

# Everything-But-The-Kitchen-Sink Regulatory Review: ACA to COVID-19

Presented By:

Shanna Hanson, FHFMA, ACB, *Manager of Business Knowledge* – **Centauri Health Solutions**





THE RISE  
ASSOCIATION

We are a network of health care professionals addressing the challenges posed by the emerging landscape of value-based care and government health care reform.

## OUR MISSION

Our mission is to provide a community for like-minded professionals to come together for networking, education, and industry collaboration to stay ahead and advance their careers.

ONE ASSOCIATION  
THREE COMMUNITIES



LEARN MORE AT THE [RISEHEALTH.ORG/MEMBERSHIP](https://risehealth.org/membership)

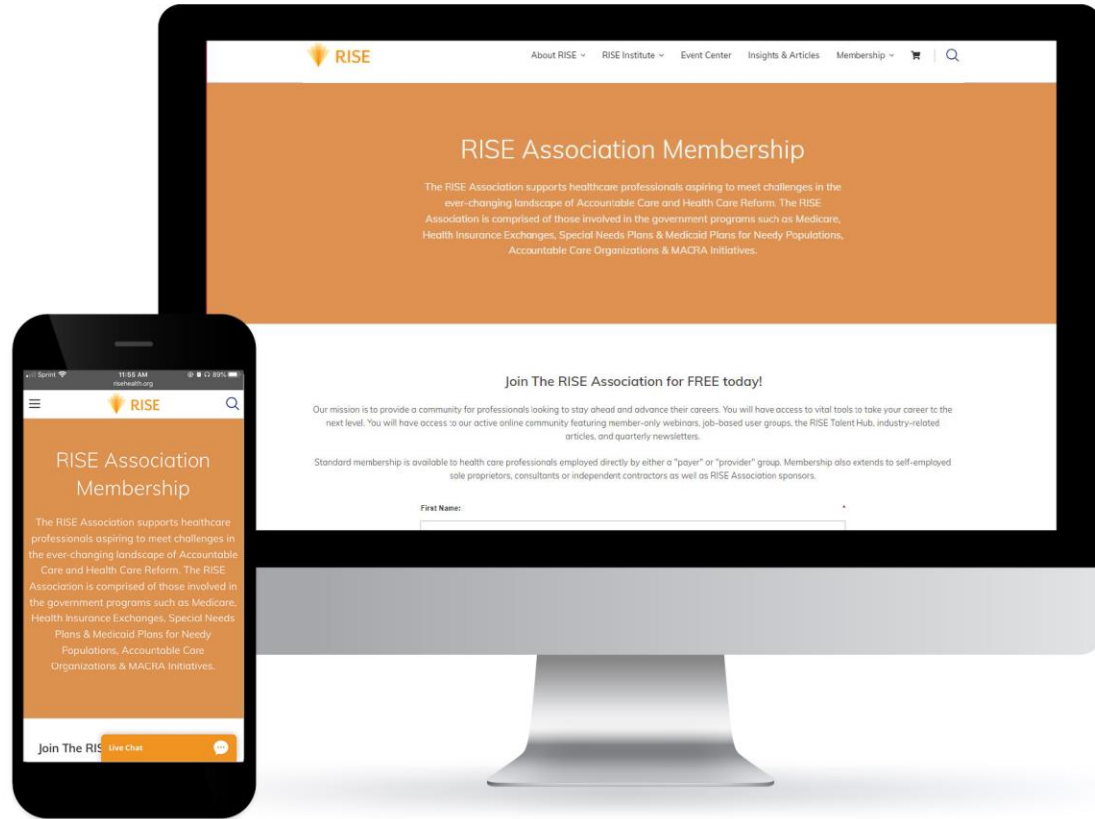
# RISE ASSOCIATION MEMBER BENEFITS

---



LEARN MORE AT THE [RISEHEALTH.ORG/MEMBERSHIP](https://risehealth.org/membership)

# JOIN THE RISE ASSOCIATION **FOR FREE**

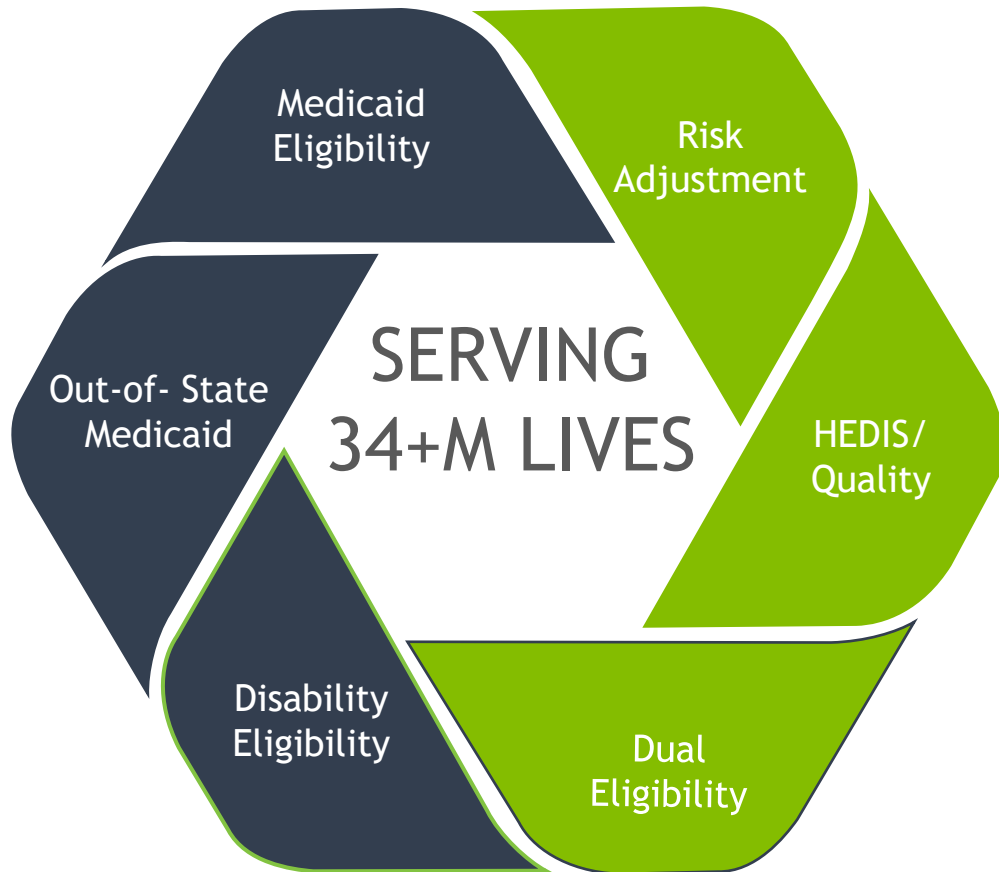


**Stay Tuned for More Updates  
on Membership Enhancements  
Coming Soon!**

**LEARN MORE ONLINE AT  
[RISEHEALTH.ORG/MEMBERSHIP](https://risehealth.org/membership)**

**AN EXCLUSIVE FIRST LOOK IS COMING AT THE RISE MEDICARE MARKETING & SALES SUMMIT IN VEGAS NEXT MONTH**

# Company Overview



## Purpose

We are charting a new path in healthcare with **power to solve** and **passion to serve**.

## Vision

- We improve access to care by simplifying the healthcare system for insurers, providers, members and patients.
- We innovate and solve for the complex problems in the healthcare ecosystem.
- We are thoughtful, compassionate and collaborative.
- We are proud of the work we do and who we are.

## Values

- Integrity
- Innovation
- Collaboration
- Compassion
- Quality

**HITRUST**



# Everything-But- The-Kitchen-Sink AGENDA

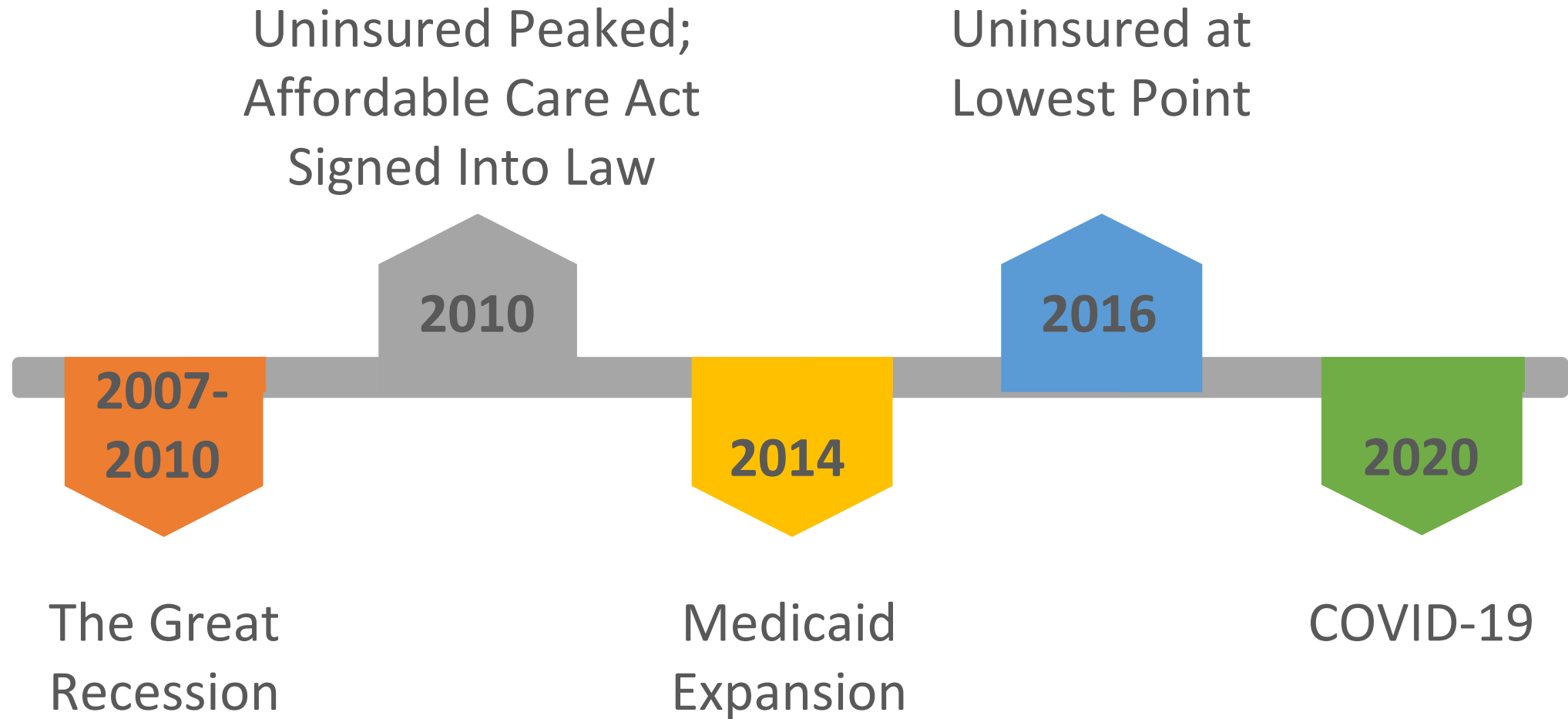
- Medicaid Expansion
- Medicaid Financing
- Medicaid Work Requirements; 1115 Waivers
- Medicaid Eligibility Checks
- Social Security Disability
- Constitutionality of the ACA
- Risk-Corridor Ruling
- Transparency
- COVID-19
- Social Determinants of Health
- Public Charge

# Medicaid Expansion

The Great Recession to COVID-19



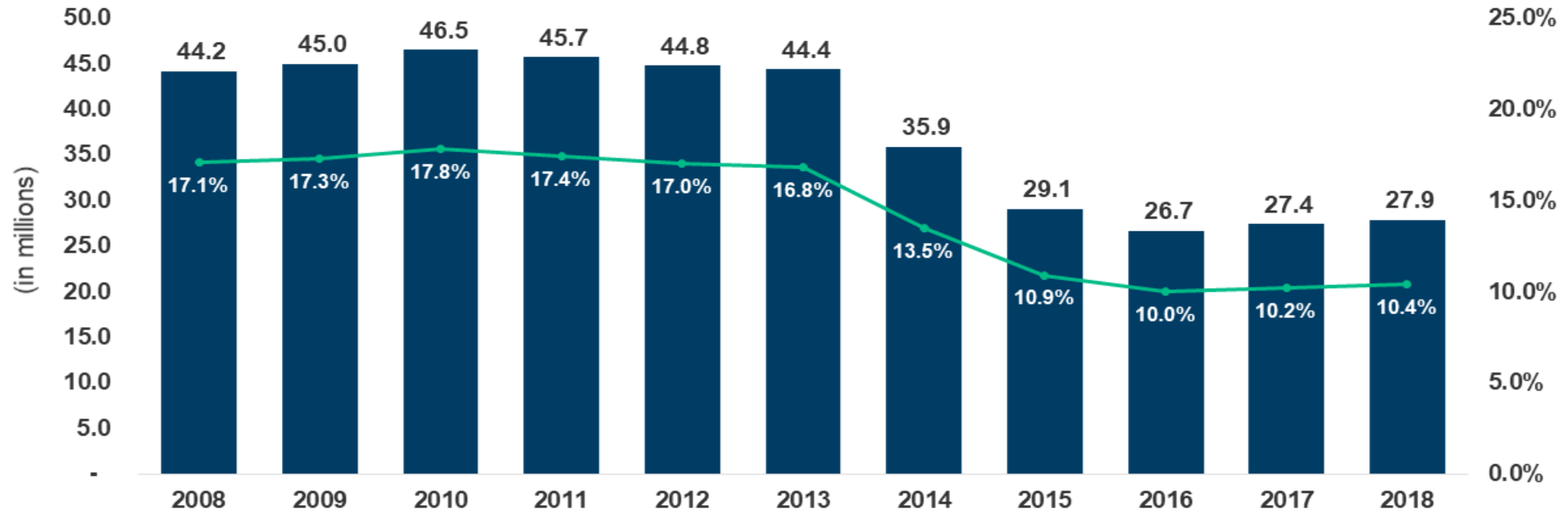
# A Decade of Change



# Affordable Care Act (ACA)

Figure 1

## Number of Uninsured and Uninsured Rate among the Nonelderly Population, 2008-2018



NOTE: Includes nonelderly individuals ages 0 to 64.

SOURCE: KFF analysis of 2008-2018 American Community Survey, 1-Year Estimates.

**KFF**  
HENRY J KAISER  
FAMILY FOUNDATION



# Medicaid Financing

FMAP

Healthy Adult Opportunity (HAO)

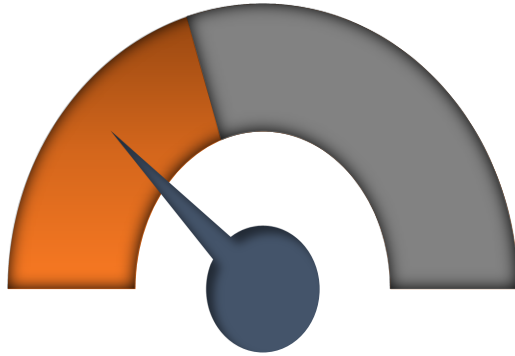
MFAR

# Federal Medical Assistance Percentage (FMAP)

- Percent of state's Medicaid expenses
- Varies by state and Medicaid program
- Base rate determined from state's average personal income
- Not less than 50% (14 states)
- Paid as a percent of state's Medicaid expenditures
- "Open-ended"

# FMAP Variety

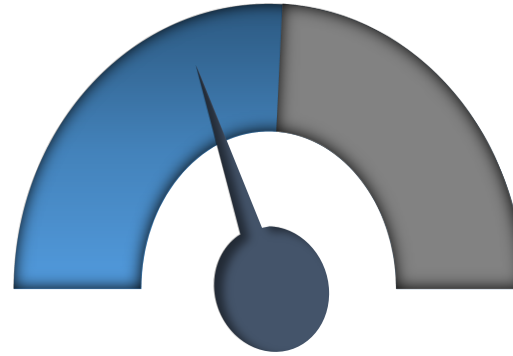
## FMAP Base Rate



$\geq 50\%$

Avg personal  
income determines  
base rate

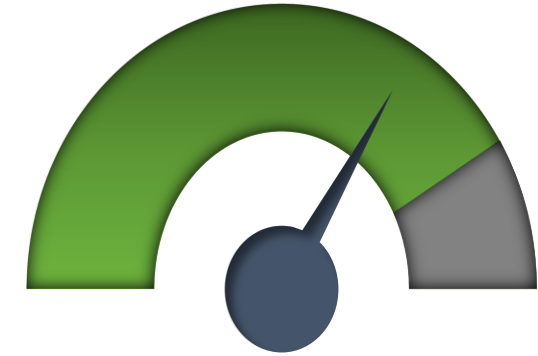
## eFMAP (enhanced)



$\geq 65\%$

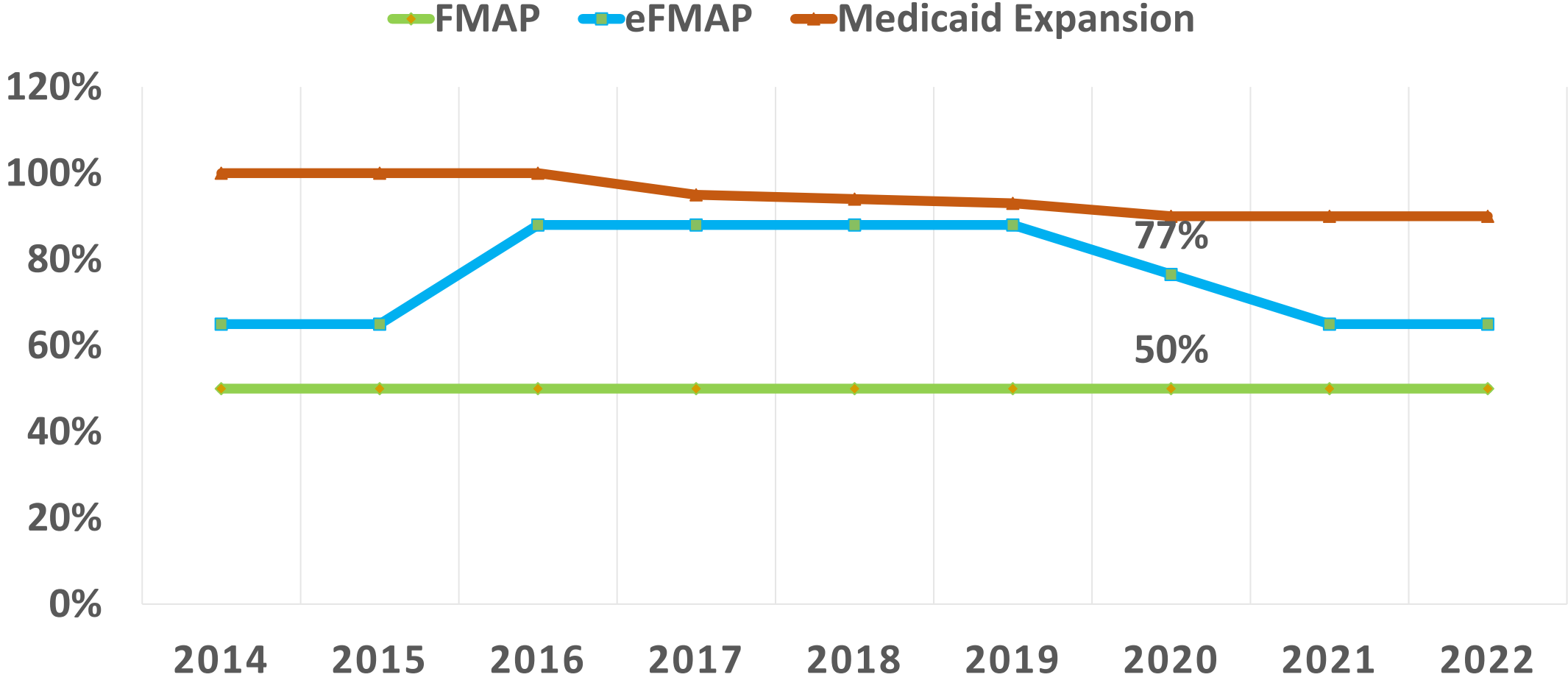
Children's Health  
Insurance Program  
(CHIP), for example

## Medicaid Expansion

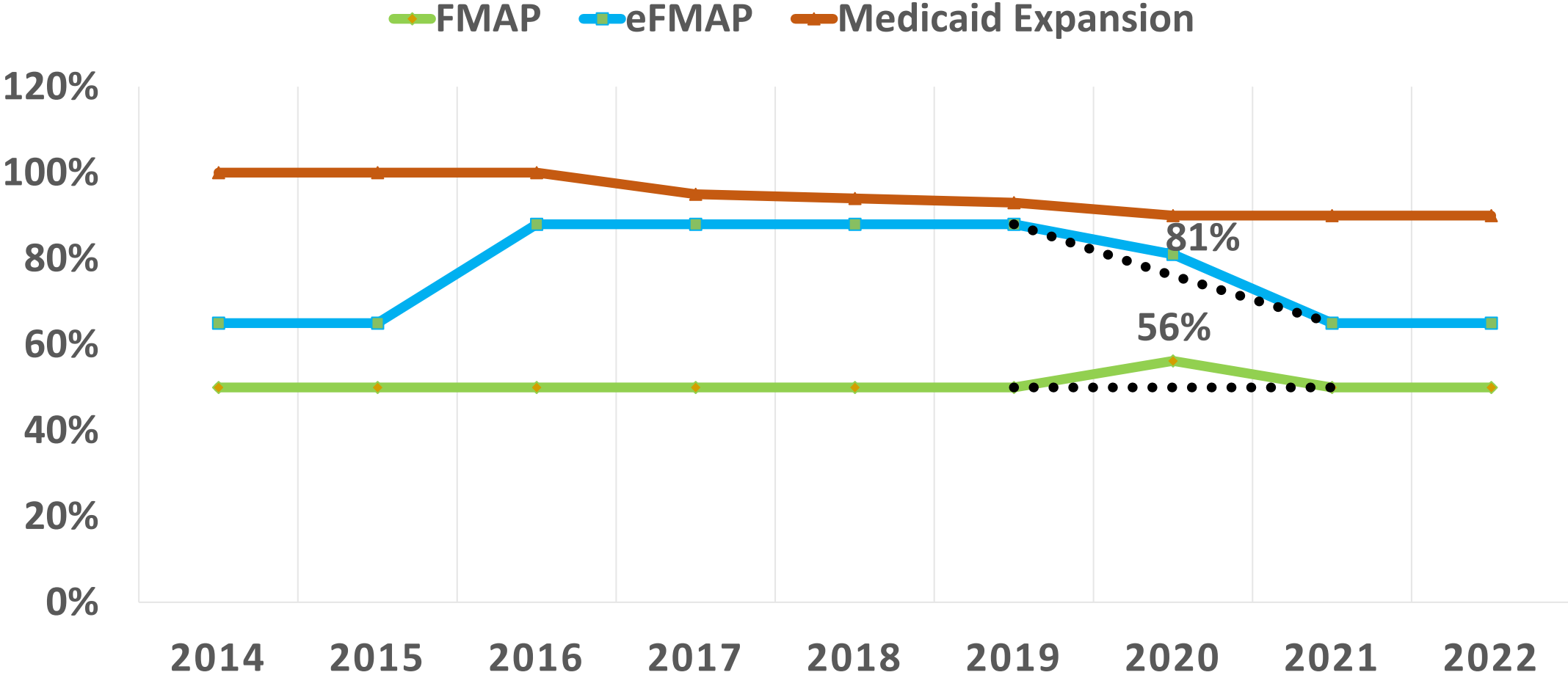


90% in 2020 and  
beyond, newly  
eligible

# Medicaid Matching Rates – Before Families First Act



# Medicaid Matching Rates – After Families First Act





# The Great Recession

---

- 2007-2009: ~5 million lost employer sponsored insurance (ESI)
- American Recovery and Reinvestment Act (ARRA)
  - Signed February 2009
  - \$787 billion historic economic stimulus bill
  - 6.2 FMAP increase; 10/1/08 – 6/30/11
  - Closer to 12.0 FMAP for some states, factoring in unemployment
  - Medicaid Maintenance of Effort (MOE) provisions



# Economic Downturns

Medicaid;  
State Expenses



State  
Revenues

# COVID-19

The looming crisis facing Medicaid programs “is going to be the '09 recession on steroids. It’s going to hit hard, and it’s going to hit fast.”

- Matt Salo, National Association of Medicaid Directors

- Medicaid State Budgets

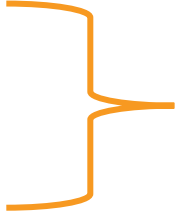
- 2009 – 15.7%
- 2019 – 19.7%
- 2020 – ???
- 2021 – ???



# Healthy Adult Opportunity (HAO)

- CMS guidance January 30 (pre-COVID-19)
  - Section 1115(a)(2) Medicaid Demonstration
  - Capped Federal Medicaid match
    1. Aggregate (“block grant”) method
    2. Per Capita Cap method
  - Adult population not currently covered
  - Increased state flexibility in benefit design
  - Managed care or fee-for-service delivery systems
  - Oklahoma expansion – Governor v. ballot initiative
  - Arbitrary and capricious?
- Limited population
  - Adults under age 65
  - Not eligible on the basis of disability or need for long-term care
  - Not eligible under a state plan.

# Medicaid Fiscal Accountability Rule (MFAR)

- November 18: CMS published a proposed rule
  - State funding of Medicaid
    - Supplemental payments
    - Provider taxes
    - Intergovernmental transfers (IGTs)
    - Certified public expenditures (CPEs)
    - Provider donations
  - Significant implications for state Medicaid financing
-  **Most at risk**

# Medicaid Work Requirements; 1115 Waivers

1. Uphold Medicaid objectives
2. Other waiver requests included

# Medicaid Objectives

“...to furnish

(1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and

(2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care[.]”

- Section 1901 of the Social Security Act
- 42 U.S.C. § 1396-1 Appropriations

	KY HEALTH	AR Works
Population	Expansion group & two groups of parents/caretaker relatives; ages 19-64	Expansion group; ages 19-49 (30-49 then 19-29 phased-in implementation)
Hours	80 per month	80 per month
Reporting requirements	Yes	Yes, online only (initially)
Retroactive eligibility	Month of application only for KY HEALTH	Month of application only for expansion group
Monthly premiums	Yes, with possible 6-month lockout	Previously approved
Lockouts	Yes, until 80 hours completed in a 30-day period or literacy class	Three months grace per calendar year, then locked out until first of next calendar year
Loss of coverage	95,000 Estimated	Never estimated



# Here Comes the Judge!

- District Judge James E. Boasberg
- Agency action, **NOT** legality of work requirements
- Administrative Procedures Act (APA):  
“judicial authority to **review executive agency action for procedural correctness**”
- Arbitrary and capricious



# Judge's Decision

---

- Secretary failed to “adequately analyze” coverage
  1. Lose coverage
  2. Promote coverage
- Arbitrary and capricious



# The Road to the Supreme Court

- D.C. Circuit
- *de novo* standard
- February ruling against HHS
- March ruling against Michigan
- May ruling against New Hampshire
- SCOTUS?



# Medicaid Eligibility Checks

# Medicaid Eligibility Checks

- June 29, 2019: CMS guidance
- State systems must ensure correct FMAP
- Eligibility checks between annual redeterminations
  - >28 states conducting interim data matches
  - Churn
  - Increased uninsured
- Continuous 12-month eligibility
  - Beneficial
  - COVID-19 Disaster Relief Medicaid State Plan Amendments



Oversight of State Medicaid Claiming and Program Integrity Expectations

# Social Security Disability

Continuing Disability Reviews (CDR)

# SSA Continuing Disability Reviews (CDR)

- CDR Diaries
  - Review cycle
  - Impairment
  - Permanent or nonpermanent
  - Review category
- November 18, 2019: Proposed rule
  1. Add a new medical diary category; total of four
  2. Revise the criteria
  3. Change the frequency
  4. Identify medical improvement (MI) at its earliest point

# CDR Diary Categories

Diary Category	Overview	Current Policy	Proposed Policy
Medical Improvement Expected (MIE)	Disabling impairment expected to improve. Medical listing includes a specified period of disability.	6-18 mo	6-18 mo
<b>NEW!</b> Medical Improvement Likely (MIL)	Impairment typically not resulting in permanent, irreversible structural damage and amenable to improving with treatment. Decision based on the inability to adjust to other work. Children approaching an age with key development activities (e.g. 6, 12).	N/A	<b>2 yrs</b>
Medical Improvement Possible (MIP)	Impairment does not meet the criteria for establishing a MIE, MIL, or MINE diary. Diary of “last resort.”	3 yrs	3 yrs
Medical Improvement Not Expected (MNE)	Chronic or progressive impairment or a combination of impairments, with permanent, irreversible structural damage or functional loss for which there is no known effective therapy, treatment, or surgical intervention.	5-7 yrs	6 yrs



# Fiscal Years 2020 - 2029

Diary category	CDRs under current category*	CDRs under proposed category *	Net change*	Percent change vs. current category total
MIE	986	1,205	219	22.2
<b>New! MIL</b>		1,764	<b>1,764</b>	
MIP	4,605	3,738	-867	-18.8
MNE	559	559		
<b>Total</b>	<b>6,150</b>	<b>7,267</b>	<b>1,116</b>	<b>18.1</b>

\* Calculated in thousands

# Constitutionality of the ACA

Texas v. Azar

# Three Questions

1. Do all parties have standing?
2. Is the individual mandate constitutional?
3. Is the individual mandate severable from the ACA?

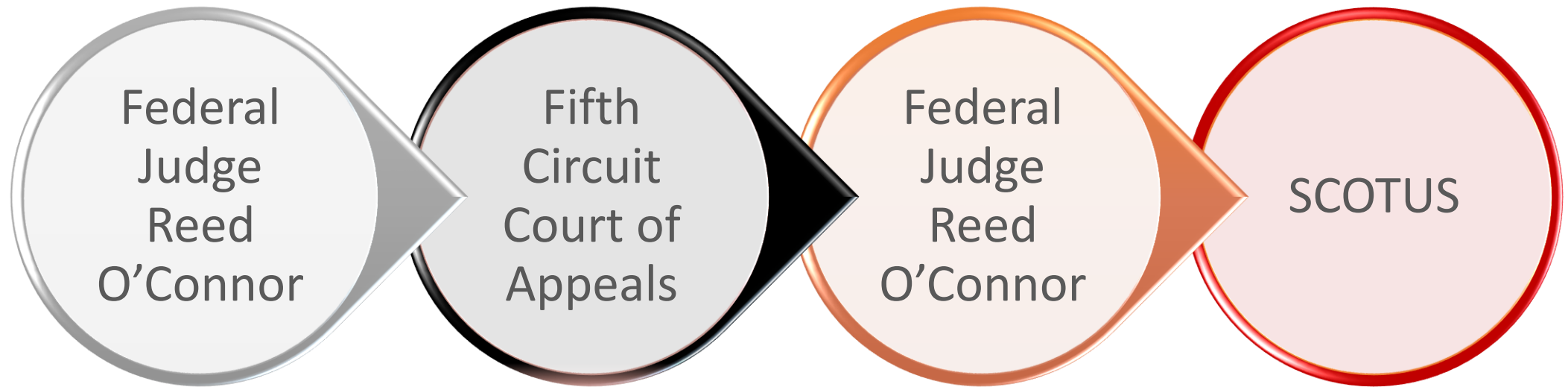


# What's at Stake?

- At risk, elimination of:
  - Medicaid expansion
  - Health Insurance Marketplaces
  - Income-based cost-sharing subsidies and premium tax credits
  - Dependent coverage to age 26
  - 10 categories of essential health benefits
  - Prohibition on lifetime or annual limits
  - Pre-existing condition protections
  - Lots more...



# Texas v. Azar



# Risk-Corridor Ruling

Supreme Court Decision  
Implications

# Maine Community Health Options v. United States

1. Does the government have an obligation under the ACA to make payments to insurers?
  - YES, even in the absence of explicit appropriations language
2. Can Congress set aside those obligations retroactively and through the appropriations process?
  - NO, obligation was not repealed or otherwise set aside by appropriations rider
3. Can the insurers could sue the federal government for damages?
  - YES, under the Tucker Act

# Implications

- *“the government should honor its obligations.”*
  - Justice Sonia Sotomayor
- Government was to share in Qualified Health Plan (QHP) excess losses and profits for the first three years
- Excess losses exceeded profits by more than \$12.2 billion
- More lawsuits pending, and more could be filed
- Payout calculations? Medical loss ratio impacts?
- Cost-sharing reductions (CSR) litigation impact?



# Transparency

Hospital

Health Plans

# Hospital Price Transparency

---

- Final rule, effective January 1, 2021
- Post standard charges online
  - machine-readable file
  - negotiated rates
  - 300 "shoppable" services
  - 70 pre-selected by CMS
- Suit filed December 4
  - Exceeds government authority
  - Violates First Amendment
- Hearing held May 7



This Photo by Unknown Author is licensed under [CC BY-SA](#)

# Medicare Inpatient Prospective Payment System (IPPS)

- Proposed rule issued May 11
- Effective for cost reporting periods January 1, 2021 or later
- Require median health plan-specific negotiated rates
- Inpatient services by MS-DRG
- Medicare Advantage and other health plans
- Soliciting feedback on using as basis for DRG weights

# Health Plan Transparency in Coverage

- Proposed rule published November 15, 2019
- CMS, Department of Treasury, and Department of Labor
- Issuers offering individual or group insurance
  1. cost-sharing estimate
  2. estimate of allowed amounts for out-of-network
  3. estimated accumulated amounts towards deductible and out-of-pocket limit
  4. negotiated rate for in-network service
  5. list of covered items and services for which cost-sharing information is disclosed (e.g., service paid for in a bundled payment arrangement)
  6. notice of “prerequisites” to coverage (e.g., prior authorization, step therapy)
  7. standard notice that communicates other key information that may affect a patient’s out-of-pocket liability

# COVID-19

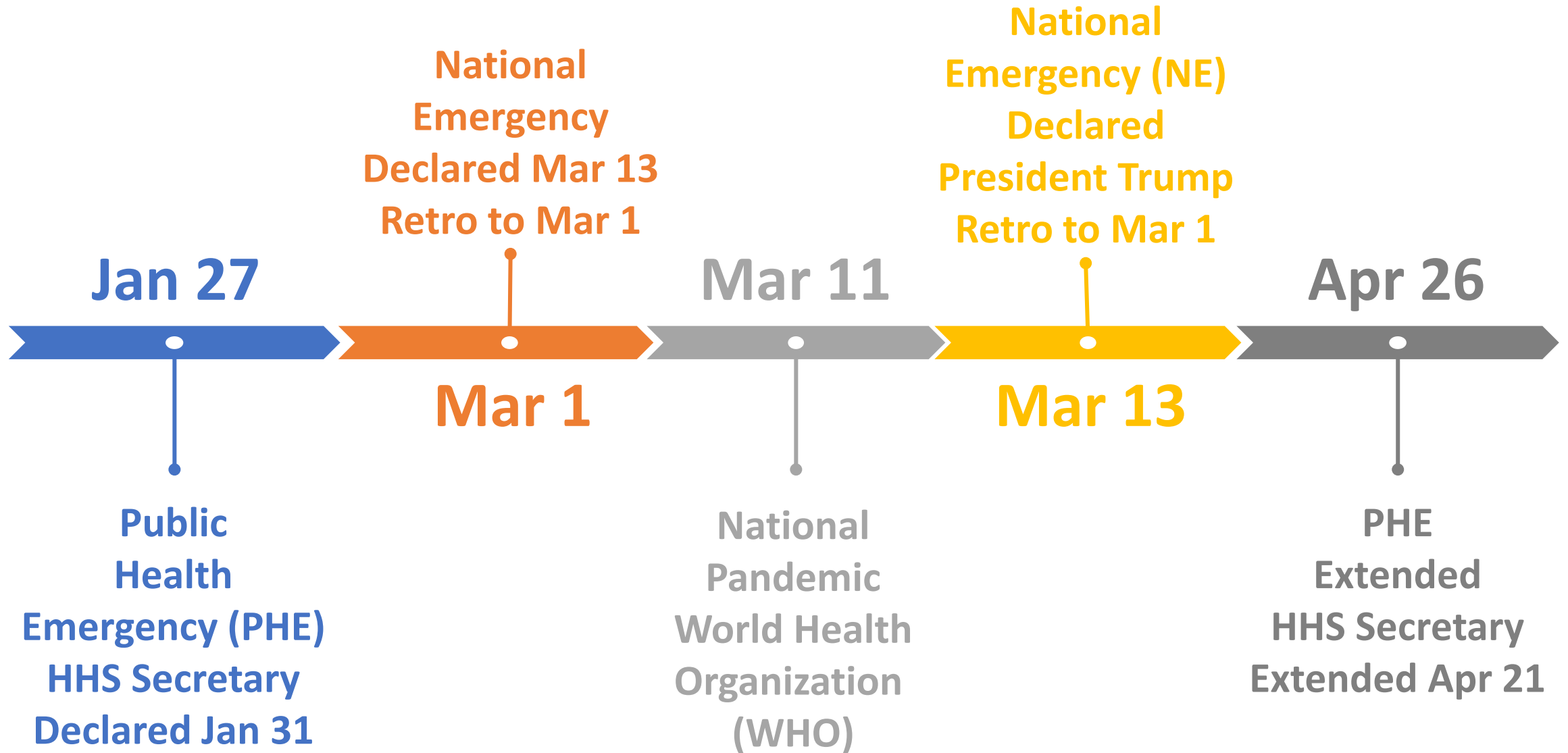
Emergency Declarations

Waiver Soup!

Impacts

State Budget

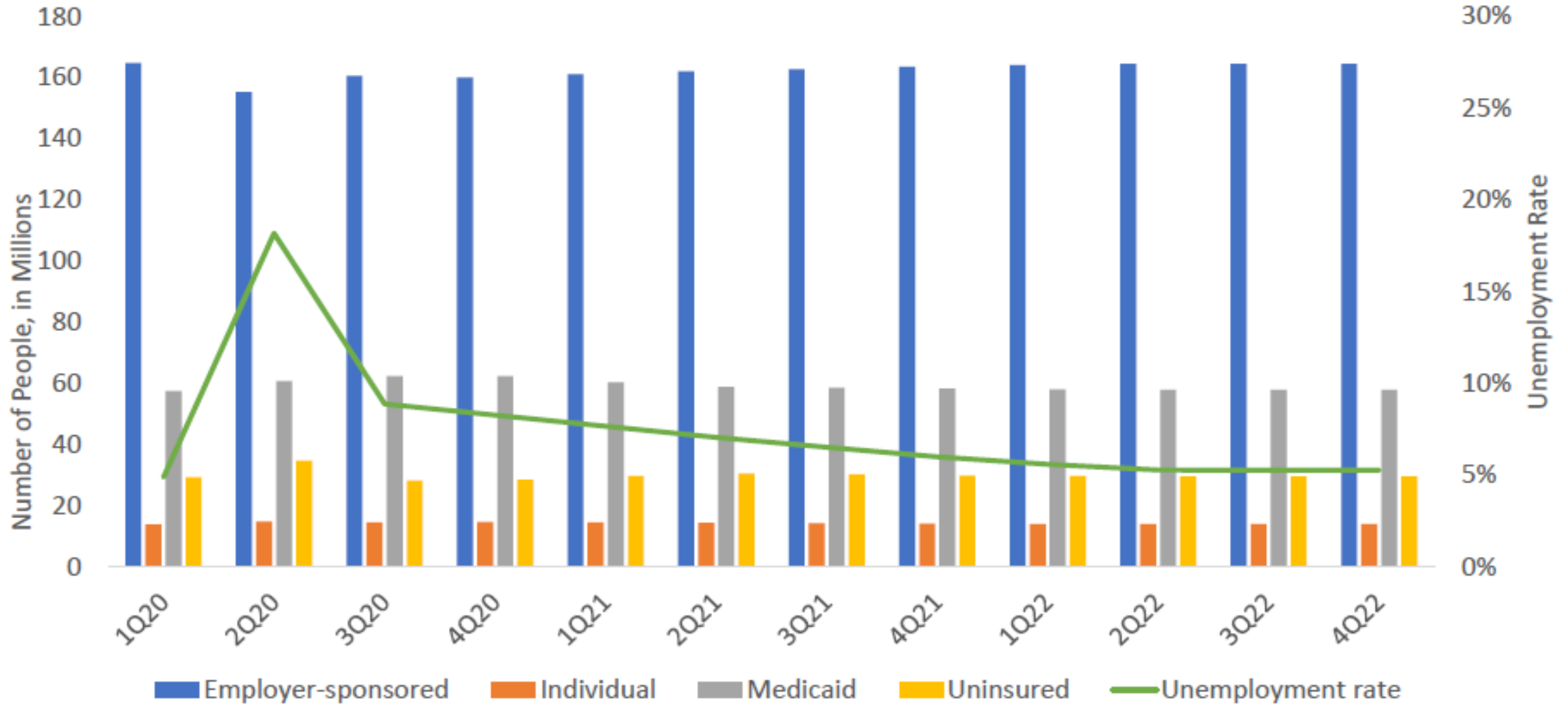
# COVID-19 Emergency Declarations



# Emergency Flexibilities and Waivers

Flexibility/Waiver	Beginning	Ending
1135 Waiver (Blanket or Individual)	First of the month of the NE (March 1)	PHE or NE
Medicaid Disaster Relief State Plan Amendment (SPA)		PHE or NE
CHIP Disaster Relief State Plan Amendment (SPA)		PHE or NE
Emergency Section 1115 Medicaid Demonstration	PHE	60 days post-PHE
Verification Plan (Addendum)	Immediately	???

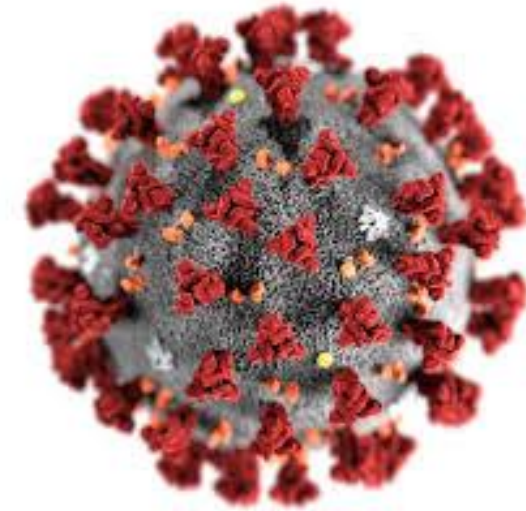
# HMA Moderate Scenario, Estimated Source of Primary Health Insurance 2020-2022





# COVID-19 Impacts

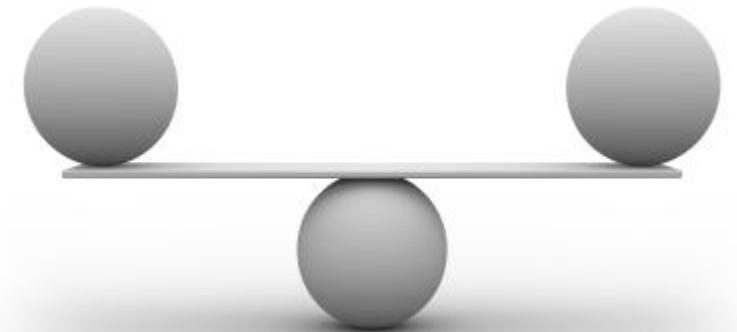
- HMA analysis by state\*
  - Employment-based coverage losses
  - Increased Marketplace enrollment
  - 5-18 million additional Medicaid sign ups
- Additional FMAP increase requested



\*HMA Updates Forecast of COVID-19 Impact on Medicaid, Marketplace, Uninsured, Health Management Associates (HMA), May 2020

# State Budget Balancing Measures

- Medicaid provider cuts: NY, CA, CO, OH, AK, GA
- New York: 1.5% reduction effective April 2
- Other options:
  - Reduce allowable MCO profit margins
  - Provider taxes
  - Reduce provider rates
  - Reduce MCO rates
- MCOs may be more vulnerable than providers



# Social Determinants of Health

Medicare Advantage

Risk Adjustment

Supplemental Nutritional Assistance Program (SNAP)

COVID-19 State Examples

# Medicare Advantage

- 2020: Special Supplemental Benefits for Chronically Ill (SSBCI)
- Not primarily health related, not uniformly offered, tailored to chronically ill enrollees
  - Pest control
  - Meals (beyond a limited basis)
  - Food and produce
  - Non-medical transportation: grocery shopping, banking
  - Indoor air quality equipment and services
  - Social needs benefits: fitness club, park passes, counseling
  - Complementary (alternative) therapies
  - General supports for living: subsidies for rent or assisted living, utilities

# Oh SNAP!

- Supplemental Nutrition Assistance Program (SNAP); formerly Food Stamps
- 2019 **Proposed** Rule: Revision of Broad-Based Categorical Eligibility (BBCE)
- Limits BBCE; receipt of SNAP based on eligibility for another program (e.g. TANF)
- Income and assets must be verified; limits applied
- Gross Income 130% FPL
- Assets \$2,250 per household or \$3,500 if at least one member is age 60+ or disabled.

# Oh SNAP SNAP!

- **2019 Finalized Rule: Able Bodied Adults Without Dependents (ABAWD)**
  - Impacts ages 18-49, no dependents, not disabled or pregnant
  - New teeth to existing work requirements, limits exemptions, etc.
  - Effective April 1, 2020
  - Estimated ~700K will lose benefits
- A coalition of 14 states and two major cities filed a lawsuit January 16
- Preliminary injunction and stay on part of the final rule
- Families First Coronavirus Response Act temporarily and partially suspends the time limit

# Public Charge

Department of Homeland Security (DHS)

Department of Justice (DOJ)

Department of State (DOS)

Executive Order

# Public Charge

- Federal immigration law
- Non-citizens likely to depend on the U.S. government as their main source of support
- “Chilling effect” defined as fear and confusion
- Causing immigrants to drop out of or not enroll in benefits (1 in 7)



# Public Charge – Department of Homeland Security

- February 24: Implemented nationwide while appeals process plays out
- “Totality of circumstances” test
- Medicaid and certain non-cash, public assistance programs considered
- Does not apply to most in a Legal Permanent Resident status
- <https://www.centaurihs.com/is-your-team-ready-for-the-public-charge/>
- COVID-19 related testing, treatment, vaccine NOT considered

# Public Charge – Department of Justice

- Proposed rule sent to the Office of Management and Budget (OMB) on July 3, 2019
- Not public, don't know what it says exactly
- Legal immigrants could be deported for receiving certain government benefits
- The proposal deals with immigrants already admitted to the U.S., including legal immigrants with green cards



# Summary

# Summary

Regulatory Issue	Potential Impact(s)
Medicaid Expansion	Increased managed care enrollment, decreased uninsured.
Medicaid Financing	Varies by state, economics, and funding mechanisms. Tax increases, provider payment cuts, reduced benefits, restricted eligibility, or some combination of these measures.
1115 Waivers	HHS rewriting Medicaid Objectives instead of upholding them; include waiver requests that cause churn, increased uninsured.
Eligibility Checks	Churn, increased uninsured. This can be mitigated by state adoption of 12-month continuous eligibility.
Social Security CDRs	Medicare Advantage: Loss of members Medicaid Managed Care: Loss of members or decrease in capitation

# Summary

Regulatory Issue	Potential Impact(s)
Texas v. Azar	Numerous depending on what parts of the Affordable Care Act are determined severable from the individual mandate
Risk-Corridor Ruling	Qualified Health Plans: Risk sharing payout; possible cost sharing reduction settlement
Transparency	Disclosures otherwise considered confidential; undue burden
COVID-19	Numerous. Enrollment losses and gains. Increased uninsured. State budget balancing measures: provider payment cuts, instituting provider taxes, Medicaid managed care rate reductions and/or reduced allowable profit margins, more.
SDoH	Improved health of plan member, better scores and ratings.
Public Charge	Otherwise eligible members not enrolling or dropping coverage

# Contact Us

For more information contact:

**Ray Evans**

Vice President of Sales

**727.432.6651 (mobile)**

**[Ray.Evans@centaurihs.com](mailto:Ray.Evans@centaurihs.com)**

**[www.centaurihs.com](http://www.centaurihs.com)**

# Thank You for Attending!



**Presented By:** Shanna Hanson, FHFMA, ACB  
Manager of Business Knowledge  
[Shanna.Hanson@CentauriHS.com](mailto:Shanna.Hanson@CentauriHS.com)  
816.406.1785