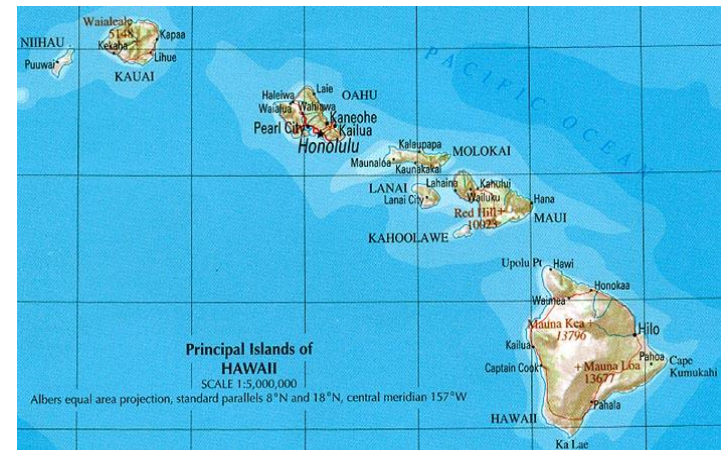
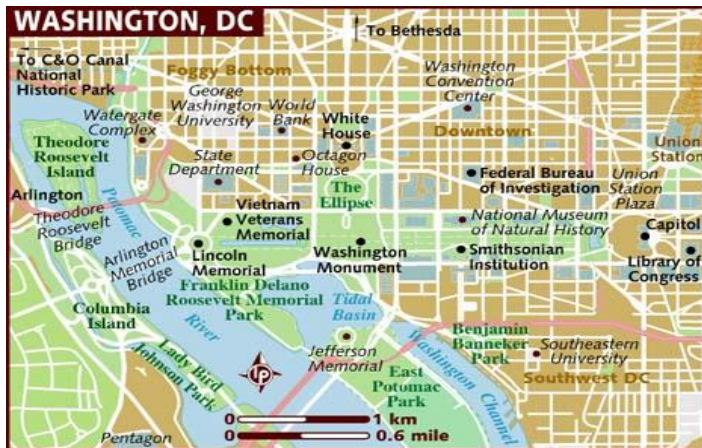


Federal Health Reform: Its Impact on Hawai`i



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William S. Richardson School of Law
University of Hawai`i @ Mānoa

Presentation Road Map



I. Federal reform basics

II. The issue re Hawai`i's Prepaid Health Care Act

III. Federal reforms impacting Hawai`i

IV. Medicare & Medicaid

**I. Hawai`i's non-Medicaid-eligible uninsured Reforms
unrelated to Prepaid Health Care Act**

V. Health ins. provisions applicable in HI

VI. Who benefits from federal reforms?

VII. The elephant everyone knows is in the room

VIII. How did the individual mandate work out?

The Patient Protection & Affordable Care Act of 2010



**“Comprehensive reform
with an incremental soul”**

- Ezra Klein, Washington Post

I. Fundamental Focus of Reforms

1. Improve dysfunctional & costly insurance markets for individuals & small businesses
2. Expand Medicaid coverage for the poor



Fundamental Culture Shift at the Federal Level



**Purchase of “affordable” health ins =
individual responsibility & obligation
(with employer & govt contributions)**

Uwe Reinhart's 3-legged stool

1. **Universal mandate**
2. **Subsidies for those who can't afford ins**
3. **Insurers must accept all comers**



Re Federal Comprehensiveness

Individual mandate added >20 million
new US insureds by 2017



Q: How many of those new insureds were Hawai`ian?

A: See slide #51

The Basics Re Expanded Coverage

- U.S. Citizens & Legal Residents Had to Have “Qualifying Coverage” by 2014



- Medicaid expansion added 11 M insureds
- New ins exchanges enrolled 10.3 M more
- 2.6 M children stayed on parents’ plans from age 19 to age 26

Medicaid Expansion

- Medicaid expanded to all individuals under 65 with incomes <138% of federal poverty level*



States received 100% federal funding for newly enrolled Medicaid Beneficiaries (2014-2016) . . .
90% federal funding in 2020 & thereafter

*34,638 for family of four in Hawai'i (2019)

New State Health Benefit Exchanges & Small Business Health Options Programs

- **Link individuals lacking access to employer-sponsored insurance, &**
- **Firms w <100 workers**
- **To “affordable” health insurance plans**



Premium & Cost-Sharing Subsidies to Purchase Health Insurance

- Individuals & families w incomes between 138 - 400% federal poverty level* get refundable & advanceable premium credits to buy insurance thru state or federal ins exchanges
- Cost-sharing premium subsidies for eligible individuals & families



* Up to \$100,400 for family of four (2019)

All Health Plans Required to Offer 'Minimum Essential Coverage'

- Which includes 10 required health services



OUTPATIENT CARE
the kind you get
without being admitted
to a hospital



**TRIPS TO THE
EMERGENCY
ROOM**



**TREATMENT IN THE
HOSPITAL FOR
INPATIENT CARE**



**CARE BEFORE
AND AFTER YOUR
BABY IS BORN**



**MENTAL HEALTH AND
SUBSTANCE USE
DISORDER SERVICES**
This includes behavioral
health treatment, counseling
and psychotherapy



**YOUR
PRESCRIPTION
DRUGS**



SERVICES AND DEVICES
to help you recover if you
are injured, or have a
disability or chronic
condition. This includes
physical and occupational



**YOUR LAB
TESTS**



PREVENTIVE SERVICES
including counseling,
screenings, and vaccines
to keep you healthy and
care for managing a
chronic disease

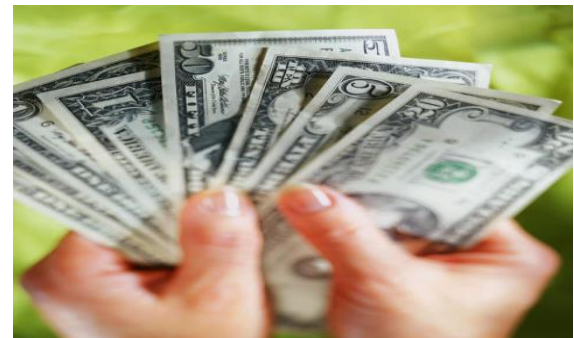


PEDIATRIC SERVICES
This includes dental
care and vision care
for kids

Individual Mandate Enforced Through Internal Revenue Code



**Starting in 2014,
Individuals faced
increasing tax
penalties if no health
insurance**





Tax Penalty

- **\$695/year up to max of 3x that amt (\$2,085)/family, or 2.5% of household income (by 2016)**
- **Annual cost-of-living adjustments post-2016**
- **Exemptions for financial hardship, religious objections, those w incomes below tax filing threshold,* etc.**

*** \$9,350 for singles, \$18,700 for couples in '09**

We All Know What Happened to That

- **2017 Tax Reforms Eliminated the Individual Mandate**



II. To Cut To the Chase re Hawai`i



Basic Issue: How does Hawai`i's employer mandate co-exist with the federal individual mandate?

Hawai`i's Prepaid Health Care Act

- Established employer mandate in 1974
 - Part-time employees, etc., exempt



- Employee contributions capped
- ERISA waiver = amendment cap

Hawai`i's Prepaid Health Care Act



Statute sunsets if & when federal law “provides for voluntary prepaid health care for the people of Hawai`i in a manner at least as favorable . . . , or upon the effective date of federal legislation that provides for mandatory prepaid health care for the people of Hawai`i.” Haw. Rev. Stat. § 393-51 (2009).

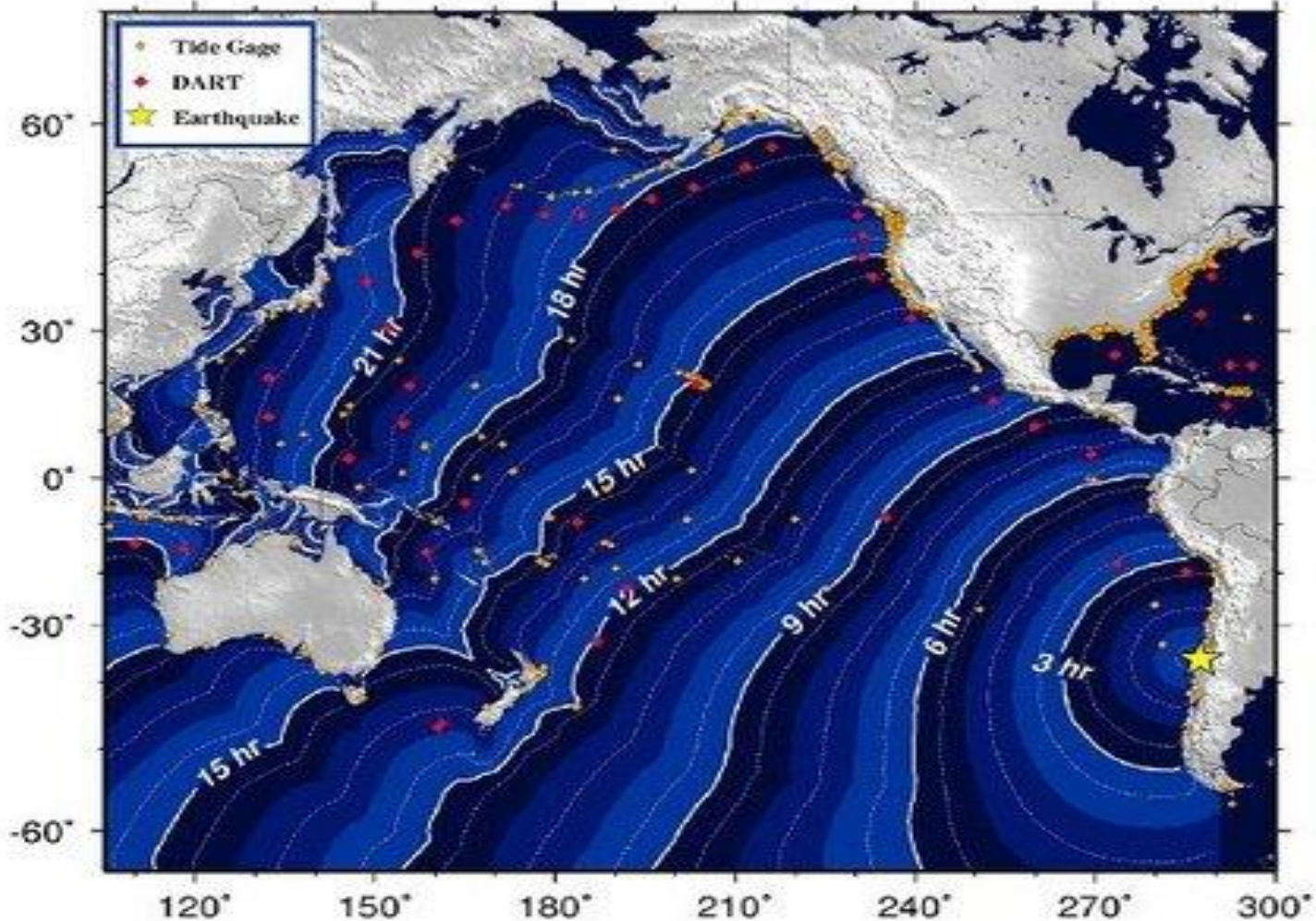
Federal Reforms Preserve Hawai`i's ERISA Exemption



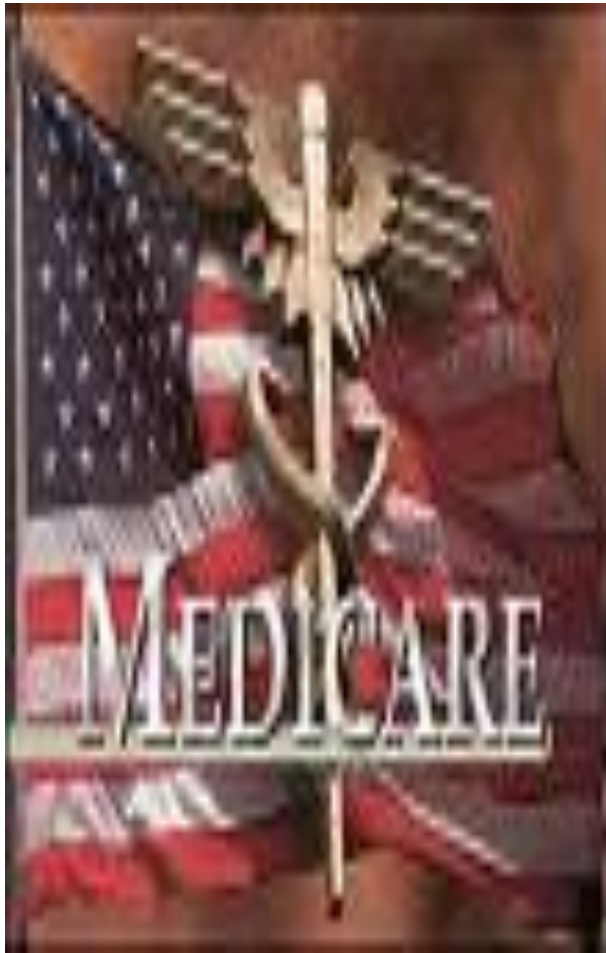
(b) Rule of Construction Regarding Hawaii's Prepaid Health Care Act--Nothing in this title . . . shall be construed to modify or limit the application of the exemption for Hawai`i's Prepaid Health Care Act (Haw. Rev. Stat. 393-1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1144(b)(5)).

Federal reforms have impacted much in Hawai`i

Tsunami Travel Times



All Provisions Affecting Medicare & Medicaid Apply in Hawai`i



Medicare Expansion

- **Extended Medicare payment protections for small rural hospitals**



Medicare Pilot Programs

- Pay doctors & institutions based on quality, not quantity, of services
- Encourage new medical groups to coordinate better re chronically ill care



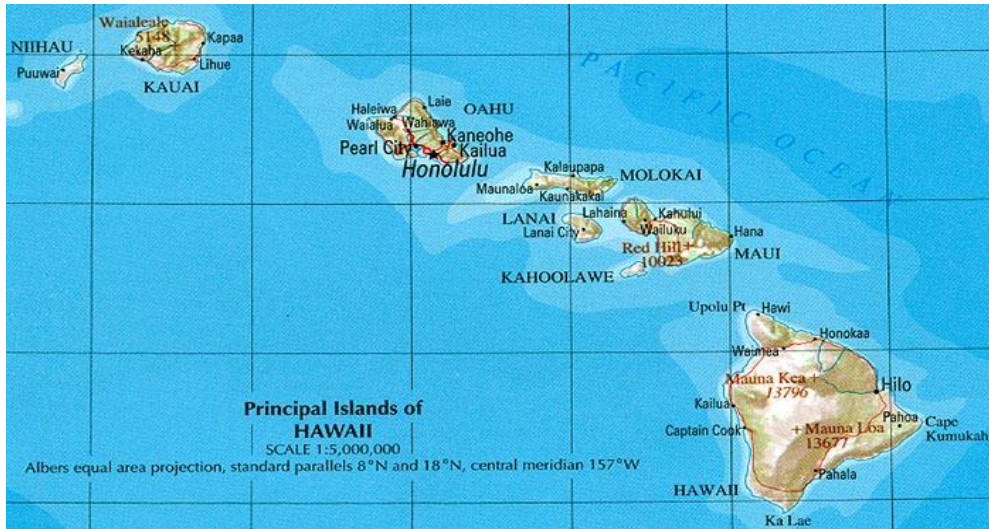
Medicare Prescription Drug Changes

- **Part D donut hole* filled by 50% prescription drug discount in 2011**
- **By 2020, cost-sharing obligations within gap reduce to 25%**



*** Donut hole eliminated Medicare coverage of prescription drug expenditures between \$2830 and \$6440 (in 2010)**

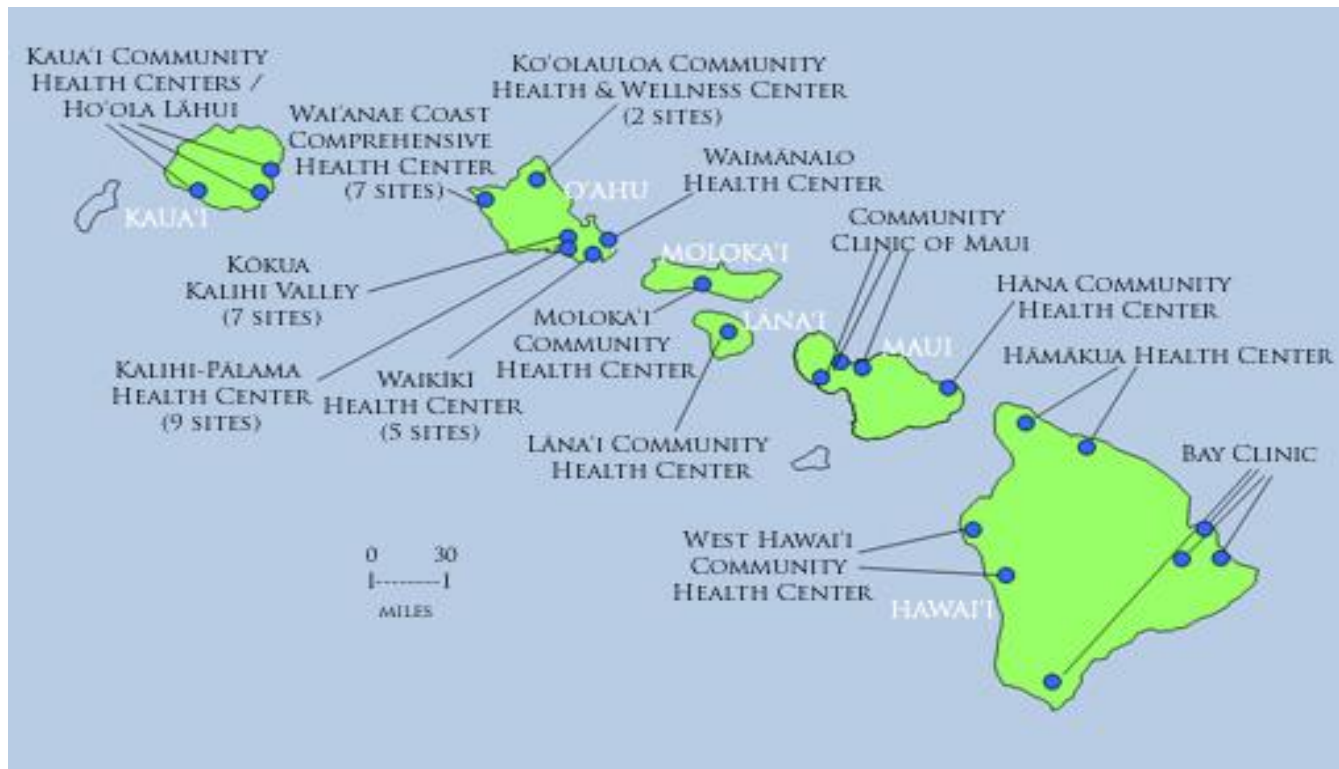
III. Provisions Unrelated to Prepaid Health Care Act Apply in Hawaii



Washington

More Money for Community Health Centers

- \$11 billion to expand access to health care in communities where most needed



Loan Repayment Exclusions for Physicians in Underserved Areas



Community First Choice Option

- States can offer home- & community-based services to the disabled, rather than only institutional care



Comparative Clinical Effectiveness Research

- Established non-profit Patient-Centered Outcomes Research Institute to compare clinical effectiveness of medical treatments



2-Yr Credit (up to \$1B) to Encourage Investment in New Therapies for Disease Prevention & Treatment



Feeding Facilities Required for Nursing Mothers

- **Businesses with >50 employees must make available to nursing mothers:**
 - reasonable time breaks &
 - facilities for lactation (not in rest rooms)



Calorie Counts Required in Chain Restaurants

Chain restaurants w >20 locations must show calorie info beside food on standard menus



Tax on Tanning Parlors

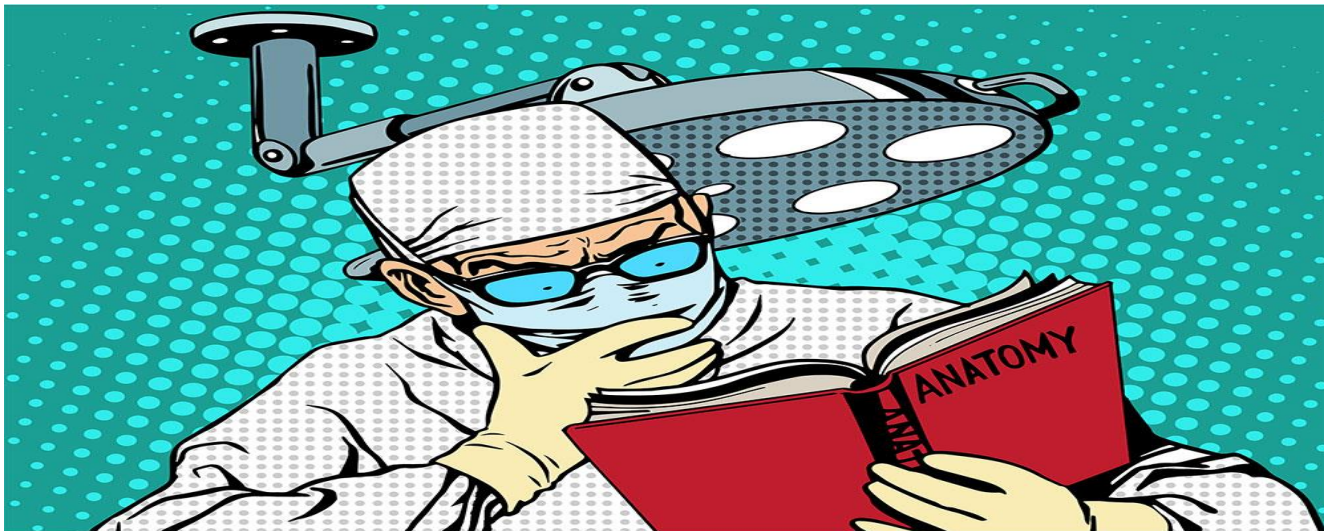
- 10% tax on indoor tanning services bills*



***(after July 1, 2010) (Replaces proposed tax on cosmetic surgery)**

Tort Liability Reform Funding

- Federal funding for state demonstration programs to evaluate alternative liability reform models*



TORT REFORM?

Approximately 44,000 Americans are killed due to poor medical care

Enhanced Fraud & Abuse Oversight & Enforcement



IV. Provisions Relating to Health Insurance Generally

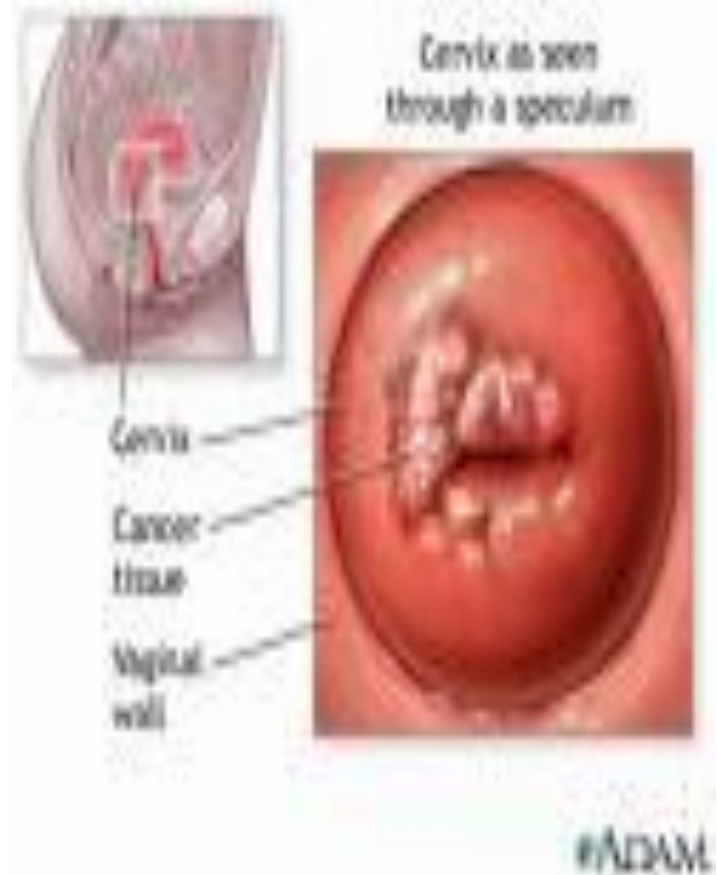
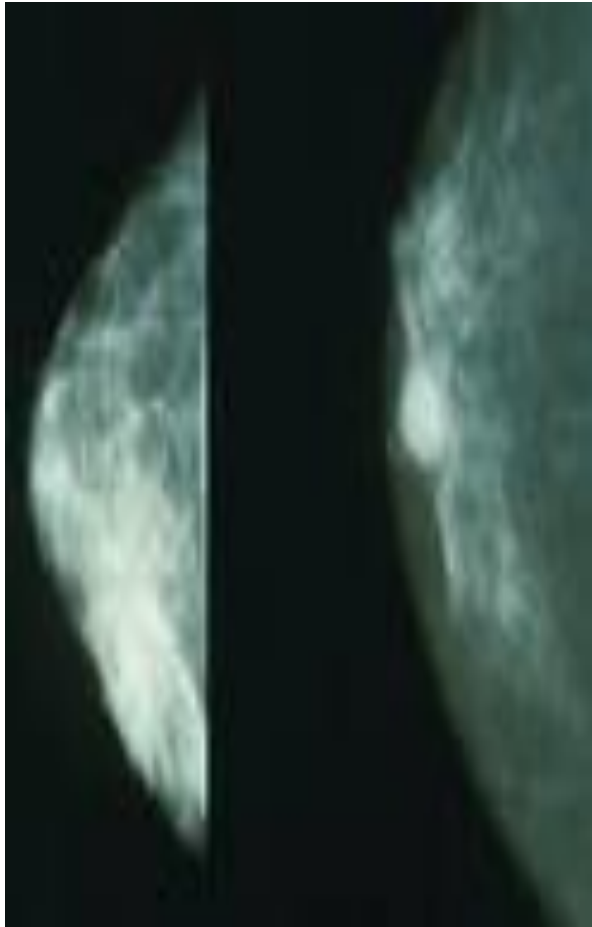
- Probably applicable to Hawai`i's Employer Insurance Mandate



No Prior Authorization Requirements for Women To See Ob-Gyns



No Co-insurance or Deductibles for Certain Preventive Services for Women



Insurers Must Accept All Applicants, Regardless of Health Status



Pre-existing Conditions

- Insurers can no longer reject applicants with pre-existing conditions
- Or charge them exorbitant rates



No Rescission of Existing Policies for Illness



Lifetime Caps on Insurance Benefits Eliminated after 2014



Insurers Must Permit Children to Remain on Family Policies Thru Age 26



V. Who Benefits from Reforms?

- Patients: almost everyone insured
- Doctors: more insureds = more reimbursement
- Hospitals: more insureds = less uncompensated care
- Ins. Companies: more insureds = bigger market
- Pharmaceutical Manufacturers: more insureds = bigger markets



VI. The Elephant in the Room That Everyone Sees: **Costs**



Costs of Federal Reform

- Predicted to cost gov't about \$938 billion over 10 years, acc. to nonpartisan Congressional Budget Office,
- Predicted to reduce the federal deficit by \$138 billion over decade



Limits on Insurance Adm. Costs & Executive Compensation

- **New limits on adm. costs & executive compensation***
- **Violations will trigger consumer rebates**



Medicare Payment & Service Delivery Reforms

- Value-based purchasing programs
- Quality reporting
- Pilot programs on payment bundling



Cost Controls: Individual Incentives

- Excise tax on “Cadillac Plans” starting in 2020



- Threshold for itemized medical expense deduction increased from 7.5% of adjusted gross income to 10% of AGI

State Health Insurance Rate Oversight

- **Additional funding for states to review unreasonable increases in insurance rates**



Insurance Costs

- $\frac{1}{2}$ of enrollees in nongroup plans will qualify for federal subsidies
- Average costs lowered for middle- and moderate-income families by about 60 percent



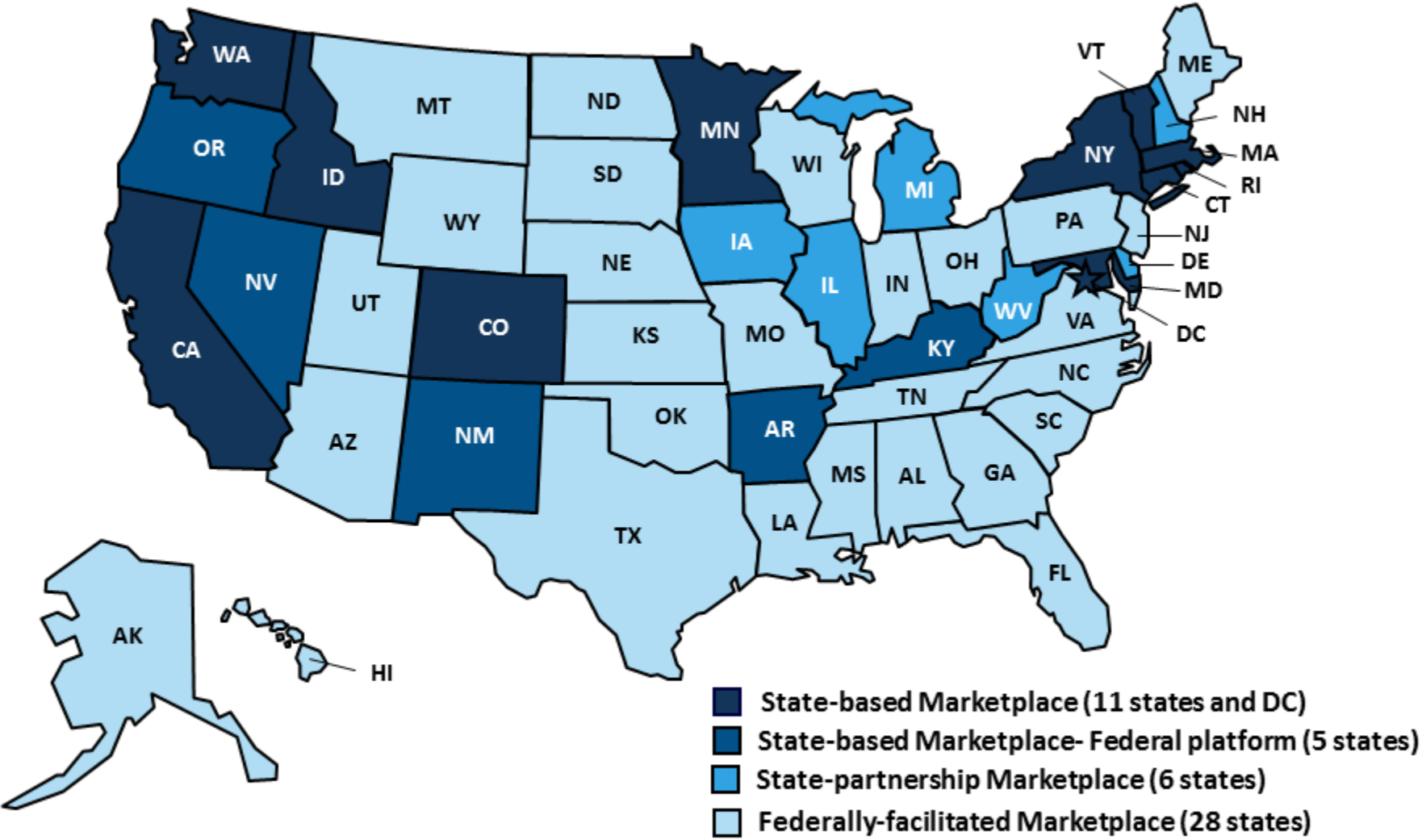
VII. How Has Obamacare Worked Out Thus Far?

- **91% of US population had health insurance by 2017 (up from 84% in 2010)**
 - **Only 5% of Hawaii's population remained uninsured (110,000 adults gained coverage thru Medicaid expansion + 20,000 were exchange enrollees*)**

***Incl many family**



State Health Insurance Marketplace Types, 2018

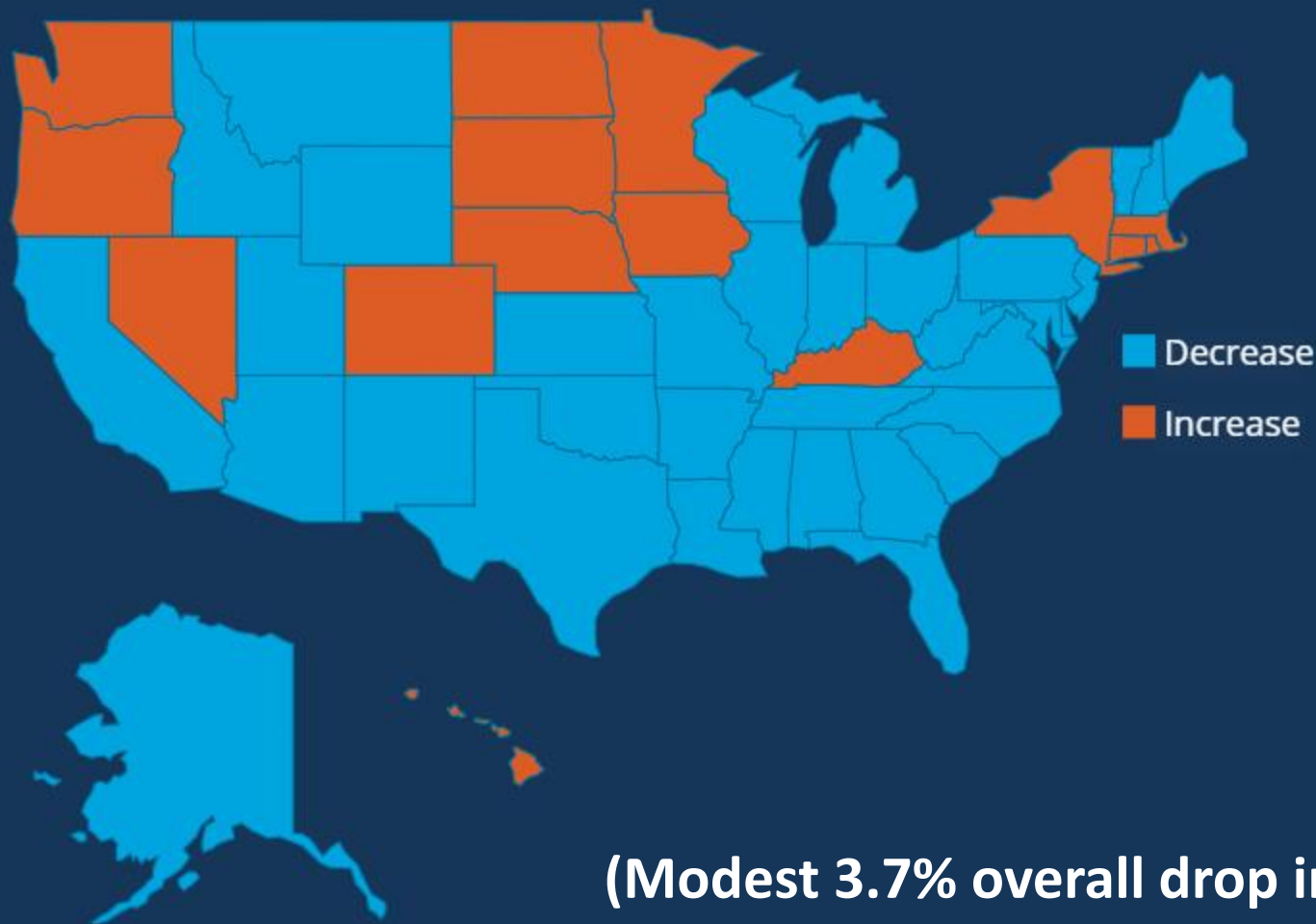


NOTES: This map displays the marketplace type for the individual market. For most states, the marketplace type is the same for the small business, or SHOP, marketplace; however, AR, MS, NM, and UT operate State-based SHOP Marketplaces.

SOURCE: *State Health Insurance Marketplace Types, 2018*, KFF State Health Facts:

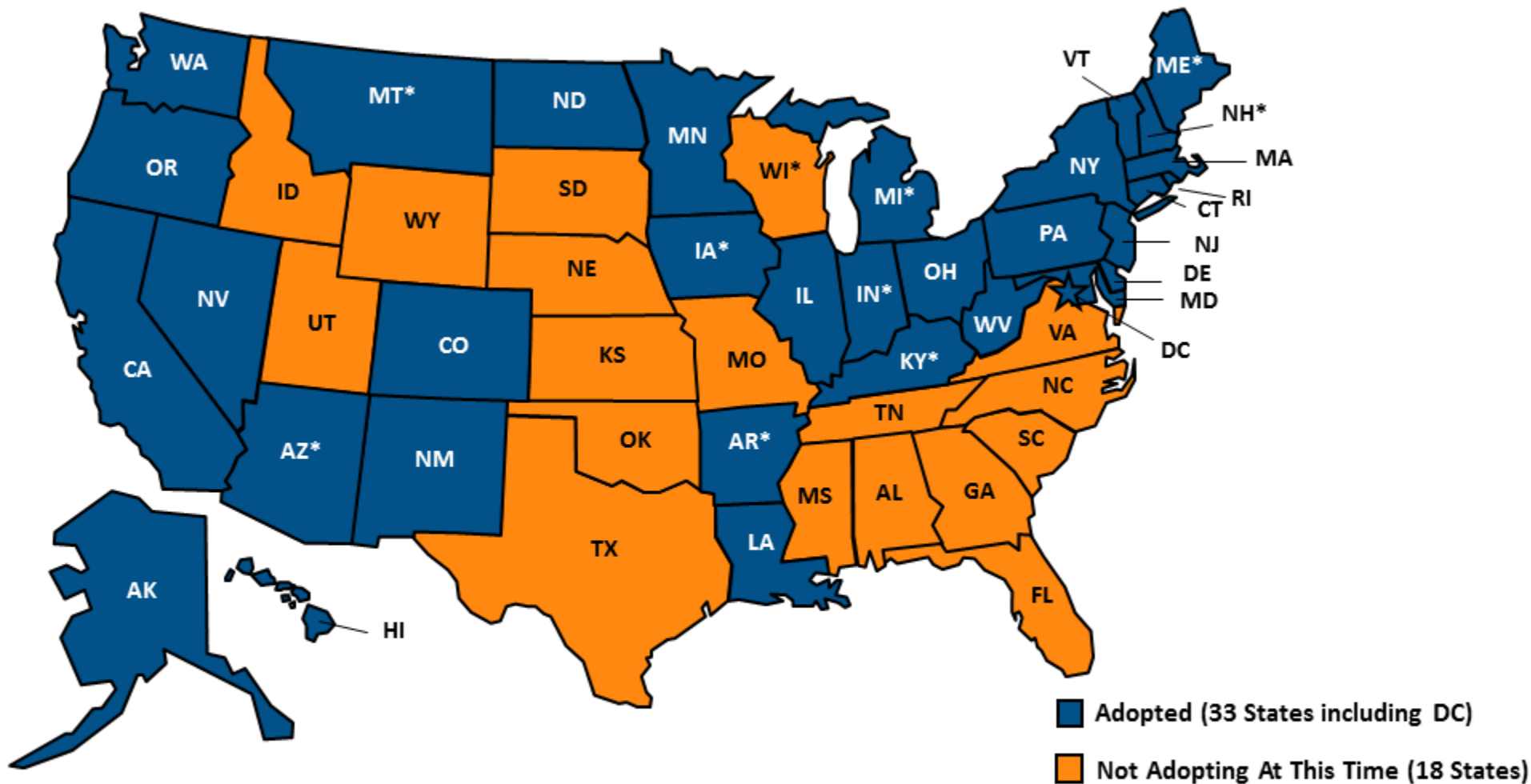
<http://kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/>.

15 States + DC Exceeded Last Year's ACA Marketplace Signups



(Modest 3.7% overall drop in signups)

Current Status of State Medicaid Expansion Decisions



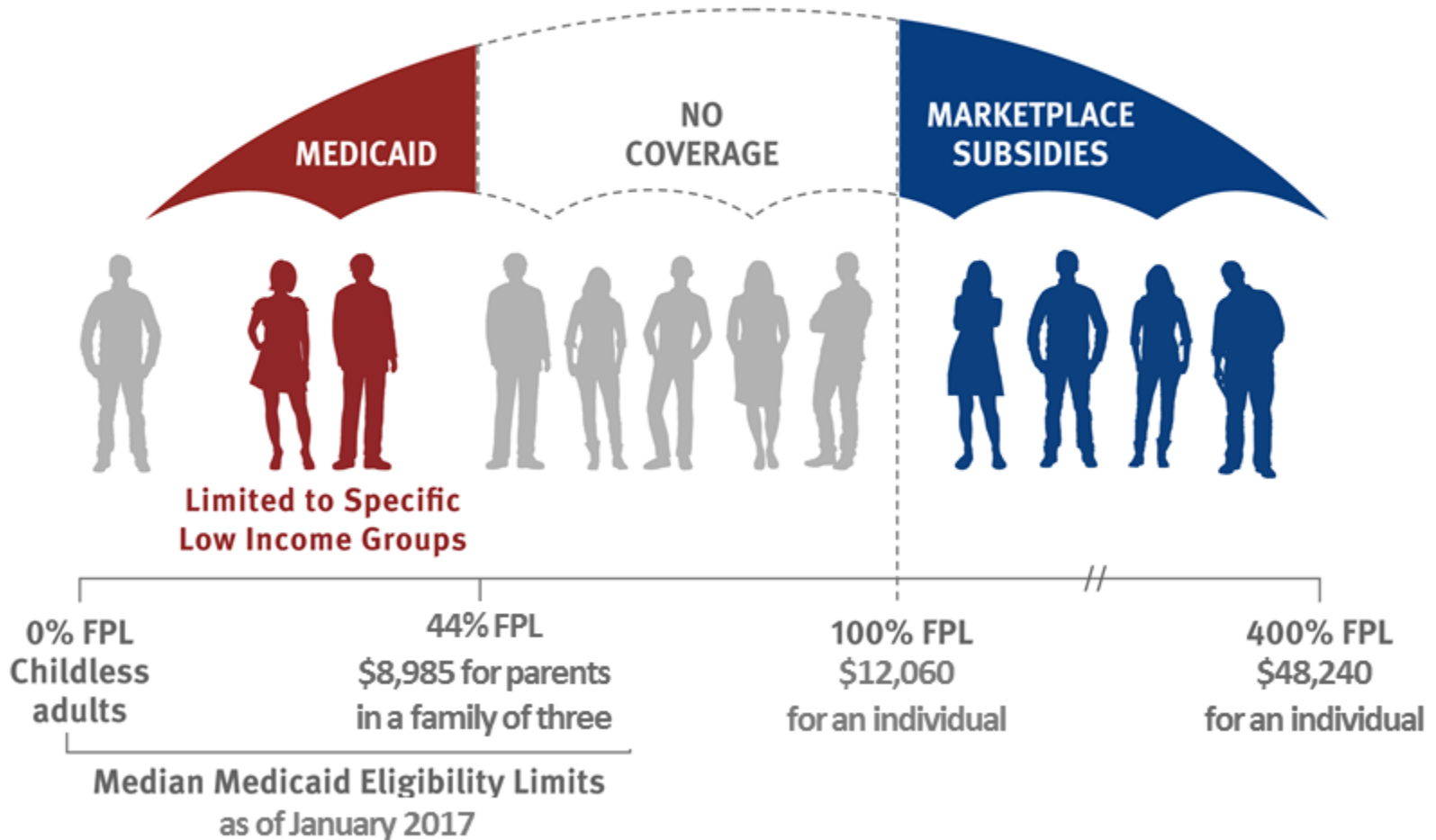
NOTES: Current status for each state is based on KFF tracking and analysis of state executive activity. *AR, AZ, IA, IN, KY, MI, MT, and NH have approved Section 1115 expansion waivers. KY initially adopted expansion through a state plan amendment but received CMS approval for the Kentucky HEALTH expansion waiver on January 12, 2018; implementation will start in April 2018 with full implementation by July 2018. ME adopted the Medicaid expansion through a ballot initiative in November 2017; the ballot measure requires submission of a state plan amendment within 90 days and implementation of expansion within 180 days of the measure's effective date. WI covers adults up to 100% FPL in Medicaid, but did not adopt the ACA expansion.

SOURCE: "Status of State Action on the Medicaid Expansion Decision," KFF State Health Facts, updated January 16, 2018.

<http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/>

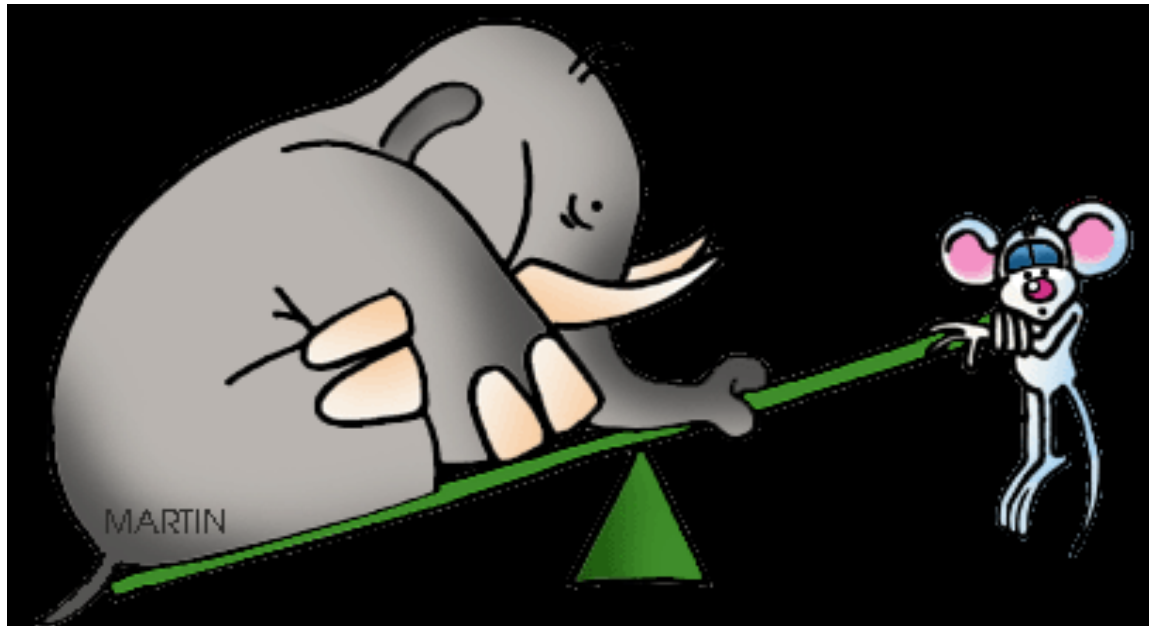
Figure 1

Gap in Coverage for Adults in States that Do Not Expand Medicaid under the ACA



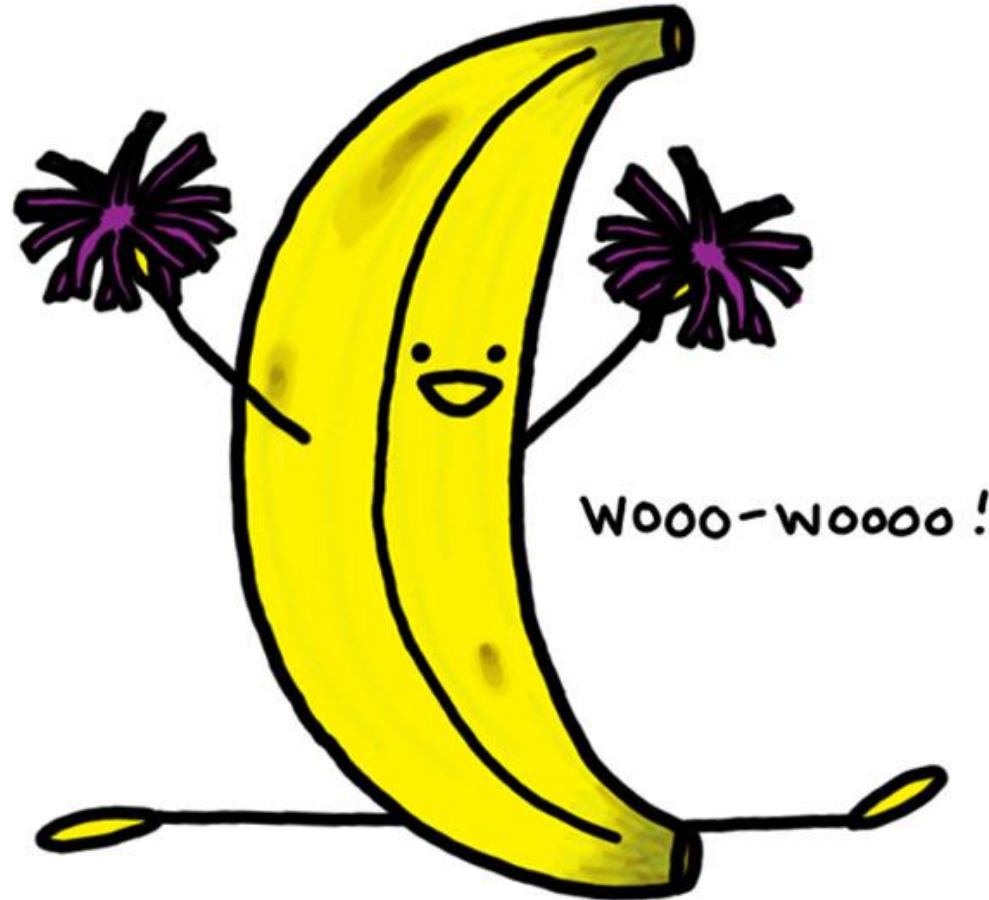
However

Bad news: Individual mandate repeal (via the 2017 tax reforms) has unbalanced the individual market



Good news: It's *only* the individual market

Repeal Doesn't Affect Medicare, Medicaid or Employer-Provided Insurance



Nonetheless

- Executive Action



- Congress



- & States



Are nibbling away at the ACA



& That's a Subject for Another Day



Cost Containment = Next Step

Some options on the table

- **Pay-for-Performance?**
- **Capitation/patient?**
- **Eliminate/curtail fee-for-service?**
- **Capitation/episode of care?**
- **Bundle provider payments?**



“The path to fiscal responsibility must run directly through health care.”

**Peter Orszag, OMB
Dir., @ White House
Fiscal Resp. Summit**

**New York Times
February 23, 2009**

