

The Affordable Care Act and Childhood Asthma

**An Opportunity to Help Millions
of Children Breathe Easier**

***Webinar sponsored by the Childhood
Asthma Leadership Coalition
September 13, 2012***

School of Public Health
& Health Services

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Overview

- ▶ Introduction
- ▶ Overview of Childhood Asthma Leadership Coalition
 - Katie Horton, JD, MPH, RN
- ▶ Part I: The Affordable Care Act and the Supreme Court's Decision
 - Sara Rosenbaum, JD
- ▶ Part II: ACA Implementation Update: Opportunities for the Childhood Asthma Community
 - Mary-Beth Harty, JD, MPH

Overview: Childhood Asthma Leadership Coalition

- ▶ New coalition of advocates and experts dedicated to raising awareness and advancing public policies to improve the health of children who suffer from asthma
- ▶ **Members:** cross-section of experts from range of fields including: housing, environmental health, health care delivery, health economics and public policy
- ▶ **Partners:**
 - ▶ *Merck Childhood Asthma Network, Inc. (MCAN)*
 - ▶ *George Washington University School of Public Health and Health Services*
 - ▶ *First Focus*

Part I: The ACA and the Supreme Court's Decision

NFIB v Sebelius: Implications for Implementation of the Affordable Care Act

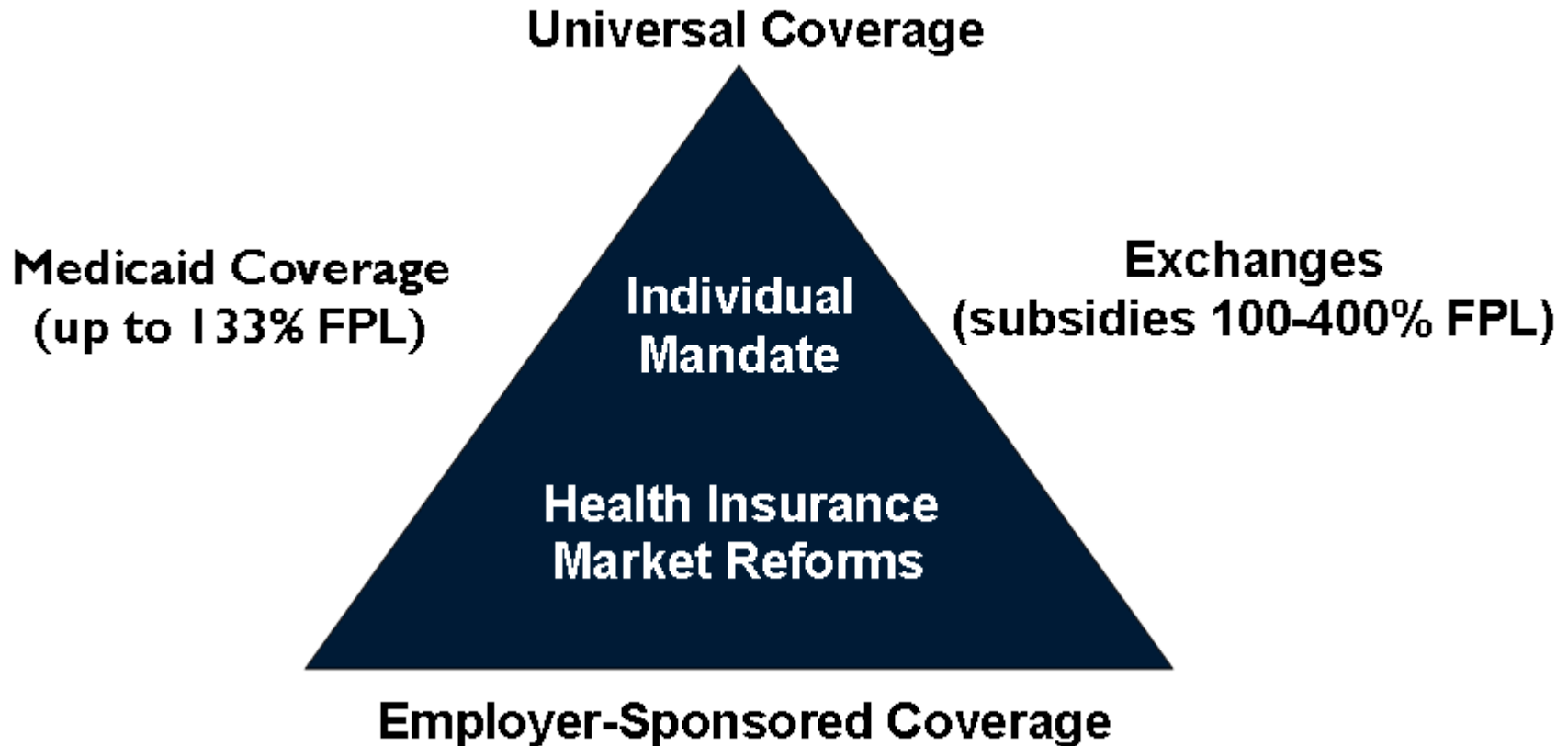
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The ACA and the Supreme Court's Decision

ACA Coverage Decisions



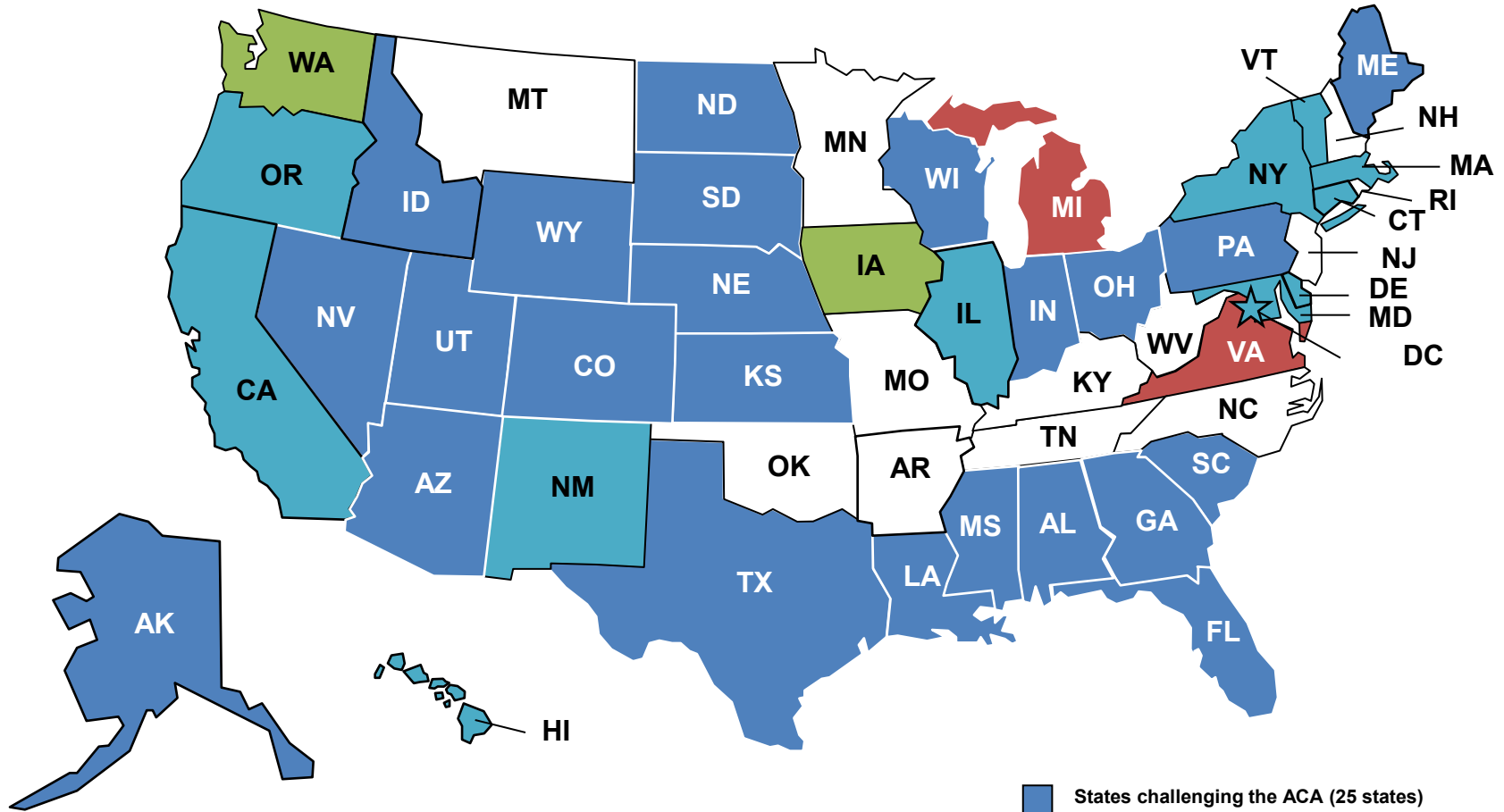
Note: In 2012, for a family of 4, 133% FPL is \$30,657 and 400% FPL is \$92,200. Source: Kaiser Family Foundation

ACA Litigation by the Numbers

- ▶ 27 Federal district court cases
- ▶ 11 Federal circuit court of appeal cases
- ▶ 1 Federal circuit court holding Medicaid expansion constitutional
- ▶ 0 Federal circuit courts holding Medicaid expansion unconstitutional
- ▶ 1 Federal circuit courts holding minimum coverage requirement unconstitutional
- ▶ 2 Federal circuit courts holding minimum coverage requirement unconstitutional
- ▶ 90 *Amicus* briefs supporting constitutionality of the Medicaid expansion

Source: NHeLP

States' Positions in the ACA Supreme Court Case



Notes: VA filed its own lawsuit separately and was not a party in the case accepted by the Supreme Court. All states that challenged the ACA contested the constitutionality of the individual mandate; all state challengers except VA also contested the constitutionality of the Medicaid expansion. All states supporting the ACA backed the constitutionality of both the individual mandate and the Medicaid expansion, except that DC only joined a brief supporting the individual mandate. **Source Kaiser Family Foundation**

- States challenging the ACA (25 states)
- States both challenging and supporting the ACA (2 states)
- States supporting the ACA (11 states and DC)
- States not taking a position in the litigation (12 states)

Questions Before the Court

- 1. Do courts have jurisdiction to decide the constitutionality of the ACA's individual mandate provision now?**
- 2. If so, is the ACA's individual mandate provision constitutional?**
- 3. If unconstitutional, is the individual mandate provision severable?**
- 4. Is the ACA's Medicaid expansion constitutional?**

The Personal Responsibility Requirement (aka the Individual Mandate)

- ▶ 5-4 ruling that the Commerce Clause does not permit Congress to require individuals to purchase affordable health insurance in the commercial market. (CJ Roberts and the four dissenters)
 - ▶ Even when it is economic in nature and has significant consequences for others, inactivity in the marketplace cannot be regulated by Congress.
 - ▶ The power to *regulate* behavior lies with the states under their 10th Amendment powers.
- ▶ But Congress *can* influence behavior through the Tax Code. (CJ Roberts and the liberal wing). The personal responsibility requirement is an economic incentive, structured as a tax.

The Medicaid Expansion

- ▶ 7-2 holding that the Medicaid expansion amounts to an unconstitutional coercion, but 5-4 decision to preserve the funding and to instead simply limit the enforcement remedies.
 - ▶ **CJ Roberts, Breyer and Kagan:** the expansion is unconstitutional because of (1) Medicaid's vast size; (2) an amendment (the 2014 eligibility amendment) that amounts to a "new program"; and (3) states given no reasonable notice that the program would change. The proper remedy (CJ Roberts, Breyer, Kagan, Ginsburg, and Sotomayor) is to bar the Secretary from using her full enforcement powers ("a gun to the head"; an "economic dragooning") to condition federal financial participation in the existing program on agreement to the expansion
 - ▶ **The dissent:** the expansion is unconstitutional *because of Medicaid's sheer size*. The proper remedy is to simply strike down the expansion.

The Constitutional Aftermath

- ▶ Distinguishing between federal and state powers:
 - ▶ What is the long-term future for Congress's power to define a problem as national and enact a regulatory remedy? Does this have any meaning for the power to regulate industries, or are the circumstances of this case unique?
 - ▶ Does the taxing power holding suggest a new direction for Congress in inducing behavior? (Incenting broccoli)

The Medicaid Aftermath

- ▶ The decision's meaning for implementation of the 2014 ACA Medicaid eligibility expansion
 - ▶ States can refuse the expansion without consequences to the rest of their programs, but can the Secretary allow them to partially implement it? (e.g., only up to 100 percent FPL)?
- ▶ The decision's meaning for other ACA Medicaid provisions (e.g., MOE, foster children, simplification and streamlining provisions)
- ▶ The decision's long-term meaning for the enforceability of existing Medicaid provisions
- ▶ As of mid-August, no official HHS guidance on the decision's reach or consequences, other than state flexibility to implement later and drop the expansion at a future date

The State Context

- ▶ Will states be persuaded to implement the expansion? Does a partial implementation option make implementation more likely?
- ▶ How will simplification and MOE proceed in the states?
- ▶ How many states will opt to directly administer their own exchanges rather than to rely on the federal government?
- ▶ Regardless of whether exchanges are federally or state administered, how will Medicaid alignment proceed (e.g., integrated system versus parallel universes).

Part II: ACA Implementation Update

Opportunities for the Childhood Asthma Community

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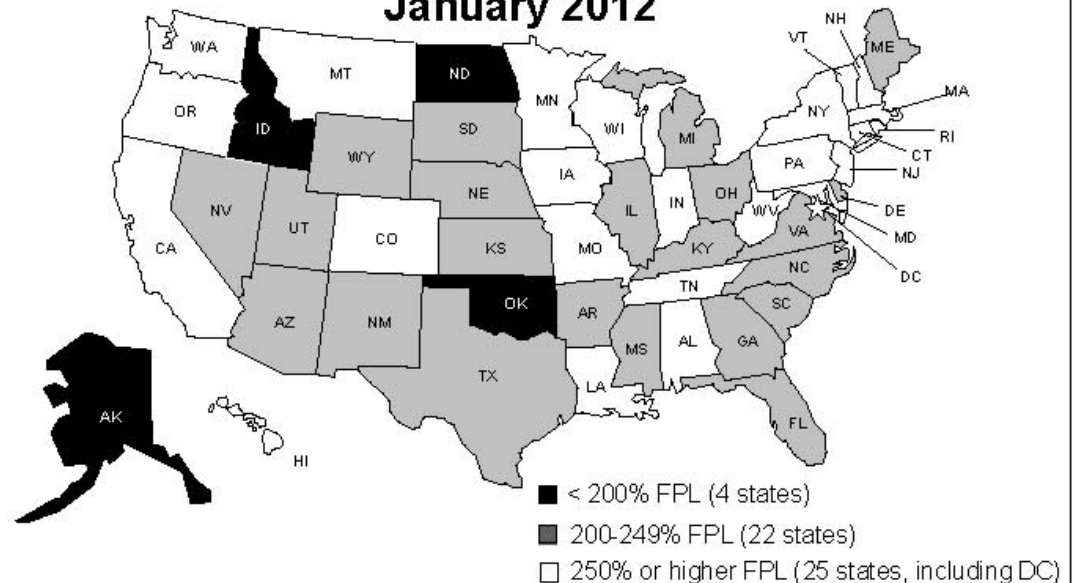
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Coverage is Critical for Children with Asthma

- ▶ **Medicaid & CHIP cover nearly 31 million children**
 - ▶ Most states cover children up to 250% FPL (\$57K for family of 4 in 2012)
 - ▶ All but 4 states cover children with family income up to 200% FPL (\$46K for family of 4 in 2012)
- ▶ 8 million children uninsured today...5 million are eligible for Medicaid or CHIP, but not enrolled

Figure 2
Children's Eligibility for Medicaid/CHIP by Income, January 2012



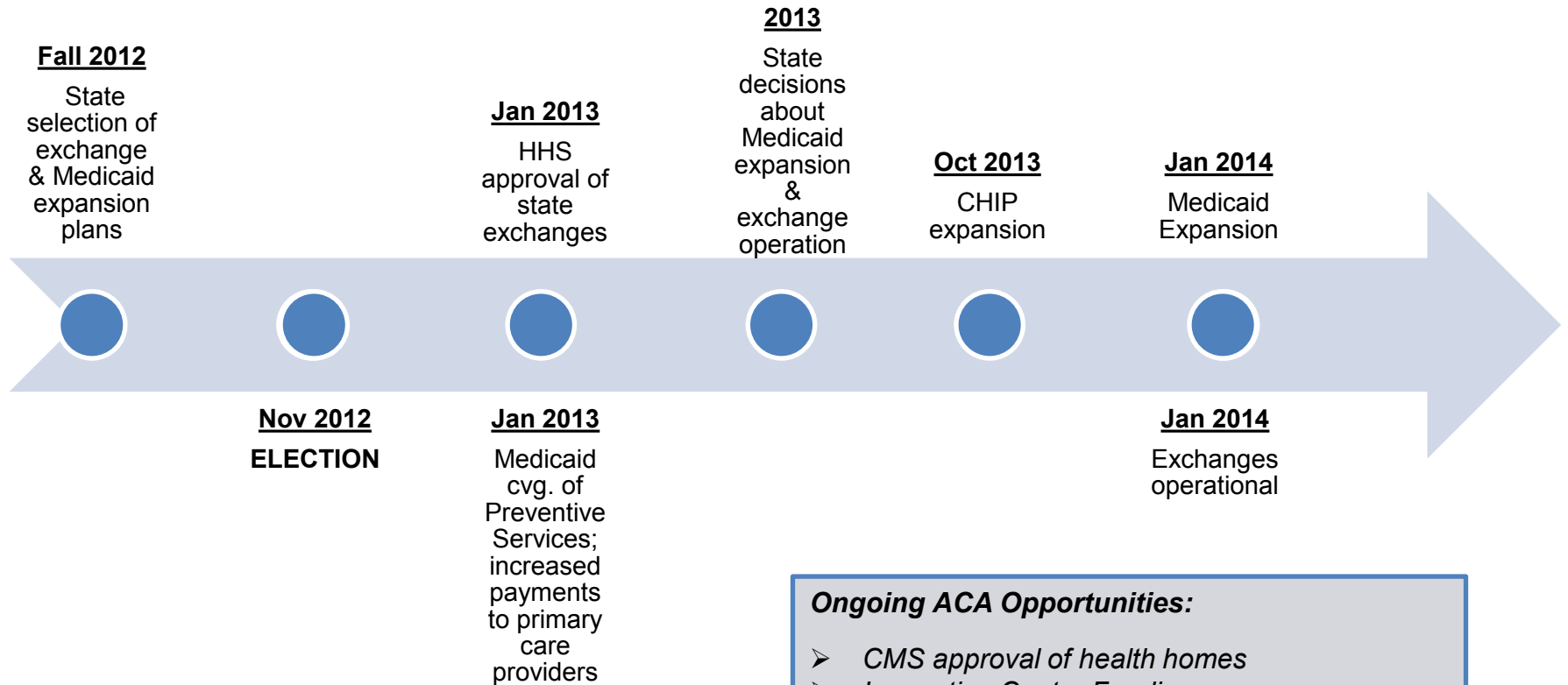
NOTES: The federal poverty level is \$23,050 per year for a family of four in 2012. IL uses state funds to cover children up to 300% FPL. OK has a premium assistance program for select children up to 200% FPL. AZ's CHIP program is currently closed to new enrollment.

SOURCE: Based on the results of a national survey conducted by the Kaiser Commission on Medicaid and the Uninsured and the Georgetown University Center for Children and Families, 2011.

CHIP: Impact of Health Reform on Children's Coverage

- ▶ ACA includes provisions to further expand and strengthen children's coverage:
 - ▶ CHIP extension through FY 2015
 - ▶ Maintenance of effort requirements through FY 2019
 - ▶ 23% increase in CHIP match rate 2016 through 2019...bringing CHIP match rate to *at least* 88% in every state (assuming CHIP reauthorized)
 - ▶ Streamlined enrollment procedures
 - ▶ Medicaid expansion to parents
- ▶ Full ACA implementation expected to reduce uninsured children by almost half (to 4.2 million uninsured)

ACA Implementation Timeline: 2013-2014



Ongoing ACA Opportunities:

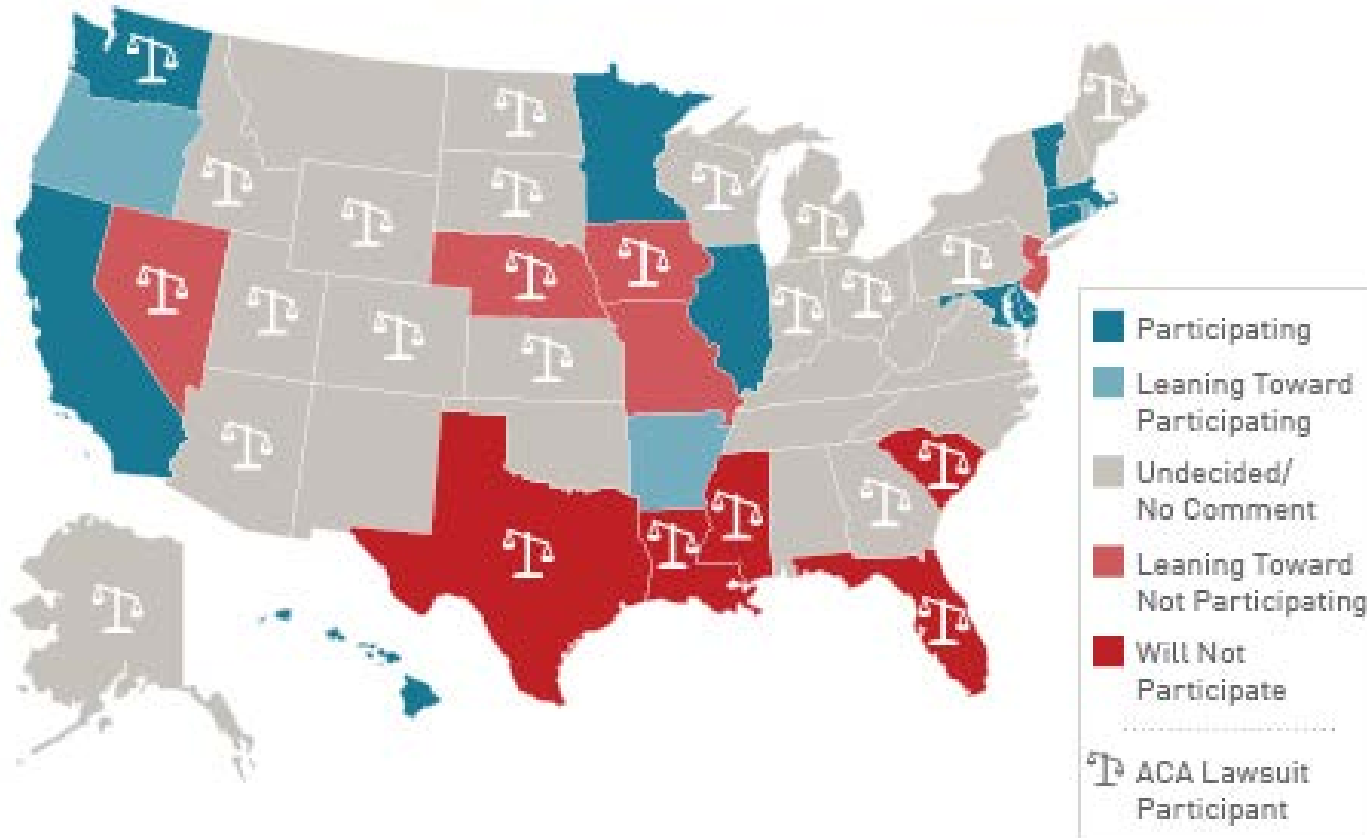
- *CMS approval of health homes*
- *Innovation Center Funding*
- *Prevention and Public Health Fund Programs*

Health Reform Implementation: Questions for the Asthma Community

- ▶ Starting January 1, 2014, states can elect to expand Medicaid up to 133% FPL
 - ▶ *Has your state determined whether it will take advantage of the new Medicaid expansion?*
 - ▶ *If not, consider advocacy efforts to secure this important source of coverage for families.*

Where the States Stand

What are States Saying about ACA Medicaid Expansion?



Note: Based on literature review as of 7/10/12. All policies possible to change without notice.

Source: American Health Line, <http://aMalerts.com/2012/07/03/medicaid-where-each-state-stands-on-the-medicoid-expansion/>, accessed July 10, 2012.

Health Reform Implementation: Questions for the Asthma Community

- ▶ States must select a benchmark plan on which to base exchange and Medicaid expansion coverage
 - ▶ *Will your state's benchmark plan adequately cover asthma services for kids?*
 - ▶ *States selecting benchmark plans NOW! Check with your state office responsible for this important decision.*
- ▶ States must set up streamlined enrollment between Exchanges, Medicaid & CHIP
 - ▶ *Has your state defined streamlined, coordinated and family-friendly enrollment procedures?*

Health Reform Implementation: Questions for the Asthma Community

- ▶ States have the option to enroll Medicaid beneficiaries with chronic conditions into a “health home”
 - ▶ *Has your state considered health home options for children with asthma?*
 - ▶ *If yes, do care coordination, care management and other health home services meet evidence-based standards?*
- ▶ States must establish a Navigator program to assist consumers in making choices about their health care options
 - ▶ *What entities are likely to become Navigators in your state?*
 - ▶ *Will these Navigators provide sufficient information to children with asthma and their families?*

Health Reform Implementation: Questions for the Asthma Community

- ▶ Additional Community Transformation Grants (CTG) and other Prevention and Public Health Funding opportunities will be announced in 2013
 - ▶ *Are you or other asthma stakeholders in your state applying for CTG funding? How can childhood asthma benefit from these funding opportunities?*
- ▶ New payment and service delivery models for asthma are well-suited for testing under the Innovation Center initiatives
 - ▶ *Have entities in your state received funding from the Health Care Innovations Awards? Has your state received grants through Medicaid Incentives Program for the Prevention of Chronic Diseases?*
 - ▶ *How can childhood asthma become part of these funding opportunities?*

Takeaways

- ▶ *Develop relationships with state Medicaid Office & state Office of Health Reform*
- ▶ *Pursue appointments to health reform advisory committees and exchange boards in your state*
- ▶ *Closely monitor and influence decisions on Medicaid benchmark plans and essential health benefits*
- ▶ *Engage with HHS and state regulatory bodies by commenting on draft rules and regulations (or by partnering with others who are commenting)*
- ▶ *Monitor implementation of reforms effective now: keep up-to-date on HHS guidance and approvals and hold states accountable*

Takeaways

- ▶ *Educate consumers about the ACA and ensure that your state begins work on an outreach plan for consumers about coverage options*
- ▶ *Advocate for CHIP reauthorization*
- ▶ *Learn from advocates in other states; identify best practices*
- ▶ *Collect stories, document ongoing challenges, share those challenges with policymakers*
- ▶ *Inform implementation through ongoing research; educate HHS and state decision-makers about how this research should inform implementation*
- ▶ ***Stay connected to the Childhood Asthma Leadership Coalition – look for updates, information and additional webinars***

For More Information

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