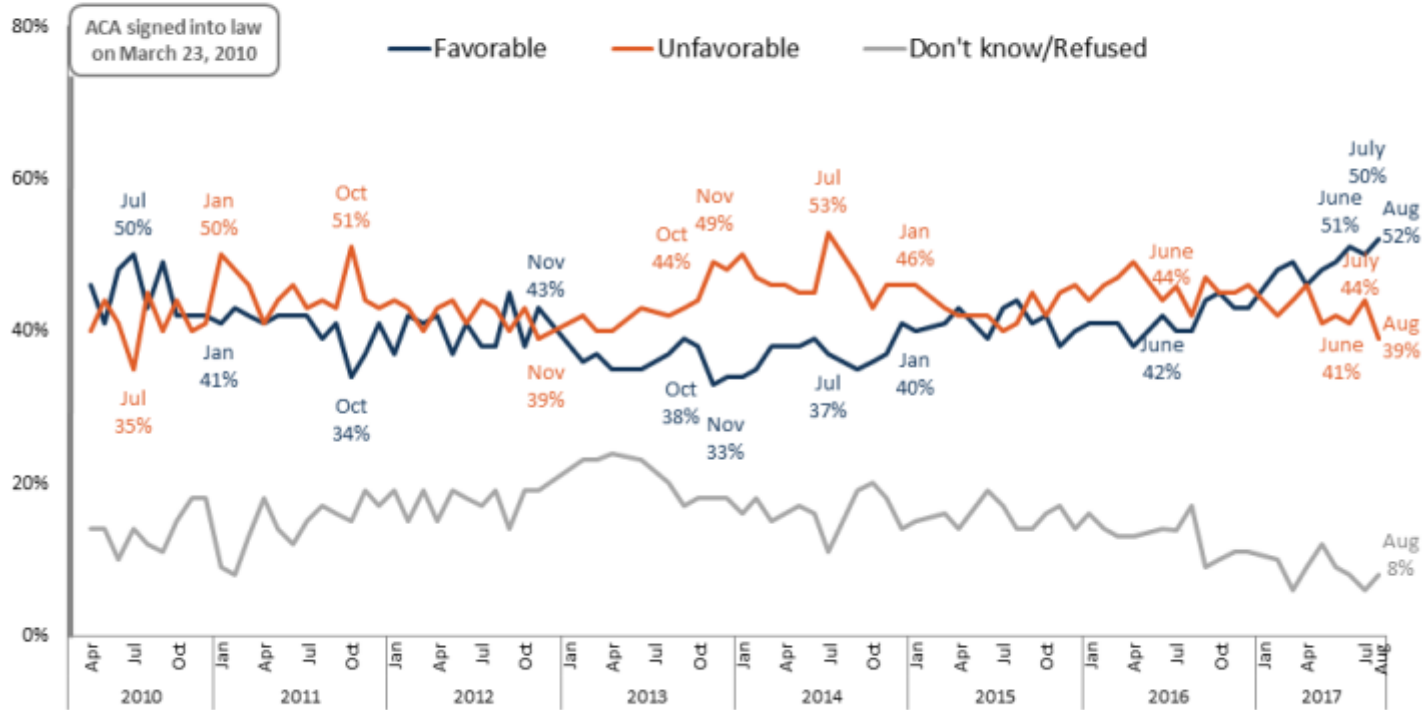
Source: U.S. Census Bureau, 2013 to 2016 1-Year American Community Surveys.



Figure 7

## More of the Public Have Favorable Views than Unfavorable Views of ACA

As you may know a health reform bill was signed into law in 2010, known commonly as the Affordable Care Act or Obamacare. Given what you know about the health reform law, do you have a generally favorable or generally unfavorable opinion of it?



NOTE: Data not collected for Dec 2012, Jan 2013, May 2013, Jul 2013, Aug 2014, Feb 2015, May 2015, Jul 2015, May 2016, and Jan 2017.  
SOURCE: Kaiser Family Foundation Health Tracking Polls





Figure 16

## Most Unaware ACA Marketplace Issues Only Affect Those Who Purchase Their Own Insurance

Do you think health insurance companies choosing not to sell insurance plans in certain marketplaces will affect...

- ...everyone who has health insurance?
- ...only those who get health insurance through their employer?
- ...only those who buy health insurance on their own? (correct answer)



Do you think health insurance companies charging higher premiums in certain marketplaces will affect...



NOTE: Don't know/Refused responses not shown. Questions asked of separate half samples. Question wording abbreviated. See topline for full question wording.

SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted August 1-6, 2017)



# Health Insurance Marketplace Enrollment and Subsidies - 2017

## National Enrollment

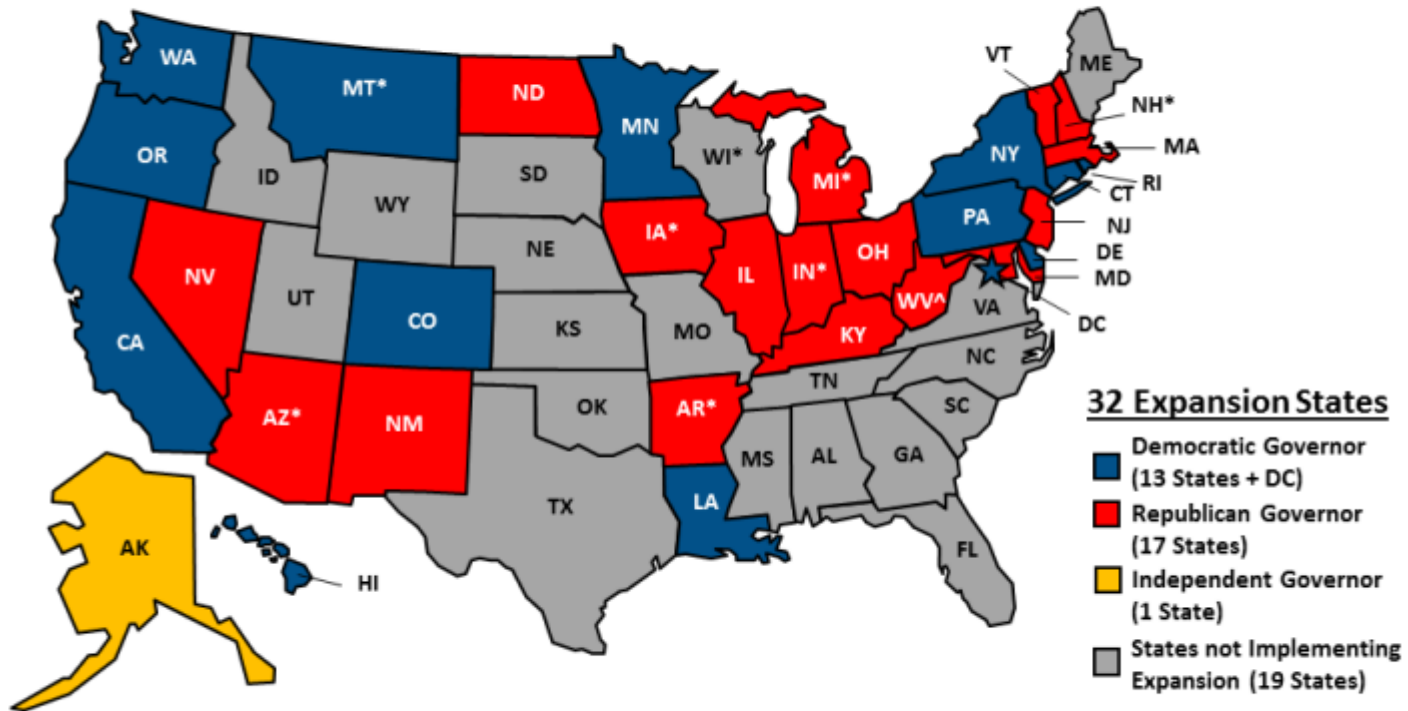
- 12.2 M enrollees
  - 10.3 M had effectuated coverage as of 3/31/16
- Advance premium tax credits (APTCs)
  - 84% of enrollees (8.7 M)
- Cost sharing reductions (CSRs)
  - 57% (5.8 M) of enrollees

## Texas Enrollment

- 963,171 enrollees
  - Down from 1.3 Million in 2016
- APTCs
  - 86% of enrollees (829,374)
- CSRs
  - 63% of enrollees (604,735)

Figure 1

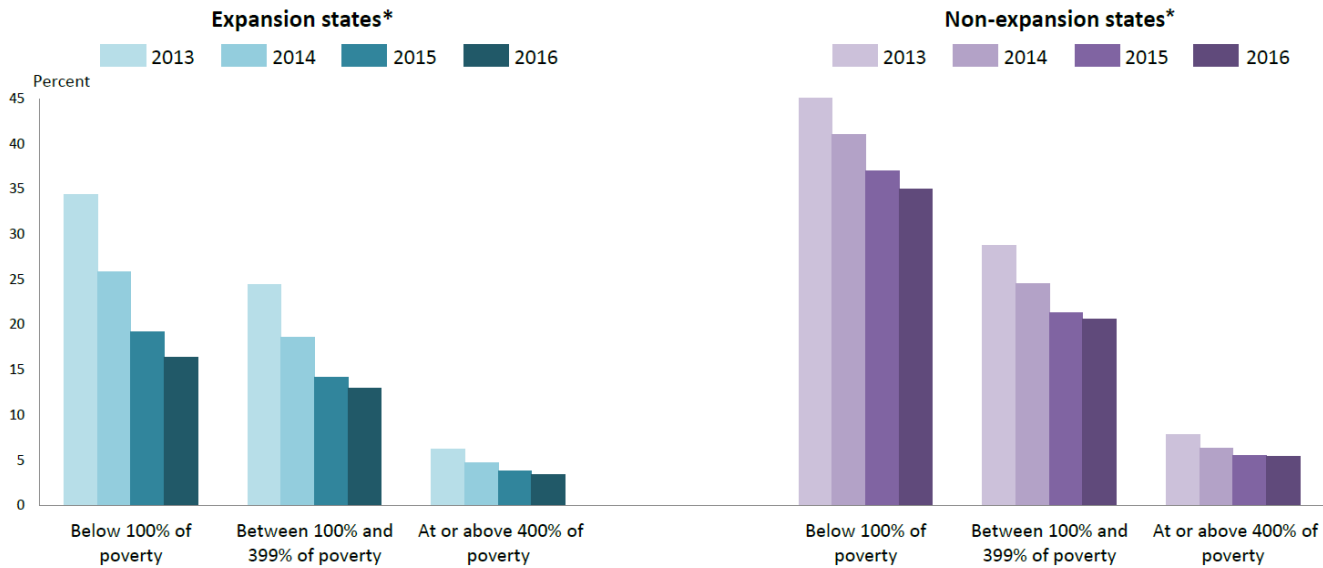
To date, 32 states have implemented the Medicaid expansion.



NOTES: \*AR, AZ, IA, IN, MI, MT, and NH have approved Section 1115 expansion waivers. ^The Governor in West Virginia switched parties from Democrat to Republican in August 2017.



# Uninsured Rate by Poverty Status and Medicaid Expansion of State for Adults Aged 19 to 64 Years: 2013 to 2016



U.S. Department of Commerce  
Economics and Statistics Administration  
U.S. CENSUS BUREAU  
[census.gov](http://census.gov)

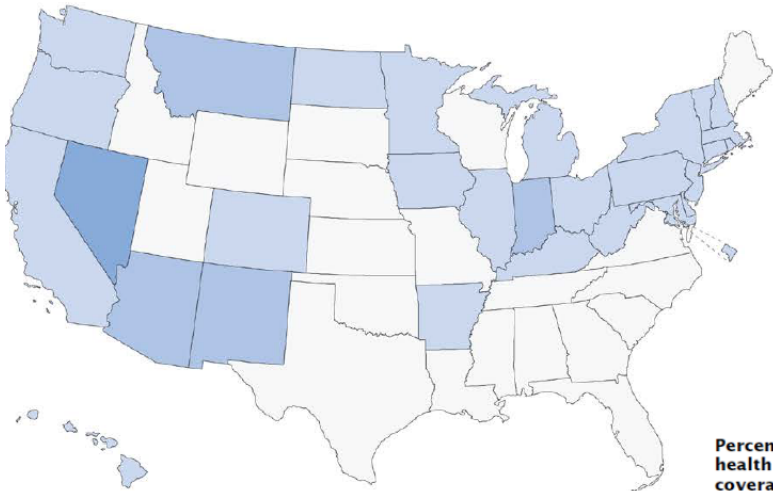
\*Medicaid expansion status as of January 1, 2016.  
Source: U.S. Census Bureau, 2013 to 2016 1-Year American Community Surveys.

# Uninsured Rate by State and Medicaid Expansion Status: 2016



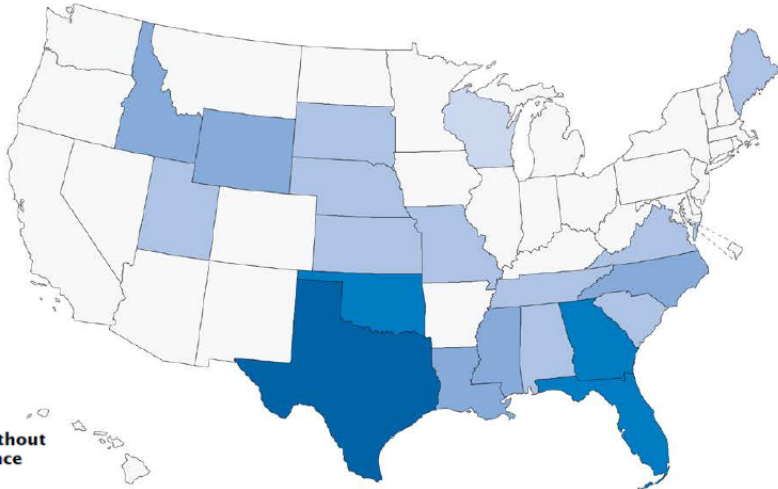
## Expansion States\*

2016 uninsured rate: 6.5%

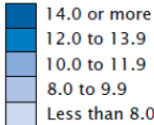


## Non-Expansion States\*

2016 uninsured rate: 11.7%



Percentage without health insurance coverage



U.S. Department of Commerce  
Economics and Statistics Administration  
U.S. CENSUS BUREAU  
[census.gov](http://census.gov)

\*Medicaid expansion status as of January 1, 2016.  
Source: U.S. Census Bureau, 2016 1-Year American Community Survey.

# Market Stabilization Final Rule

- 82 Fed. Reg. 18346 (April 18, 2017)
- 20 day comment period – received over 4,000 comments
- Changes to Guaranteed Availability
- Modified 2018 Open Enrollment Period
  - November 1 – December 15, 2017
- Special Enrollment Period changes
- Modifies de minimus range

# HHS Notice of Benefit and Payment Parameters for 2018/Letter to Issuers

- Risk Adjustment Program
  - Partial Year Enrollee Adjustment
  - Adding Prescription Drug Information to RA Model
  - High-Cost Risk Pooling
- Standardized Plans
- Special Enrollment Periods
- Network Adequacy

Source: *HHS Notice of Benefit and Payment Parameters for 2018*, final rule, 81 Fed. Reg. 94058 (Dec. 22, 2016); 2018 Letter to Issuers in the Federally-facilitated Marketplaces <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces.pdf> (Dec. 16, 2016).

# Marketplace Affordability

## Shoring Up the Risk Pool in 2017

- **CMS actions to strengthen the risk pool**
  - Oversight of special enrollment periods
  - Encouraging transitions to Medicare
  - Transitions to individual market for 26 year-olds aging out of parents coverage
  - Contacting those who paid the shared responsibility payment
  - Improving outreach
  - Discouraging short-term and excepted benefit plans
  - Individuals currently enrolled in transitional (grandfathered) plans
  - Changes to risk adjustment methodology



# 1332 Waivers

- Section 1332 provides waiver authority to the Secretaries of HHS and Treasury for state innovation
- Can waive ACA provisions
  - QHP requirements (Part I of Subtitle D), Exchange Operations (Part II of Subtitle D), Individual Mandate (5000A), Employer Mandate(4980H), PTC (36B), CSR (1402)
- State plan must:
  - (1) provide coverage that is at least as comprehensive as the coverage defined in Section 1302(b) and offered through Exchanges
  - (2) provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide
  - (3) Provide coverage to at least a comparable number of its residents as the ACA would provide
  - (4) Not increase the federal deficit
- 1332 Checklist: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-cpdf.pdf>

# Network Adequacy

## The Affordable Care Act

- ACA provides the first federal network adequacy standards
  - § 1311(c)(1)(B)
- QHP issuers must maintain a network that is “sufficient in number and types of providers...to assure that all services will be accessible without unreasonable delay”
  - 45 CFR § 156.230
- For 2018, CMS will rely on state reviews, provided State has a sufficient review process
- New requirements for provider transitions and out-of-network cost sharing

# *House v. Price*

- Currently Before US Court of Appeals for DC Circuit (16-5202)
  - House alleges Administration providing CSR payments without an appropriation
    - Filed in November 2014
  - Judge Rosemary Collyer ruled for the House on May 12, 2016 (2016 WL 2750934)
  - Government has appealed
    - No jurisdiction/cause of action
    - Appropriation at 31 U.S.C. § 1324
  - Intervention by State AGs
  - Status Report due October 30

# Risk Corridors Litigation

- 32 Issuers have filed lawsuits in the Court of Federal Claims
- Government Position:
  - Court does not presently have jurisdiction/no justiciable claim
  - Section 1342 requires budget neutrality
  - HHS has no contractual obligation to make payment
  - No property interest that results in taking
- Land of Lincoln/Moda/BCBSNC – now on appeal

# Resources

Resource	Resource Link
Patient Protection and Affordable Care Act (ACA)	<a href="http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/content-detail.html">http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/content-detail.html</a>
The Center for Consumer Information & Insurance Oversight	<a href="http://www.cms.gov/CCIIO/Resources/Training-Resources/index.html">http://www.cms.gov/CCIIO/Resources/Training-Resources/index.html</a>
Kaiser Family Foundation	<a href="http://kff.org/">http://kff.org/</a>
The Commonwealth Fund	<a href="http://www.commonwealthfund.org">http://www.commonwealthfund.org</a>

# Resources

Resource	Resource Link
Health Affairs Blog	<a href="http://healthaffairs.org/blog/">http://healthaffairs.org/blog/</a>
Internal Revenue Service	<a href="http://www.IRS.gov/aca">http://www.IRS.gov/aca</a>
Center for Medicare & Medicaid Innovation	<a href="https://innovation.cms.gov/">https://innovation.cms.gov/</a>
Healthcare.gov	<a href="http://www.healthcare.gov">http://www.healthcare.gov</a>