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HEALTH ACTUARIES & CONSULTANTS

# 2021 ACA Outlook

11/19/2020

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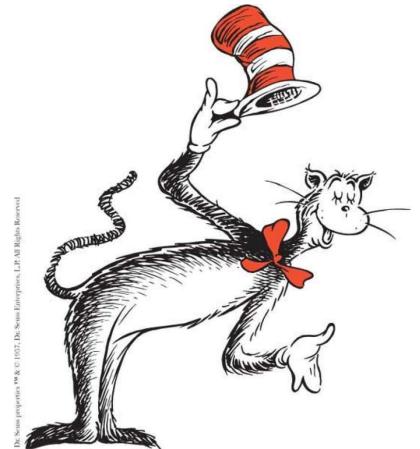
# About Me

- Health Care Consulting Actuary
- Focus on Major Medical Products, Pricing, Valuation, ACA, Strategy, Policy, Research
- Active SOA Volunteer
  - Chair of the Social Insurance & Public Finance Section Council
  - Lead Individual/SG Markets Subgroup for Health Section
  - FSA Curriculum Committee (Health Exams)
- First SEAC Meeting since 2010



# The Changing Policy Role of Health Actuaries

- 20<sup>th</sup> Century
  - Number crunchers
  - Insurance/product/regulatory knowledge
  - State approvals
  - Implement rather than shape policy changes
- 21<sup>st</sup> Century
  - 2000s – More interaction with federal government
  - 2010s – ACA unknowns
    - “toughest job in corporate America”
    - “chief actuary estimates that 80% of his time these days is spent talking to lawmakers, journalists and others outside the company about the law, rather than on typical actuarial work”
    - <https://www.wsj.com/articles/is-this-the-hardest-job-in-america-1398901700>
  - 2020s – More personal opportunity to inform policy



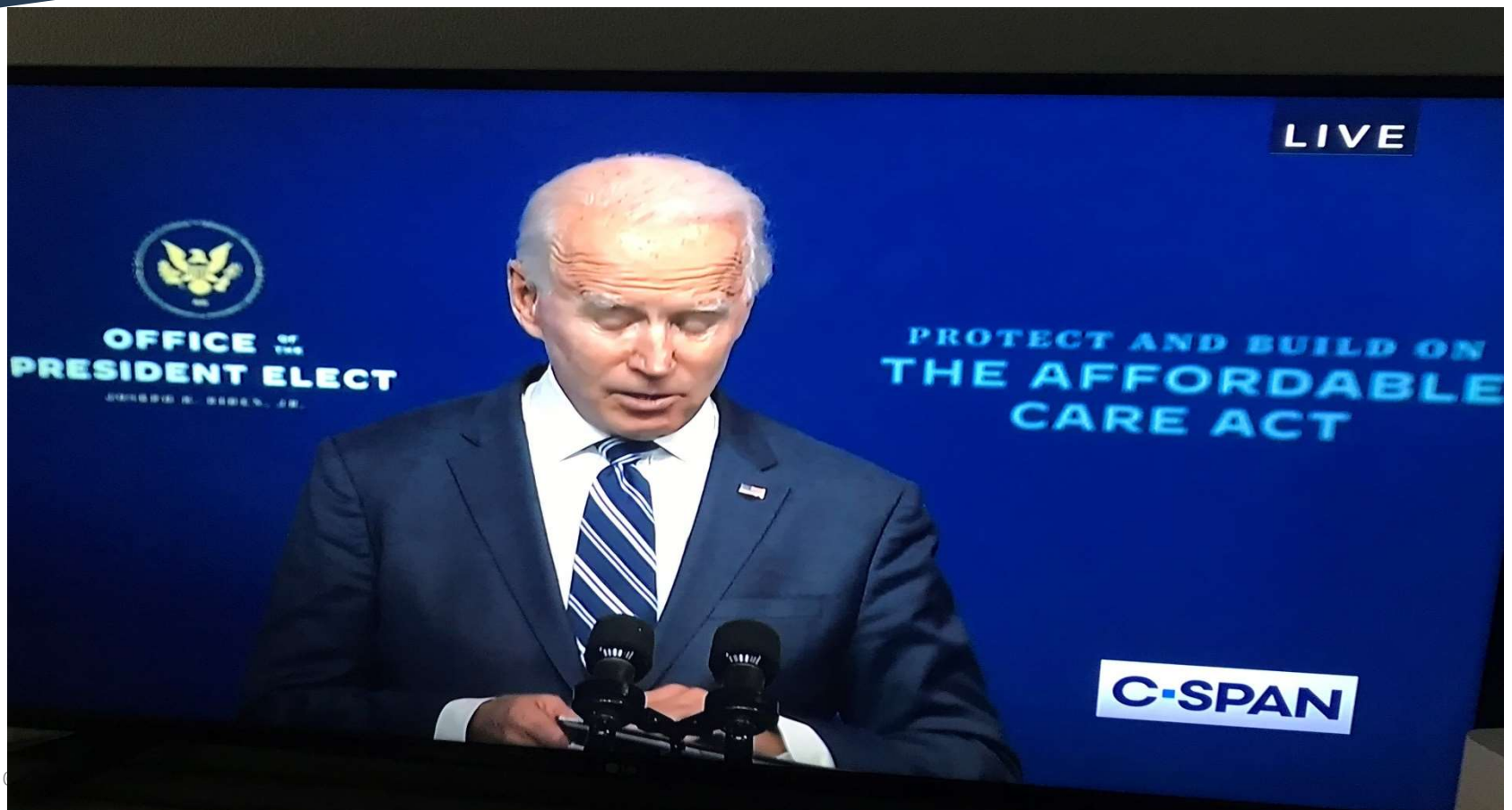
# Actuary of 2020s: Shaping Policy, Not Implementing It

- Risk Adjustment Stabilizing Mechanisms
- Migration Impact (Group <-> Individual <-> Medicaid)  
<http://axenehp.com/wp-content/uploads/2019/05/Hixme-Legislative-Report-5-8-Final.pdf>
- Regulatory Comments
- Rate Review Methodology <https://axenehp.com/focused-aca-rate-review/>
- Strategic State Decisions/Funding to Reduce Uninsured Rates
- Optimal Surplus Level Recommendation  
<https://dfr.vermont.gov/sites/finreg/files/regbul/dfr-order-19-07-i-bcbsvt-rbc.pdf>
- Legislative Drafting
- Research Leading to Policy Initiatives

# ACA Policy: Presentation Challenges/Comments

- Covered a lot of real content while not getting too deep into the politics, which is a challenge. Overall nicely done.
- Content for one of the speakers was a bit too political.
- Really disappointed in the selection of outside speaker. Please do not recruit speakers with a clear political agenda. We should not be presenting partisan views of this issue from either side of the political aisle.
- Great to have politically relevant topics like this. I love that we have a speaker that was in the white house administration.
- It is quite a challenge to parcel through the potential messaging within the content and given current political atmosphere as it affects any attempt at gaining an understanding of the underlying data, issues, and truths.

President Biden? Any major changes to the ACA?



# Significant/**Monumental** Health Legislation/Action

Years	Branch Control (House-Senate-WH)	Significant Federal Legislation
1961-1969	<b>Democrats</b>	<b>Medicare and Medicaid</b>
1969-1977	Split	Federal HMO Act
1977-1981	Democrats	National health reform efforts stalled in the face of economic recession
1981-1993	Split	EMTALA, COBRA, <b>NAIC Small Group Model Law</b>
1993-1995	Democrats	Clinton's failed Health Security Act
1995-2003	Split	HIPAA, State Children's Health Insurance Program
2003-2007	<b>Republicans</b>	<b>Medicare Modernization / Part D</b>
2007-2009	Split	
2009-2011	<b>Democrats</b>	HITECH, <b>Affordable Care Act</b>
2011-2017	Split	
2017-2019	Republicans	Failed ACA Repeal, Tax Cuts and Jobs Act (struck ACA Shared Responsibility penalty)
2019-2021	Split	
2021-	Split	No significant legislation, framework developed by administrations' actions and state responses, much like 2011-2020
2021-	Democrats	'Medicare for All' long-term
2021-	Republicans	Market-based solutions with equity & aligned incentives

# Obama/Trump/Biden Policy Distinctions

- Every Individual Market Policy Proposal This Century has Three Commonalities <https://axenehp.com/acas-changing-coverage-goals-obama-biden-trump/>
- They aren't all the same (Heritage Foundation, Romney Care, ACA)
- Common Elements:
  - (1) Private Market Structure Undisturbed
  - (2) Premium rates are restricted/regulated to be "actuarially unfair"
    - ACA regulations refer to "actuarially fair" coverage as insurance that "is priced so that the premium paid by an individual reflects the risks associated with insuring the particular individual or individuals covered by that policy". <https://www.federalregister.gov/documents/full-text/xml/2018/02/21/2018-03208.xml>
  - (3) Third party subsidies are provided to offset risk selection concerns created by "actuarial unfair" premiums [http://actuarialstandardsboard.org/wp-content/uploads/2014/07/asop012\\_101.pdf](http://actuarialstandardsboard.org/wp-content/uploads/2014/07/asop012_101.pdf)
- Decision to buy insurance? "price of insurance more attractive relative to the expected benefits such insurance provides". Not as true as we would like it to be.
- (1) Potential break with Biden (Medicare at 60, "public option")
- (2) Requires legislation to change (Republican attempts in 2017: AHCA, BCRA, Graham/Cassidy)
- (3) Limited Section 1332 opportunities <https://axenehp.com/new-section-1332-flexibility-state-relief-empowerment-waiver-opportunities/>



# Fundamental “Coverage Goal” Differences

- **“What is Trump's healthcare plan? It looks a lot like Obamacare.”**

<https://www.businessinsider.in/science/health/news/what-is-trumps-healthcare-plan-it-looks-a-lot-like-obamacare-/articleshow/78818777.cms>

- Myth: Republicans have been relentlessly trying to repeal the ACA for 10 years.
- Summer of 2017
  - AHCA – “age-based tax credits” like 2016 Republican proposals (Empowering Patients First Act– EPFA)
    - <https://www.soa.org/globalassets/assets/Library/Newsletters/Health-Watch-Newsletter/2016/november/hsn-2016-iss-81.pdf>
  - BCRA – “Obamacare-lite”, ACA style income-based model with less federal funding
- ACA – focus on underserved populations rather than broad coverage, redistribution
- There were fewer people with private insurance in 2018 than 2009 despite \$54 billion in subsidy spending in 2018. 20 million more people had Medicaid.
- Hypothetical Republican Plan – incentives for broader coverage
  - “(EPFA) increases the overall number of people with coverage, but older people end up falling out of the market as premiums rise” -Christine Eibner, RAND
  - “This worries some Obamacare supporters, who say the goal of insurance reform isn’t just expanding coverage — it’s expanding coverage for people who really need health care.” - Sarah Kliff, Vox (now New York Times)

<https://axenehp.com/acas-changing-coverage-goals-obama-biden-trump/>

ACA market dynamics involves math, but things aren't always as complicated as they seem.



# SUNSHADE

If only you could somehow attach it to a hat.

# Full Disclosure

- Advocacy for actuarial involvement, patience to understand policy implications, avoidance of political retaliation.
- “The ACA should be left alone until its makeover is complete—not because the law is good or bad, but because any legislative adjustments would be based upon nontechnical professionals’ surface-level understanding of a convoluted, fluid law.” <https://theactuarymagazine.org/the-temptuous-crisis-invitation/>
- **Underrated question: “What happens if things are left alone?”**
- **It’s a great question because:**
  - **1. It is more likely.**
  - **2. The answer is more interesting.**
  - **3. We haven’t heard the answer 1,000 times already.**
    - <https://www.linkedin.com/pulse/two-weeks-notice-greg-fann/>

# Current Litigation

- California v. Texas

- <https://www.c-span.org/video/?471185-1/health-care-law-supreme-court-oral-argument&live>
- 'Individual Mandate' Severability/Essentiality, Congressional Intent
- Is it essential?
- Did Congress believe it was essential?
  - "The individual health insurance coverage mandate is such a vital component of the year-old health reform law that, if removed, alternatives would be needed."

<https://www.actuary.org/content/actuaries-removing-individual-coverage-mandate-would-require-alternatives-0>

- Congress can legislate to express current intent or allow Supreme Court to discern prior intent; Joe Biden wants to bring back the mandate penalty.
- "Obviously if the Affordable Care Act is struck down, we will be ready. If it is not, then we're going to continue to improve the current system." -The White House <https://www.businessinsider.com/trump-obamacare-aca-replacement-supreme-court-arguments-2020-10>

# President Trump's Health Care Executive Actions

New flexibility (ACA and other markets can play nice)

Consumers aren't locked into one risk pool

<https://www.linkedin.com/pulse/tail-two-risk-pools-greg-fann/>

State flexibility

Blank notebook?

<https://www.promiseskept.com/achievement/overview/healthcare/>

## **Criticisms**

Impact to ACA Risk Pool

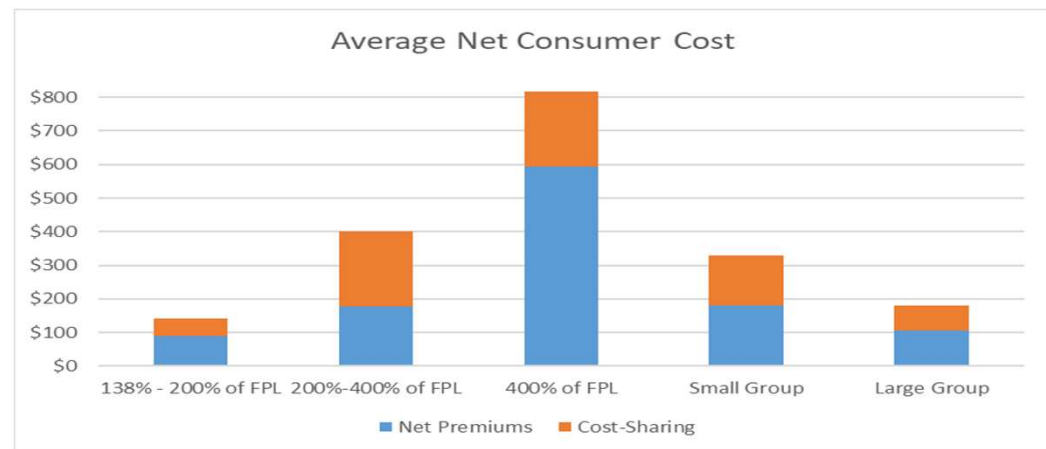
Consumer Understanding



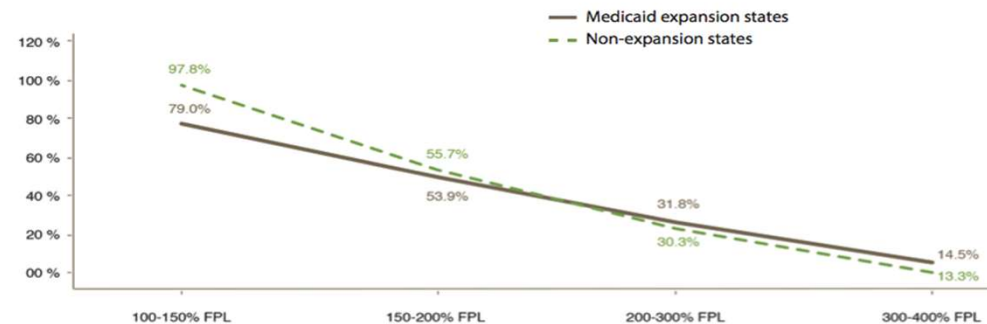
# Why More Flexibility?

- **ACA markets are not a universal solution**
- Brookings -20% of Americans benefitted financially  
<https://archive.triblive.com/opinion/featured-commentary/obamacares-wealth-redistribution/>
- October 2017 action reduced net premiums, primarily for 200-400% of FPL individuals
- Provide Consumers and States options rather than rigid mandates
- Better allocation of federal funds
- Policies: 1332 Changes, ICHRA
- Lower cost, non-ACA compliant products (e.g. “60% lower”)

<https://www.urban.org/sites/default/files/publication/72436/2000487-Variation-In-Marketplace-Enrollment-Rates-In-2015-By-State-And-Income.pdf>



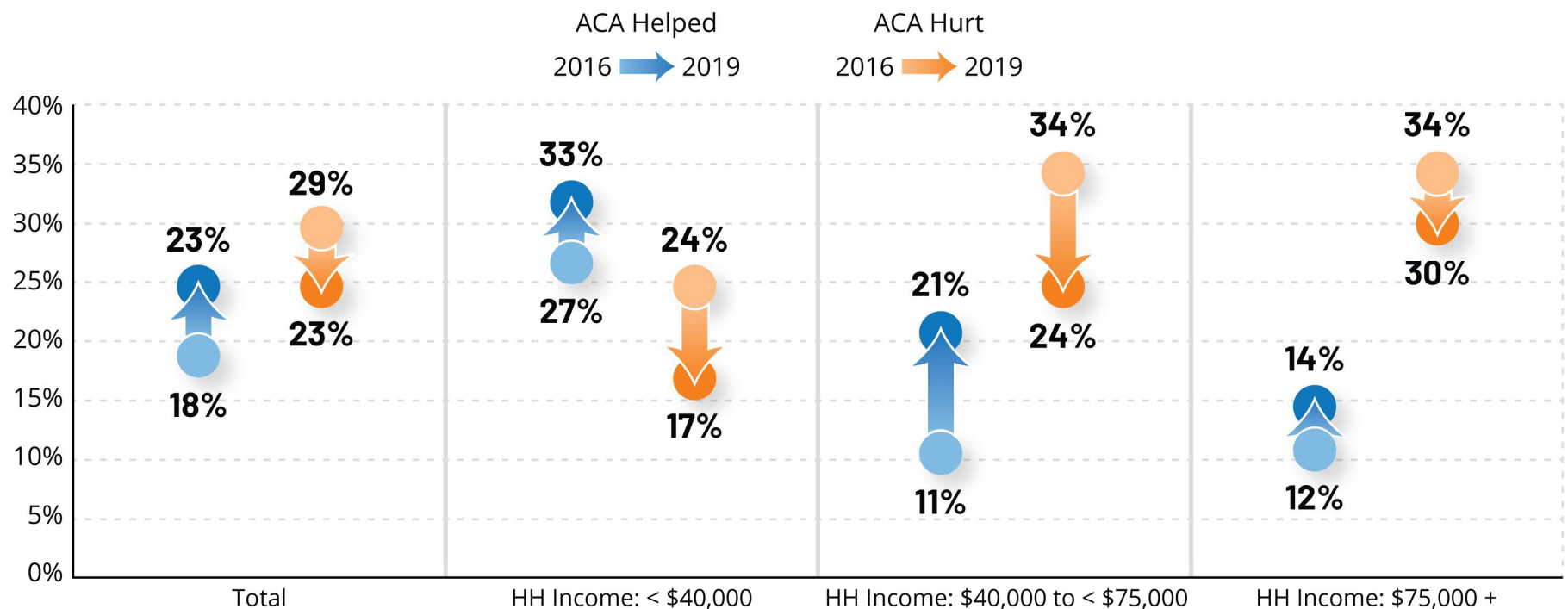
**Figure 3. Plan Selection Rates by Income Level and State Group**



Source: The Urban Institute. HIPSMA-ACS 2015, Plan Selection and Enrollment Counts from CMS. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/Items/2015-09-08.html>

# Impact of Flexibility and Reduced Premiums?

## Since 2016, More People Say the ACA Has Helped Them or Their Families, Fewer Say It Has Hurt



NOTE: "HH" = Household

SOURCE: KFF Health Tracking Polls, June 2016 and September 2019.

# Good News in 2021: ACA's "best year"

- **ACA subsidy dynamics / National Average**

- 10/12/17 CSR Action - Converted federal funds from 'claim reimbursement to insurers' to 'increased premiums subsidies' beginning in 2018; uneven state/market/timing response
- Subsidized (federal) exchange enrollees with access to <=\$10 net monthly premium

Metal Level	Net Premium	PY17	PY18	PY19	PY20	PY21
Bronze	<=\$10	54%	79%	78%	77%	76%
Silver	<=\$10	18%	23%	24%	19%	14%
Gold	<=\$10	0%	5%	8%	6%	9%

- As more states/insurers/consumers respond, when will Silver and Gold lines cross?
  - <https://www.linkedin.com/pulse/cheaper-dozen-12-years-affordable-care-act-greg-fann/>
- 3<sup>rd</sup> consecutive year of premium declines and more insurer participation  
[http://digitaleditions.walworthprintgroup.com/publication/?i=676515&article\\_id=3784550&view=articleBrowser&ver=html5](http://digitaleditions.walworthprintgroup.com/publication/?i=676515&article_id=3784550&view=articleBrowser&ver=html5)
- ACA on-exchange unsubsidized enrollment increased in 2020  
<https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Early-2020-2019-Effectuated-Enrollment-Report.pdf>



# State-level Data

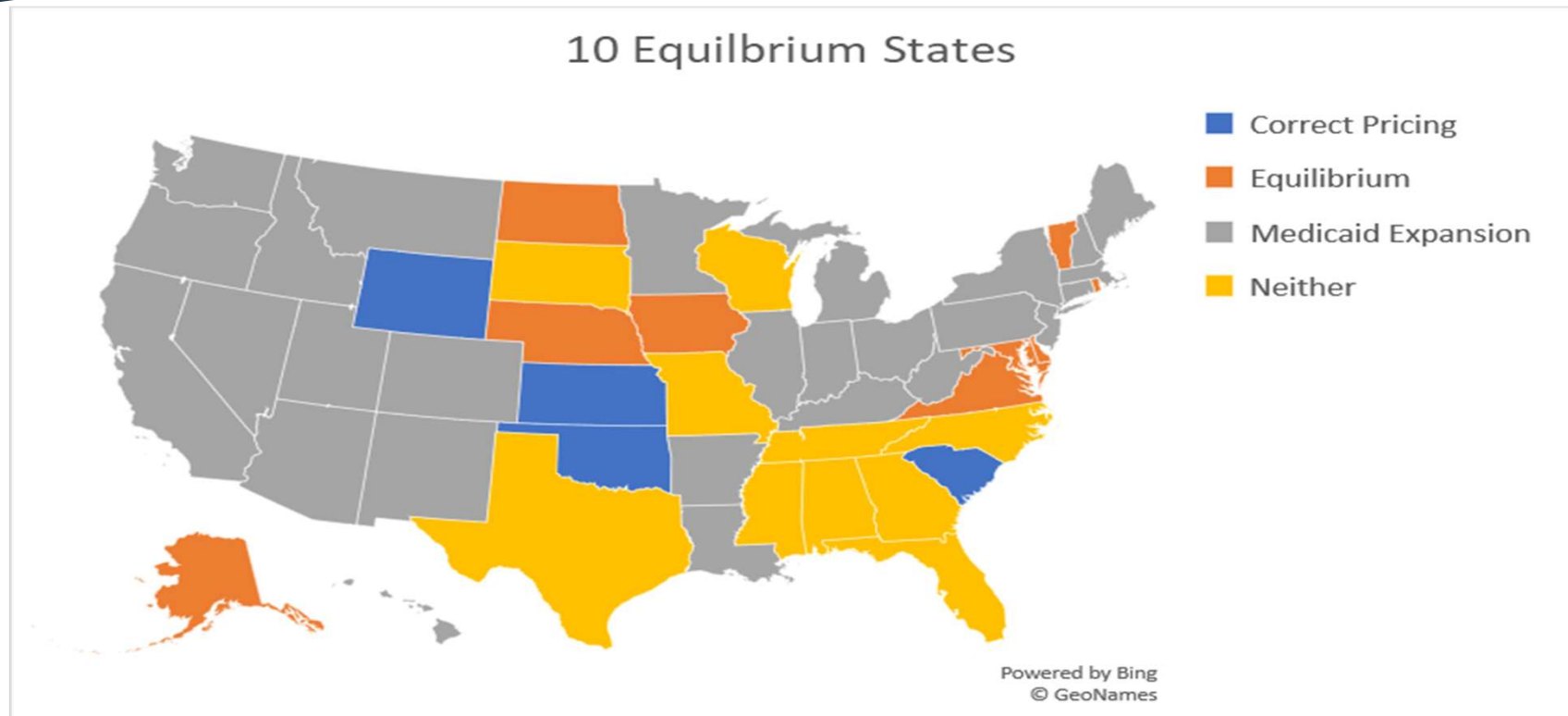
- As more states/insurers/consumers respond, when will Silver and Gold lines cross?

State	Metal Level	Net Premium	PY17	PY18	PY19	PY20	PY21
State #1	Bronze	<=\$10	63%	91%	88%	89%	86%
State #1	Silver	<=\$10	31%	29%	26%	24%	15%
State #1	Gold	<=\$10	0%	3%	2%	2%	1%
State #2	Bronze	<=\$10	59%	82%	84%	86%	84%
State #2	Silver	<=\$10	21%	24%	31%	21%	23%
State #2	Gold	<=\$10	0%	9%	11%	8%	28%
<b>Total</b>	<b>Bronze</b>	<b>&lt;=\$10</b>	<b>54%</b>	<b>79%</b>	<b>78%</b>	<b>77%</b>	<b>76%</b>
<b>Total</b>	<b>Silver</b>	<b>&lt;=\$10</b>	<b>18%</b>	<b>23%</b>	<b>24%</b>	<b>19%</b>	<b>14%</b>
<b>Total</b>	<b>Gold</b>	<b>&lt;=\$10</b>	<b>0%</b>	<b>5%</b>	<b>8%</b>	<b>6%</b>	<b>9%</b>

# If The ACA Is Left Alone...

- President Trump has been active on regulatory front
- Downstream stakeholders continue to implement new regulations:
  - Consumers
    - Smarter Benefit Choices
      - <https://www.latimes.com/business/la-fi-ask-emily-covered-california-20171026-story.html>
  - Employers – ICHRAs (primarily small employers)
    - <https://axenhp.com/health-reimbursement-arrangements-will-employers-fund-individual-market-coverage/>
  - States – Section 1332 Waivers (reallocate subsidies)
    - [https://axenhp.com/videos/?vimeography\\_gallery=2&vimeography\\_video=317306856](https://axenhp.com/videos/?vimeography_gallery=2&vimeography_video=317306856)
  - States – Focused Rate Review (aligns metal slopes)
    - [https://axenhp.com/videos/?vimeography\\_gallery=2&vimeography\\_video=317306856](https://axenhp.com/videos/?vimeography_gallery=2&vimeography_video=317306856)

# Progression on the ACA Makeover: the 2020 Map



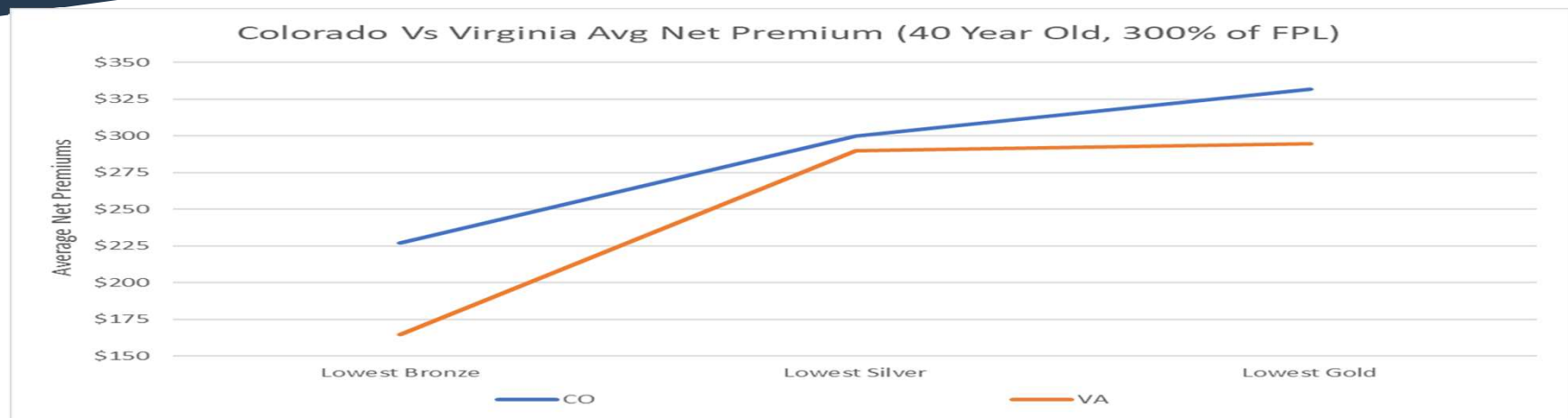
<https://www.linkedin.com/pulse/affordable-care-act-makeover-country-under-greg-fann/>

# State Specific Actions

## – Addressing Lionfish and Metalball

- **Rhode Island** - In 10/2017, two proposed plans were approved by the state insurance commissioner but not by the state exchange. “The exchange was concerned that the additional low-cost plans would have reduced the subsidies available to all exchange enrollees, making coverage less affordable if people chose plans other than the new low-cost options.” <https://axenehp.com/impressions-of-the-aca-10-years-30-voices/>
- **Virginia** – “The Bureau will only allow the use of the induced demand factors established by CMS and used in the Federal Risk Adjustment program.” <https://scc.virginia.gov/boi/co/health/check/SERFFInstr.pdf>
- **Pennsylvania** – “The induced demand factors which are used in calculating the normalized factors in Column L should be based on the HHS induced demand factors utilized in the risk transfer formula...”
  - <https://www.insurance.pa.gov/Companies/ProductAndRateRequire/Documents/2021%20ACA/2021%20ACA%20Compliant%20Health%20Insurance%20Rate%20Filing%20Guidance%2005.14.2020.pdf>
- **Colorado** – “*THE COMMISSIONER MAY ADOPT RULES DESIGNED TO:*
- *(II) ASSURE PREMIUM PRICING THAT COMPLIES WITH THE REQUIREMENTS IN THE FEDERAL ACT FOR MODIFIED COMMUNITY RATING.*” <https://www.linkedin.com/pulse/aca-directions-golden-colorado-silver-rocky-mountain-highway-fann>

# Will Colorado Look Like Virginia and its Neighbors?



Gold Enrollment	Colorado	Nebraska	Oklahoma	Wyoming
2017	6%	0%	2%	3%
2018	4%	4%	4%	46%
2019	5%	30%	17%	54%

<https://www.linkedin.com/pulse/aca-directions-golden-colorado-silver-rocky-mountain-highway-fann/>

# Non-State Actions Related to Metalball

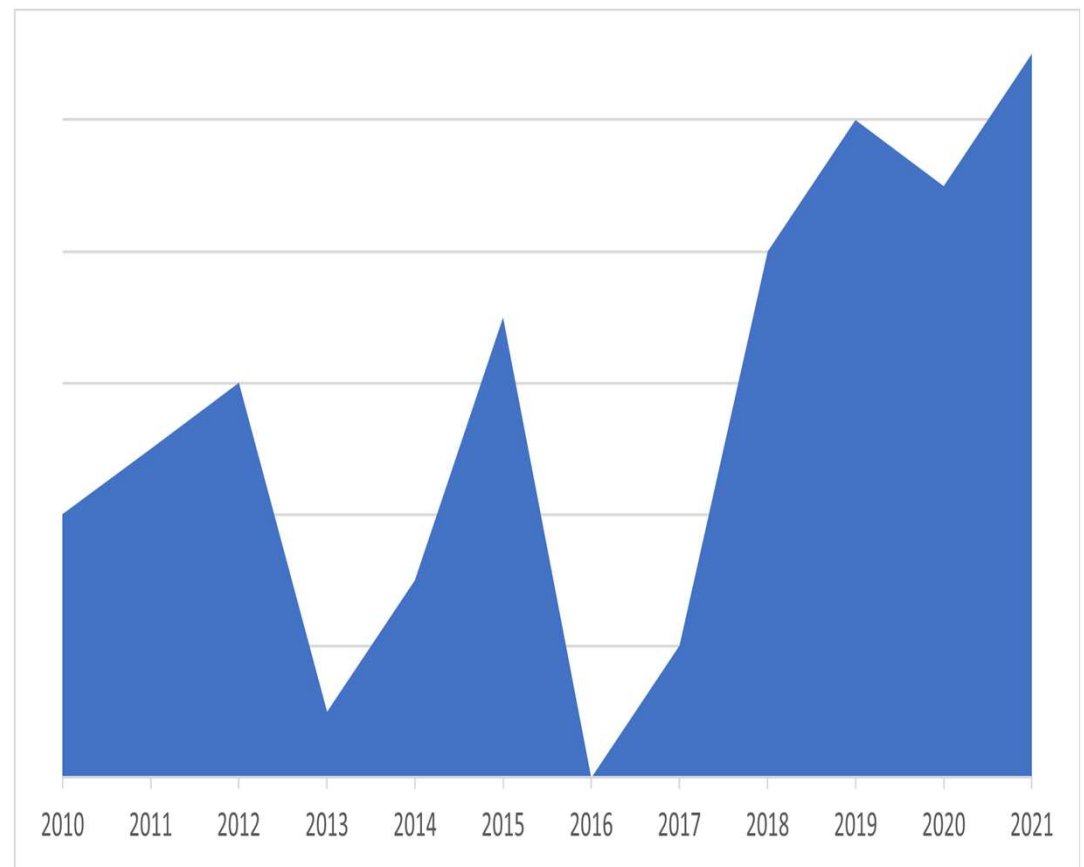
- CSR Litigation –
  - States: STATE OF CALIFORNIA, et al. v. DONALD J. TRUMP, et al.  
“the states complain that the federal government will be spending more money on health coverage for poor people.”  
<https://affordablecareactlitigation.files.wordpress.com/2018/10/76-main.pdf>
  - Insurers: Recent ruling a win for insurers, but beginning in 2018, damages are “by the amount of additional premium tax credit payments that each insurer received as a result of the government’s termination of cost-sharing reduction payments”.
    - Opens the door for litigation-funded forensic examination of insurer’s premium rates
    - <https://www.linkedin.com/pulse/collateral-damage-aca-makeover-auditing-csr-mitigation-greg-fann/>
- Presidential Executive Order – “It has been and will continue to be the policy of the United States to give Americans seeking healthcare more choice, lower costs, and better care and to ensure that Americans with pre-existing conditions can obtain the insurance of their choice at affordable rates.”
  - <https://www.whitehouse.gov/presidential-actions/executive-order-america-first-healthcare-plan/>
  - Could this increase enforcement of rating compliance?
  - <https://www.linkedin.com/pulse/repercussions-made-up-aca-words-silver-loading-protections-greg-fann>
  - Will Colorado legislation have an extrapolated impact?

<https://axenehp.com/metalball/>

# Presidential Inheritance: Market Status (2016 vs. 2020)

- 2016: “Obamacare Marketplaces Are in Trouble. What Can Be Done?”
  - <https://www.nytimes.com/2016/08/30/upshot/obamacare-marketplaces-are-in-trouble-what-can-be-done.html>
- 2020: “Obamacare Marketplaces Were in Trouble. What Did We Do?”
  - <https://axenehp.com/obamacare-marketplaces-trouble/>
- Measures:
  - Insurer Participation/Profitability
  - Consumer Popularity
  - Net Premium Levels
  - Options Available
  - “More helped, Fewer hurt”

<https://www.linkedin.com/pulse/cheaper-dozen-12-years-affordable-care-act-greg-fann/?published=t>



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POLITICS

## Trump Signs Executive Order To 'Ease The Burdens Of Obamacare'

January 20, 2017 · 7:28 PM ET



SCOTT HORSLEY



President Trump signs a confirmation for James Mattis to be defense secretary, Friday in the Oval Office.

Evan Vucci/AP



KVCN  
On Air Now

OPEN ^



Joe Biden ✓  
@JoeBiden

Beginning on January 20th, Vice President-elect Harris and I are going to do everything in our power to ease the burden of health care on you and your families.

12:52 PM · 11/10/20 · [TweetDeck](#)



Tweet



Joe Biden ✓  
@JoeBiden



We are going to build a health care system that puts you and your family first — and that every American can be proud of.

6:01 PM · 11/10/20 · [TweetDeck](#)

6,913 Retweets 1,181 Quote Tweets 98.1K Likes

Sprint Wi-Fi

7:00 PM



Tweet



Joe Biden ✓  
@JoeBiden



Come January, we will work quickly with Congress to dramatically ramp up health care protections, get America to universal coverage, and lower health care costs.

2:05 PM · 11/10/20 · [TweetDeck](#)



# Joe Biden's Health Care Plan

ACA Subsidy Boost, remove 400% cliff

Tax Increase (purportedly includes mandate penalty reinstatement, reversal of TJCA)

\$750-\$850B over ten years

Calibrate on “more generous” Gold rather than Silver

“Public Option”

Medicare Eligibility at Age 60

## **Criticisms**

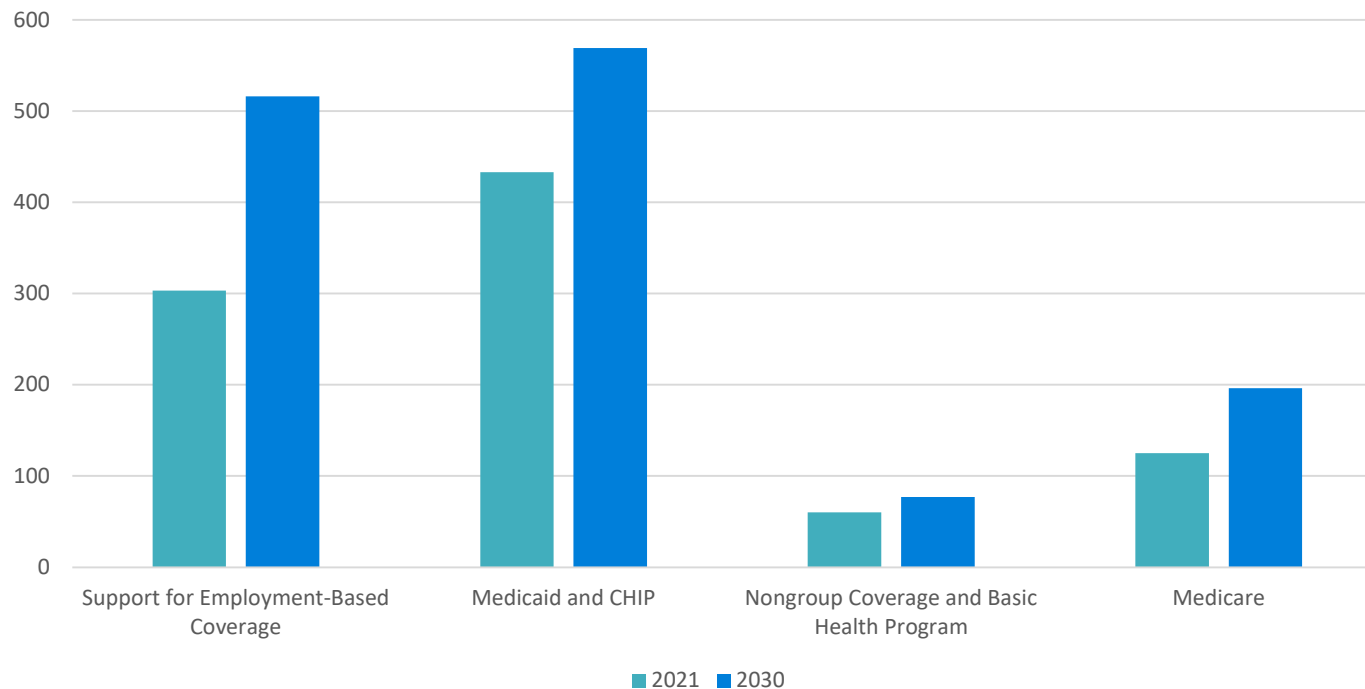
From Left: ‘More of the same’ private market, not ‘universal coverage’

From Right: Throwing more money to “prop up” a failed system



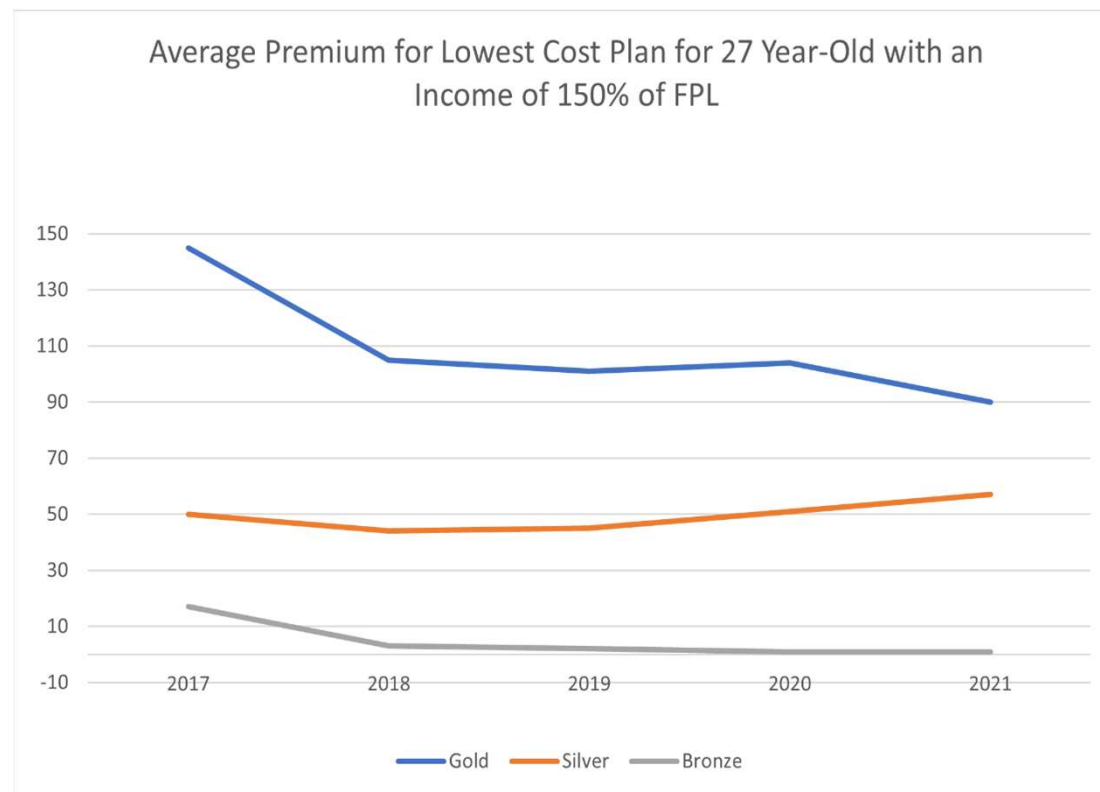
# Biden's plan would more than double ACA individual market spending

Annual Federal Health Insurance Subsidies to Under 65 Population  
(Billions of Dollars)



# Is Gold more “generous” than Silver?

*“Biden will increase the size of tax credits by calculating them based on the cost of a more generous gold plan, rather than a silver plan.”*



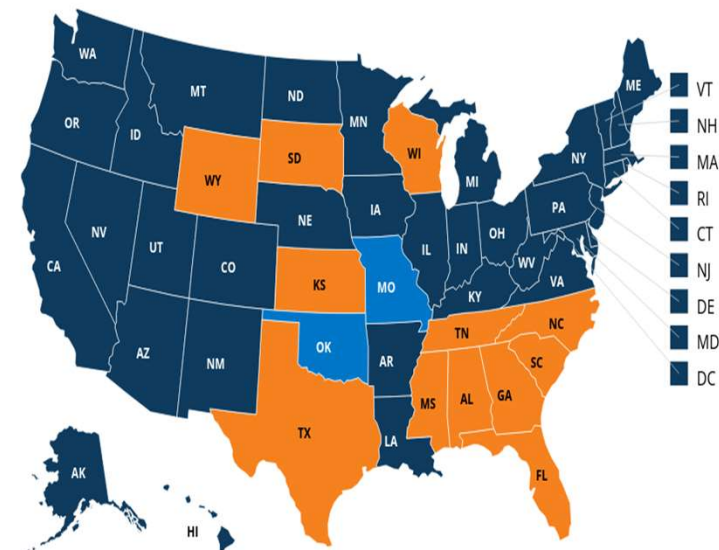
# Public Option – Part I of II

- **Three Varieties**
  - Lionfish - <https://axenehp.com/lionfish-aca-markets/>
  - Platinum - <https://axenehp.com/platinum-public-option/>
  - Poaching - <https://joebiden.com/healthcare/>
- **Directional shift to government-centric system**
- **Less direct attention to solving a serious problem**
  - “Congress should continue its work to ensure all Americans have access to affordable health coverage by adding a public option to the exchange marketplace in counties lacking competition”. –President Obama in 2016
  - “If your insurance company isn’t doing right by you, you should have another, better choice.” –Biden’s campaign website



A map of the United States with the acronym "SEAC" in large blue letters. The southeastern states (Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Louisiana, and Arkansas) are highlighted in red, indicating the region covered by SEAC.

- ### Status of State Action on the Medicaid Expansion Decision



■ Adopted and Implemented   ■ Adopted but Not Implemented   ■ Not Adopted

SOURCE: Kaiser Family Foundation, [kff.org](http://kff.org)

# Medicare Eligibility at Age 60

- Age Curves are Self-Fulfilling
- ACA age curve is 3:1, but subsidy eligible is <1:1 at similar income levels
  - <https://theactuarymagazine.org/putting-the-aca-back-together-again/>
- Enrollment is broad mix of older enrollees, unhealthy mix of younger enrollees
- Example: Lose half of older enrollees, average premium drop 12%, but age-based premiums rise 2%

Enrollment	Healthy	Unhealthy	Total
Young	0	10	10
Old	10	10	20
Old/Young			2.00
Claims PMPM	Healthy	Unhealthy	Total
Young	100	1000	1000
Old	500	5000	2750
Old/Young	5.0	5.0	2.8
Premium PMPM	Healthy	Unhealthy	
Young	1146	1146	
Old	3438	3438	

Enrollment	Healthy	Unhealthy	Total
Young	0	10	10
Old	5	5	10
Old/Young			1.00
Claims PMPM	Healthy	Unhealthy	Total
Young	100	1000	1000
Old	500	5000	2750
Old/Young	5.0	5.0	2.8
Premium PMPM	Healthy	Unhealthy	
Young	1172	1172	
Old	3516	3516	

<https://axenehp.com/another-aca-paradox-lowering-average-age-increases-consumer-premiums/>

# Summary

- **ACA markets are stronger than ever and will continue to strengthen if uninterrupted**
- **Disruptive changes without actuarial understanding could create unintended consequences**
- **President Trump's first term was light on ACA legislation but very heavy on regulation**
- **Stakeholders have been slow to respond, majority of impact yet to be realized if market is legislatively undisturbed**
- **Joe Biden likely to be more activist**
  - **Promote legislation for more funding; available w/o structural changes through reconciliation (50 Senate votes)**
  - **Government-centric options not necessarily targeting a population for a specific solution (exception is Medicaid coverage gap)**
  - **Subsidy changes/unintended consequences**



## Questions/Discussion

