

Draft date: 3/7/24

*2024 Spring National Meeting  
Phoenix, Arizona*

**NAIC/CONSUMER LIAISON COMMITTEE**

Friday, March 15, 2024

12:00 – 2:00 p.m.

Phoenix Convention Center—301 B-D West—Level 3

**ROLL CALL**

Grace Arnold, Chair	Minnesota	Chlora Lindley-Myers	Missouri
D.J. Bettencourt, Vice Chair	New Hampshire	Eric Dunning	Nebraska
Mark Fowler	Alabama	Scott Kipper	Nevada
Lori K. Wing-Heier	Alaska	Justin Zimmerman	New Jersey
Peni Itula Sapini Teo	American Samoa	Alice T. Kane	New Mexico
Alan McClain	Arkansas	Adrienne A. Harris	New York
Ricardo Lara	California	Mike Causey	North Carolina
Michael Conway	Colorado	Jon Godfread	North Dakota
Andrew N. Mais	Connecticut	Judith L. French	Ohio
Trinidad Navarro	Delaware	Glen Mulready	Oklahoma
Karima M. Woods	District of Columbia	Andrew R. Stolfi	Oregon
Dean L. Cameron	Idaho	Michael Humphreys	Pennsylvania
Dana Popish Severinghaus	Illinois	Alexander S. Adams	
Doug Ommen	Iowa	Vega	Puerto Rico
Vicki Schmidt	Kansas	Cassie Brown	Texas
Timothy J. Temple	Louisiana	Jon Pike	Utah
Kathleen A. Birrane	Maryland	Scott A. White	Virginia
Anita G. Fox	Michigan	Mike Kreidler	Washington
Mike Chaney	Mississippi	Alan L. McVey	West Virginia
		Nathan Houdek	Wisconsin

NAIC Support Staff: Lois Alexander

**2024 NAIC Consumer Liaison Representatives**

Amy Bach—*United Policyholders (UP)*

Kellan Baker—*Whitman-Walker Institute*

Stephani R. Becker—*Shriver Center on Policy Law*

Ashley Blackburn—*Health Care For All (HCFA)*

Brendan M. Bridgeland—*Center for Insurance Research (CIR)*

Jaclyn de Medicci Bruneau—*Ceres Accelerator For Sustainable Capital Markets*

Bonnie Burns—*California Health Advocates*

Jalisa Clark—*Georgetown University Center on Health Insurance Reforms*

Laura Colbert—*Georgians for a Healthy Future*

Symone N. Crawford—*Massachusetts Affordable Housing Alliance (MAHA)*

Brenda J. Cude—*Consumer Advocate*

Lucy Culp—*The Leukemia & Lymphoma Society (LLS)*

Deborah Darcy—*American Kidney Fund (AKF)*

Michael DeLong—*Consumer Federation of America (CFA)*  
 Shamus Duroc—*Rhode Island Parent Information Network (RIPIN)*  
 Eric Ellsworth—*Consumers’ Checkbook/Center for the Study of Services*  
 Erica L. Eversman—*Automotive Education and Policy Institute (AEPI)*  
 Carly Fabian—*Public Citizen*  
 Joseph Feldman—*Consumer Advocate*  
 Adam Fox—*Colorado Consumer Health Initiative*  
 Stephanie E. Hengst—*The AIDS Institute*  
 Marguerite Herman—*Consumer Advocate*  
 Claire Heyison—*Center on Budget and Policy Priorities (CBPP)*  
 Kara Hinkley—*The Amyotrophic Lateral Sclerosis (ALS) Association*  
 Anna Schwamlein Howard—*American Cancer Society Center Action Network (ASC CAN)*  
 Anna Hyde—*Arthritis Foundation*  
 Janay Johnson—*American Heart Association*  
 Amy Killelea—*Consumer Advocate*  
 Karrol Kitt—*Consumer Advocate*  
 Kenneth S. Klein—*Consumer Advocate*

Peter R. Kochenburger—*Consumer Advocate*  
 Dorianne Mason—*National Women’s Law Center (NWLC)*  
 Erin L. Miller—*Community Catalyst*  
 Carl Schmid—*HIV+Hepatitis Policy Institute*  
 Jennifer Snow—*National Alliance on Mental Illness (NAMI)*  
 Deborah Steinberg—*Legal Action Center*  
 Christa Stevens—*Autism Speaks*  
 Harold “Harry” M. Ting—*Health Consumer Advocate*  
 Wayne Turner—*National Health Law Program (NHeLP)*  
 Brent J. Walker—*Coalition Against Insurance Fraud (CAIF)*  
 Richard Weber—*Life Insurance Consumer Advocacy Center (LICAC)*  
 Caitlin Westerson—*United States of Care (USofCare)*  
 Jackson Williams—*Dialysis Patient Citizens (DPC)*  
 Silvia Yee—*Disability Rights Education and Defense Fund (DREDF)*

## AGENDA

1. Consider Adoption of its 2023 Fall National Meeting Minutes Attachment One  
 —*Commissioner Grace Arnold (MN)*
2. Receive a Report on the Consumer Participation Board of Trustees Meeting—*Commissioner Grace Arnold (MN)*
3. Hear a Presentation from the Consumer Federation of America (CFA) entitled Exposed: A Report on Uninsured American Homes—*Michael DeLong (CFA)*
4. Hear a Presentation from the Automotive Education and Policy Institute (AEPI) on How Insurers Exploit Consumer Protection Acts to Harm Consumers—*Erica L. Eversman (AEPI)*
5. Hear a Presentation from United Policyholders (UP) on Providing Consumers with Updated Tips on Buying Property Insurance —*Amy Bach (UP)*

6. Hear a Presentation from the National Health Law Program (NHLP), HIV+Hepatitis Policy Institute, Whitman-Walker Institute, and National Women’s Law Center (NWLC) on What the New Section 1557 Means for Health Insurance Non-Discrimination Protections and Considerations for Regulators—*Wayne Turner (NHLP), Carl Schmid (HIV+Hepatitis Institute), Kellan Baker (Whitman-Walker), and Dorianne Mason (NWLC)*
7. Hear a Presentation from Consumers’ Checkbook, United States of Care (USofCare), and a Health Consumer Advocate on Federal Centers for Medicare & Medicaid Services (CMS) Interoperability and Prior Authorization Rule and Federal Updates—*Eric Ellsworth (Consumers’ Checkbook), Harry Ting (Health Consumer Advocate), and Caitlin Westerson (USofCare)*
8. Discuss Any Other Matters Brought Before the Liaison Committee  
—*Commissioner Grace Arnold (MN)*
9. Adjournment

## Draft Pending Adoption

Draft: 12/18/23 rev

NAIC/Consumer Liaison Committee  
Orlando, Florida  
November 30, 2023

The NAIC/Consumer Liaison Committee met in Orlando, FL, Nov. 30, 2023. The following Liaison Committee members participated: Andrew R. Stolfi, Chair (OR); Grace Arnold, Vice Chair (MN); Mark Fowler (AL); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway (CO); Andrew N. Mais represented by Kurt Swan (CT); Karima M. Woods represented by Howard Liebers and Sharon Shipp (DC); Trinidad Navarro represented by Christina C. Miller (DE); Doug Ommen represented by Mathew Cunningham (IA); Dean L. Cameron represented by Shannon Hohl (ID); Dana Popish Severinghaus (IL); Vicki Schmidt (KS); James J. Donelon represented by Ron Henderson (LA); Kathleen A. Birrane represented by Nour Benchaaboun and Jamie Sexton (MD); Anita G. Fox represented by Renee Campbell (MI); Chlora Lindley-Myers represented by Carrie Couch (MO); Mike Chaney (MS); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by Jacob Just (ND); Eric Dunning represented by Martin Swanson (NE); D.J. Bettencourt (NH); Michael Humphreys (PA); Judith L. French represented by Jana Jarrett (OH); Cassie Brown (TX); Jon Pike represented by Tanji Northrup (UT); Scott A. White (VA); Mike Kreidler (WA); Nathan Houdek represented by Sarah Smith (WI); Allan L. McVey represented by Erin K. Hunter (WV). Also participating were Larry Chapman (AL); Sonya Sellmeyer (IA); KC Stralka and Joanna Coll (IL); LeAnn Crow and Barb Rankin (KS); Ron Kreiter (KY); Adam Patrick (LA); Gary D. Anderson (MA); Paige Duhamel (NM); T.J. Patton (MN); Ryan Blakeney (MS); Carter Lawrence (TN); Richard Tozer, Julie Fairbanks, Julie Blauvelt, and Rebecca Nichols (VA).

### 1. Observed the Presentation of Bonnie Burns Excellence in Consumer Advocacy Award

Wayne Turner (National Health Law Program—NHeLP) and Bonnie Burns (Consultant to Consumer Groups) presented Commissioner Stolfi with the Bonnie Burns Excellence in Consumer Advocacy Award. The NAIC Consumer Representatives present this award to a state insurance regulator who they believe has best represented and advanced the interests of consumers at the NAIC.

### 2. Adopted its Summer National Meeting Minutes

Commissioner Conway made a motion, seconded by Director Fox, to adopt the Committee's Aug. 12 (*see NAIC Proceedings – Summer 2023, NAIC/Consumer Liaison Committee*) minutes with one sentence revised as noted by Commissioner Lara (Attachment One). The motion passed unanimously.

### 3. Received a Summary of the Consumer Board of Trustees Meeting

Commissioner Stolfi said the Consumer Board of Trustees met Nov. 30 to appoint the 2024 consumer representatives and the consumer representatives who will serve on the Consumer Board of Trustees in 2024. Commissioner Stolfi recognized the following nine NAIC consumer representatives for having served in this capacity for more than 10 years: Amy Bach (United Policyholders), Birny Birnbaum (Center for Economic Justice—CEJ), Brendan Bridgeland (Center for Insurance Research—CIR), Burns, Brenda J. Cude (University of Georgia), Marguerite Herman (Healthy Wyoming), Karrol Kitt (University of Texas at Austin), Peter Kochenburger (Southern University Law School), and Jackson Williams (Dialysis Patient Citizens—DPC).

Commissioner Stolfi recognized the following consumer representatives who are attending their last NAIC national meeting as an NAIC consumer representative: David Arkush (Public Citizen's Climate Program), Birnbaum, Tasha Carter (Florida Office of the Insurance Consumer Advocate), Yosha Dotson (Georgians for a Healthy Future—GHF), Kelly Headrick (Autism Speaks), Rachel Klein (The AIDS Institute), Colin Reusch (Community Catalyst), and Matthew Smith (Coalition Against Insurance Fraud—CAIF).

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### 4. Received the E-Vote Results for the Reaffirmation of its 2023 Mission Statement

Commissioner Stolfi said the NAIC members of the Consumer Liaison Committee reaffirmed the Committee's mission statement through an e-vote on Oct. 13 (Attachment Two).

### 5. Heard a Presentation from the LLS, NHeLP, and HIV+Hepatitis Policy Institute on How Recent and Upcoming Federal Actions Affect the State Regulation of the Health Insurance Market

Lucy Culp (The Leukemia & Lymphoma Society—LLS) said states have the authority to regulate association health plans (AHPs), which has allowed states to use cease-and-desist orders against unauthorized entities. Culp said problems have persisted, and in 2011, the federal Centers for Medicare & Medicaid Services (CMS) established a "look through doctrine" to allow state insurance regulators to look through the association to the size of each employer to determine whether that employer's coverage was subject to the small group market or large group market rules. Culp said that in rare circumstances, there would be "bona fide associations" that have shared purposes and common interests where all employees are combined to obtain large group status. In 2018, Culp said the U.S. Department of Labor (DOL) issued an executive order that modified the definition of employer to allow more employer groups and associations to form AHPs. This led to an easier pathway to "bona fide association" status to be regulated as large group coverage. In March 2019, there was a court ruling in New York that found the DOL exceeded its rulemaking authority under the federal Employee Retirement Income Security Act of 1974 (ERISA). In 2021, the DOL indicated they would engage in additional rulemaking, and a new rule is to be issued soon.

Culp said there is a Notice of Benefit and Payment Parameters (NBPP) proposed rule that would create minimum standards for state-based marketplaces (SBMs). Culp said the proposed rule creates new steps in the process of moving from a federal platform to an SBM, requires the operation of a centralized eligibility and enrollment platform, applies national standards for web brokers and direct enrollment to SBMs, creates standard open enrollment periods for SBMs, and creates network adequacy minimum standards for SBMs.

Turner said there is an NBPP proposed rule on essential health benefits (EHBs), which would allow states to add adult dental to EHBs and could also remove the prohibition on adult vision, home health, and orthodontia. Turner said the proposed rule consolidates options for state benchmarks and removes the generosity standard and typicality standard. Turner said other issues to watch include the No Surprises Act implementation; Interoperability Rule; 1557 Nondiscrimination Rule; Section 504 Disability Protections Rule; and over the counter (OTC) coverage on preventive services.

Carl Schmid (HIV+Hepatitis Policy Institute) said there is an NBPP proposed rule on standard plans that would allow each issuer to have two non-standardized plans for each standard plan rather than four non-standardized plans for each standard plan. All covered drugs in excess of state benchmarks are to be considered EHBs. Schmid said there is a warning to issuers against discriminatory plan design and new transparency requirements in coverage, which include cost-sharing services being available online and network provider rates and out-of-network amounts being available on websites. Schmid said the U.S. House and Senate are both considering bills on pharmacy benefit managers (PBMs).

### 6. Heard a Presentation from the NWLC on Expanding Access to Maternal Health Care Through Health Plan Networks and EHBs

Dorianne Mason (National Women's Law Center—NWLC) said there is a U.S. maternal mortality crisis. Mason said 1,205 women died from pregnancy-related complications in 2021, 861 women died in 2020, and 754 women died in 2019. Mason said there is a disparity in maternal and infant health care, with Black women dying at three times

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the rate of white women, and Indigenous women dying at two times the rate of white women. Mason said “weathering” is the cumulative effect of chronic stress, including chronic stress of racism. Mason said state insurance regulators can work to improve access to mental health, which will lessen the impact of “weathering” and, in turn, impact maternal mortality.

Mason said low-income people and women of color are at a greater risk of being uninsured. Mason said continuity of coverage is important and encouraged state insurance regulators to eliminate barriers to enrollment in health coverage. Mason said women are coming into pregnancy with preexisting conditions, such as hypertension, and this can then lead to a pregnancy worsening a preexisting condition. Mason said high-quality care is predicated on communication and trust. Mason said Black women report higher adverse interactions with medical professionals, including medical professionals ignoring reports of pain and providing a misdiagnosis or a delayed diagnosis. Mason said research has shown this implicit bias is correlated with lower-quality care.

Mason reviewed recent federal administrative actions, which include the Build Back Better Act and the American Rescue Plan Act. Mason said it is important to collect and analyze data to track the utilization of health care. Mason also said network adequacy standards help ensure access to quality providers. Mason said standards should include the need to have culturally competent care and coverage for midwives and doulas. Mason said there continues to be a wide variation of EHB benchmarks across states. Mason said plans should provide robust prenatal and postnatal services, provide coverage for birth centers and home births, and ensure state benchmarks meet federal Affordable Care Act (ACA) requirements regarding maternity coverage, no cost sharing for women’s preventive services, and coverage for breastfeeding education and breast pumps.

Mason recommended state insurance regulators ensure access to mental health services, monitor disenrollment of consumers in health plans, support network adequacy standards, support the availability of culturally competent care, and monitor pregnancy-related health care utilization and spending. In response to a question from Commissioner Arnold, Mason said there is an effort to increase birthing centers in rural areas but agreed the use of midwives and doulas can also be used to increase the types of providers individuals choose in response to the reduction of maternity care facilities in rural areas.

### 7. Heard a Presentation from United Policyholders and the CEJ on Addressing Property Insurance Market Failures with a Federal Catastrophe Reinsurance Program

Amy Bach (United Policyholders) said there needs to be continued support for risk mitigation though the use insurance rewards in the form of premium discounts and renewal assurances. Bach said the property markets are failing across the country, and these problems are not limited to one jurisdiction. Bach said innovation is imperative as private reinsurers have an unsustainable degree of control over the property/casualty (P/C) market, and reinsurance pricing and treaty conditions are reducing the affordability and availability of essential property insurance. Bach said government-sponsored insurers of last resort are in higher demand and are experiencing reinsurance challenges.

Bach provided an example of risk pooling and innovation. Bach said the following concepts should be considered: 1) a national all-risks disaster insurance program offering limited essential benefits that would pair with existing small business; 2) administration low-interest loans and parametric products; 3) community risk pools; 4) enhanced resources for state insurance regulators to evaluate catastrophe (CAT) models; and 5) the creation of independent, public CAT models as a yardstick for commercially derived CAT models.

Bach reviewed the fundamentals of a catastrophic property lost reinsurance program. Bach said this type of program would provide reinsurance for primary insurance companies offering residential and commercial property insurance that includes coverage for the perils of flood, wind, hurricane, severe convective storms,

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wildfire, and earthquake. To be eligible to obtain reinsurance through the fund, insurers would need to offer an all-perils product and actively facilitate and reward loss mitigation activities.

Birnbaum said markets that provide private property insurance are failing. Birnbaum said this is a significant problem because private property insurance is a product required by lenders and/or government agencies and essential for individual, business, community, and national resilience. Birnbaum said residual markets have grown, and consumers for whom the private market has failed are obtaining inadequate coverage and artificially inflated rates. Birnbaum said insurers have not accurately assessed risks, and this has resulted in hollowed-out policies that fail to meet consumer expectations. Birnbaum said the causes of the property market failures include failure to invest in loss prevention partnerships and loss mitigation, lack of preparedness regarding the impact of climate change, unstable global reinsurance markets, unaccountable CAT models, and state insurance regulators failing to monitor markets through data collection and analysis.

Birnbaum said the solution to the property market failure is to promote investment in loss mitigation and resilience needs to address climate change and catastrophic risks. Birnbaum said there needs to be a public-private partnership and stable reinsurance. Birnbaum set forth the following strategy: 1) create a federal public catastrophe reinsurance program modeled after the federal Terrorism Risk Insurance Act (TRIA); 2) have the federal government provide stable and low-cost catastrophic reinsurance for the extreme portion of catastrophic risks; 3) have states encourage all perils policy coverage and loss prevention investment with matching federal funds; 4) improve data collection on property insurance exposures and claims to assist the federal national catastrophe reinsurance fund; 5) establish thresholds for national catastrophe fund payments based on a percentage of a state's exposure with thresholds low enough to provide meaningful benefit to insurers, but high enough to encourage a competitive private reinsurance market; and 6) implement means-tested financial assistance for low-income consumers.

In response to a question from Commissioner Chaney, Birnbaum said the increased use of reinsurance by a company increases the reinsurance cost for the company. Birnbaum said this leads to higher insurance prices and financial instability. Birnbaum said a private/public partnership with federal government involvement will help address this problem.

### 8. Heard a Presentation from the CIR on the Rapid Growth of Pet Insurance, Consumer Issues, and Concerns

Bridgeland said premiums for pet insurance in the U.S. totaled \$3.2 billion in 2022, and the total number of pets insured in the U.S. was 5.36 million—a 22% increase in 2021. Bridgeland said pet insurance is increasingly sold through employee benefit plans, as employers use pet insurance to attract and retain employees. The average premium for dogs was \$640 per year and \$387 per year for cats. Bridgeland said dogs make up 80% of insured pets, and cats make up 20% of insured pets. Bridgeland reviewed the most common pet insurance claims for dogs (urinary tract infections, ear infections, gastroenteritis, diarrhea, and skin conditions) and for cats (urinary tract infections, diabetes, vomiting, kidney disease, and hyperthyroidism).

Bridgeland said the pet insurance market continues to grow, and the total market premium has increased an average of 25% per year since 2018. Premiums are typically based on the animal's age, health profile, and the level of coverage. Bridgeland said pet insurance policies may include exclusions, varying coverage options, deductibles, and payment limits. Providers have three main categories of products: 1) accident-only (less than 1% of plans); 2) accident and illness; and 3) wellness coverages (which are not insurance products). Bridgeland said common consumer issues in pet insurance include preexisting conditions, broadly worded cancellation clauses, and lengthy waiting periods for certain conditions.

Bridgeland said the NAIC adopted the *Pet Insurance Model Act* (#663) in 2022. The model establishes consumer protections related to policy renewals, waiting period disclosures, policy limits, and benefit schedules. The model

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law also limits preexisting condition denials, provides a 15-day free look period, and prohibits waiting periods for accident coverage. The model requires insurers to differentiate pet wellness programs from insurance policies and sets training standards for insurance producers.

Bridgeland provided the following recommendations for state insurance regulators: 1) adopt Model #663; 2) prepare consumer assistance staff to deal with an increase in pet insurance related complaints; 3) begin analyzing new, state-specific pet insurance data that will be reported for the first time in the 2024 financial annual statement blanks and in the Market Conduct Annual Statement (MCAS); and 4) develop a classification system for pet insurance complaints.

### 9. Heard a Presentation on How Much Life Insurance Purchased in the U.S. Becomes a Death Claim

Richard Weber (Consumer Representative) provided a presentation based on the paper *Lapse-Based Insurance*, published in 2016 and updated in 2021. The paper was written by David Gottlieb (London School of Economics and Wharton School, University of Pennsylvania) and Kent Smetters (Wharton School, University of Pennsylvania).

Weber said most individual life insurance policies lapse before expiration. Weber said over 70% of U.S. families own life insurance, and annual premiums exceed \$110 billion. Weber said between 1990 and 2010, there were \$30.8 trillion in life insurance issued and \$24 trillion in life insurance lapses. Weber said 25% of permanent insurance policyholders lapse within just three years of first purchasing their policies, and 40% lapse within 10 years. Weber said nearly 88% of universal life policies ultimately do not terminate with a death-benefit claim, and almost 85% of term policies fail to pay a death claim.

Weber said lapses are more prevalent for smaller policies and are more exposed to background shocks, including unemployment, medical expenses, and new consumption opportunities. Weber said insurance agents receive most of the sales commission in the first or second year and, anecdotally, consumers are more likely to lapse their policies when they are not in contact with their sales agent. When policies are sold primarily based on the illustration, Weber said customer dissatisfaction may result when they see lower results than initially illustrated.

Weber said commissions continue to be the driver of sales behavior in a number of cases and lapses often follow a failure to consider the client's best interests and the suitability of the recommendation.

Weber requested state insurance regulators to review how policy illustrations should be prepared under current state regulation and evaluate the experience of the New York Department's Insurance Regulation 187. Weber said state insurance regulators should move toward requiring insurance carriers and insurance producers to only make policy recommendations that are suitable to the consumer's circumstances and place the client's interest above the interest of the producer.

### 10. Heard a Presentation from the AHA and HCFA on the Drivers of Medical Debt, Current State Protections, and Recent Federal Actions

Janay Johnson (American Heart Association—AHA) said uninsurance, rising out-of-pocket costs for the insured, the proliferation of substandard insurance products, and complex billing processes all contribute to the prevalence of medical debt. Johnson said the consequences of medical debt include bankruptcy, stress, foreclosure, poor health, and poor financial credit. Johnson said there are disparities in medical debt and provided the following statistics on medical debt. A larger share of Black adults (16%) report having medical debt compared to white (9%), Hispanic (9%), and Asian American (4%) adults. Nearly half of women (48%) report having medical debt, compared to more than a third of men (34%). People ages 30–64 are more likely than younger adults and adults over 65 to report medical debt. Adults who were uninsured for more than half of the year are more likely to report medical debt (13%) than those who were insured for all or most of the year (9%).



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Ashley Blackburn (Health Care for All—HCFA) reviewed recent federal actions to reduce the burden of medical debt, which include the following: 1) the federal No Surprises Act; 2) an executive order directing federal agencies to examine pathways to reduce burden of medical debt; 3) voluntary reform by three nationwide credit bureaus; and 4) the Consumer Financial Protection Bureau’s (CFPB’s) rulemaking to remove medical debt from credit reports. Blackburn said states are also taking action to eliminate medical debt from appearing on credit reports.

Blackburn provided the following recommendations for states insurance regulators: 1) study the impact of high deductibles and cost sharing on patients; 2) require insurers to track and report on how many of their enrollees are experiencing medical debt, and what the causes are; 3) educate enrollees about their rights under state law; 4) require insurers to make information available to enrollees about their rights under state law; and 5) leverage the role of banking regulators where applicable.

### 11. Discussed Other Matters

Michael DeLong (Consumer Federation of America—CFA) questioned the transparency and openness of the Special (EX) Committee on Race and Insurance and encouraged the Committee to maintain open meetings and engage with consumer representatives.

Having no further business, the NAIC/Consumer Liaison Committee adjourned.

SharePoint/NAIC Support Staff Hub/Committees/Consumer Cmte/2023 Fall/Consumer\_11Min\_rev121823

# **Exposed: A Report on \$1.6 Trillion of Uninsured American Homes**

**By Sharon Cornelissen, PhD, Douglas Heller, and Michael DeLong  
Consumer Federation of America**



# Research Questions

- How many households lack homeowners insurance?
- Which households are more likely to lack homeowners insurance, what is their housing like, and where are they?
- What is the value of uninsured homes, and what portion of uninsured homes belong to Black and Hispanic homeowners?

# Summary of Homeowners Insurance Report

- Homeowners insurance is vital for protecting consumers' homes and ensuring they can recover from disasters
- One in thirteen homeowners (7.4%, or 6.1 million) lacks homeowners insurance
- Homeowners of color are disproportionately without coverage
- Rural homeowners and those living in Houston and Miami are disproportionately without insurance
- \$1.6 trillion in property value is not covered by insurance



# Rising Premiums Due to Climate Change and Reinsurance Costs Could Force Many Homeowners to "Go Bare"



# Report Methodology

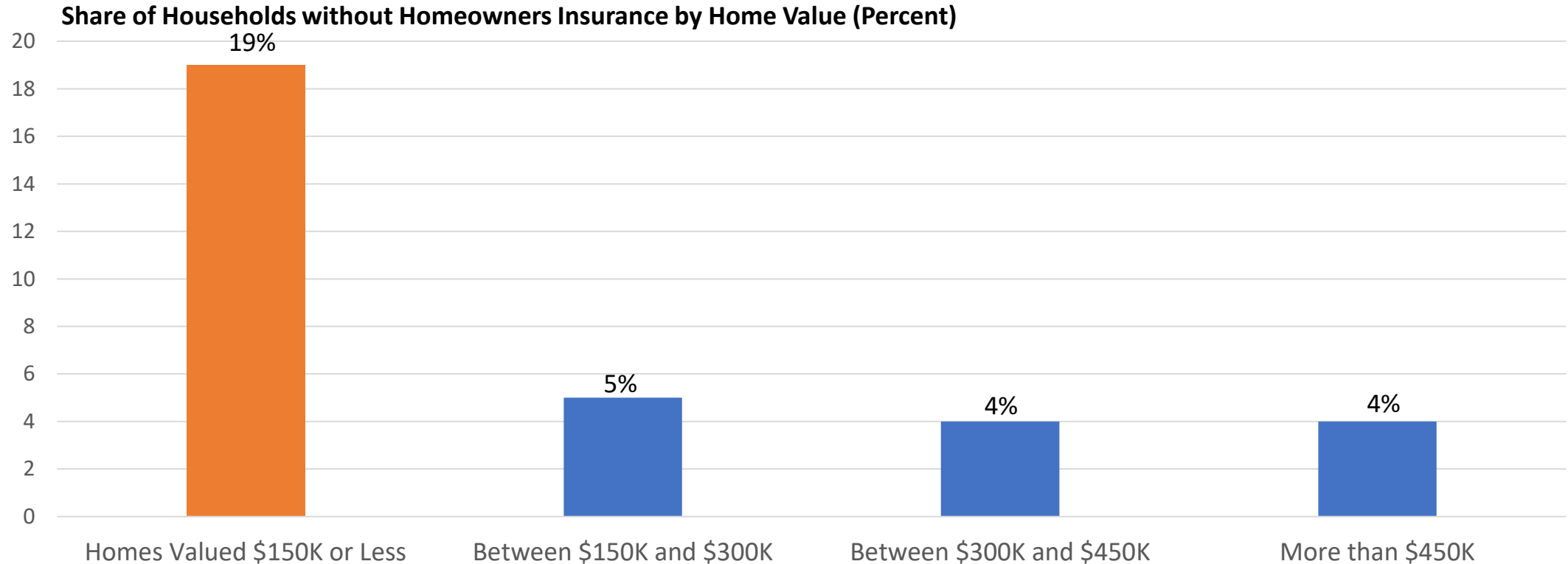
- Analyzed data from 2021 American Housing Survey and American Community Survey
- Survey provided information about composition and quality of housing stock, housing expenses including homeowners insurance, demographics, and geographic variation
- Survey responses weighted to ensure estimates were representative
- Conducted statistical analyses to ensure robust results
- Final sample included 31,669 observations

# Findings: 6.1 Million Homeowners Lack Insurance Coverage

- 6.1 million homeowners lacked homeowners insurance coverage in 2021
- 7.4% of homeowners—equivalent to 1 in 13 homeowners across the United States



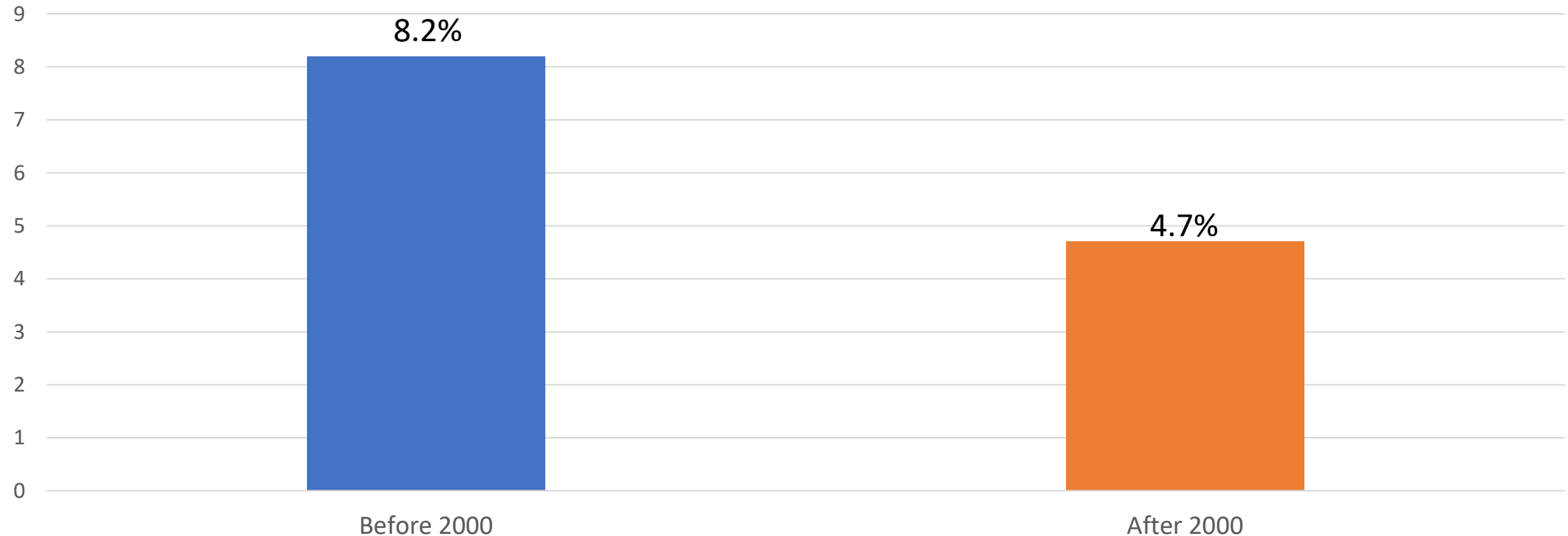
# Lower-Valued Homes Are Most Likely to Not Have Insurance



Source: Consumer Federation of America analysis of 2021 AHS data.

# Homes Built Before 2000 Are More Likely to be Uninsured

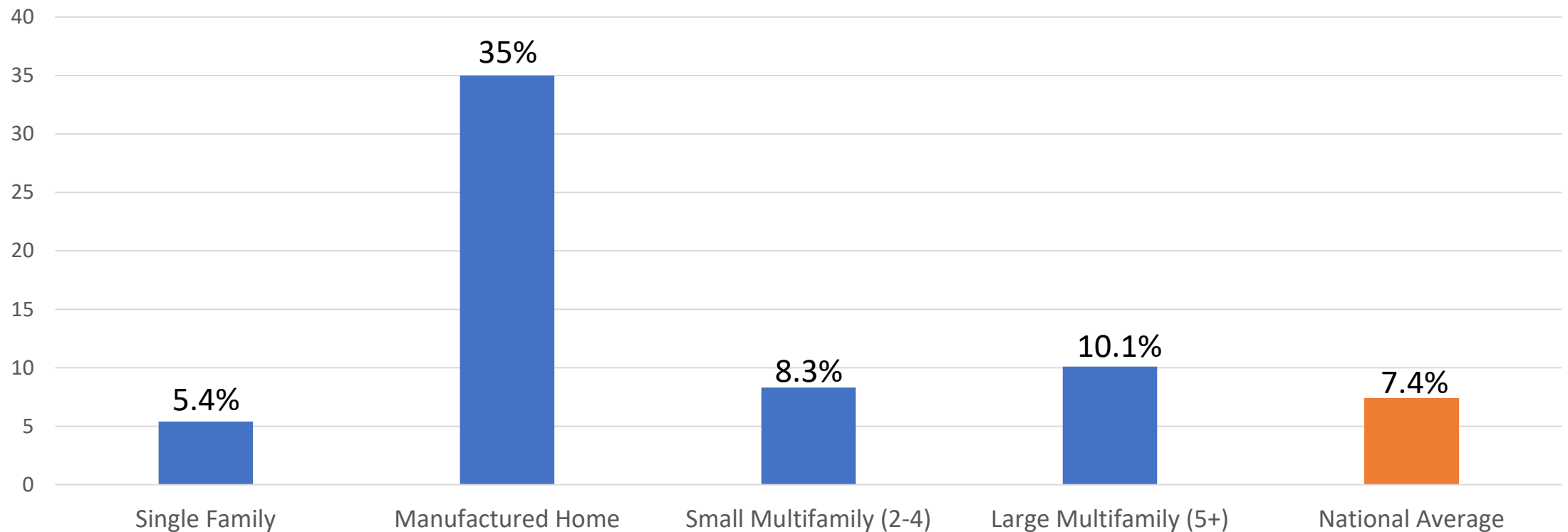
Share of Households without Homeowners Insurance by Year Built (Percent)



Source: Consumer Federation of America analysis of 2021 AHS data.

# Owners of Manufactured Homes Are Most Likely to Not Have Homeowners Insurance

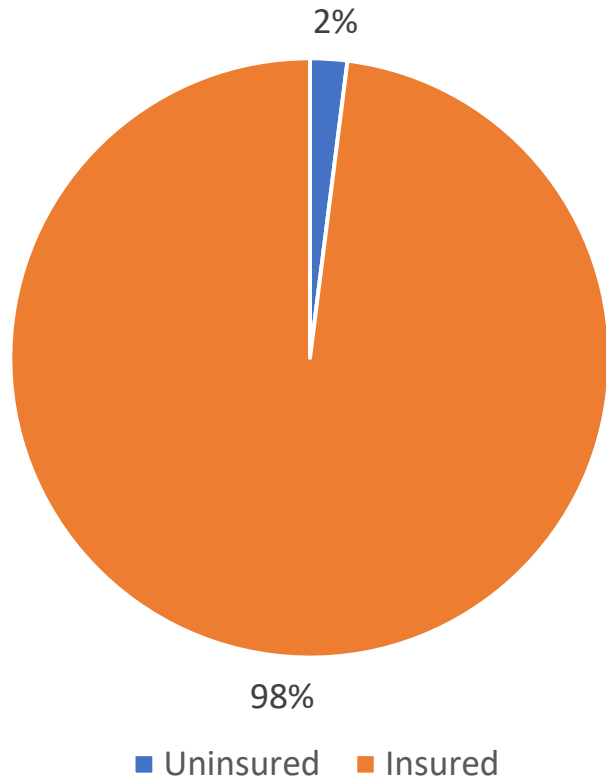
Share of Households without Homeowners Insurance by House Type (Percent)



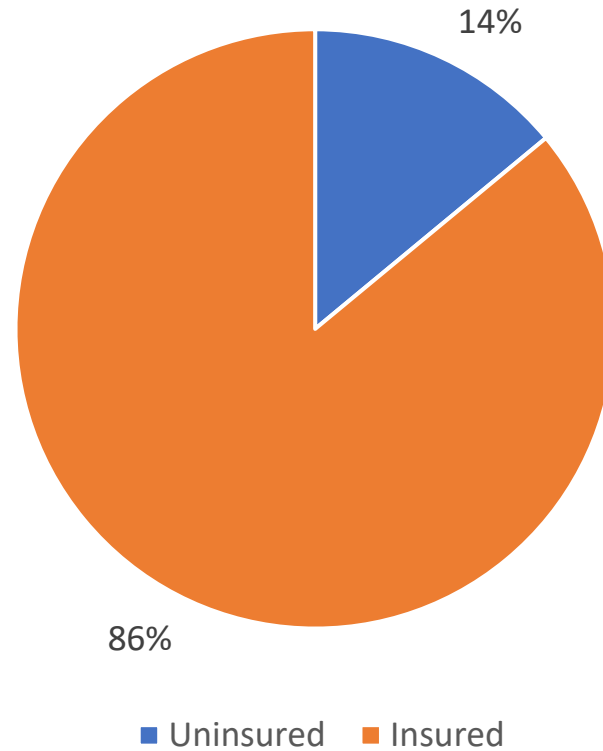
Source: Consumer Federation of America analysis of 2021 AHS data.

# Most Uninsured Homeowners Have No Mortgage

With a Mortgage

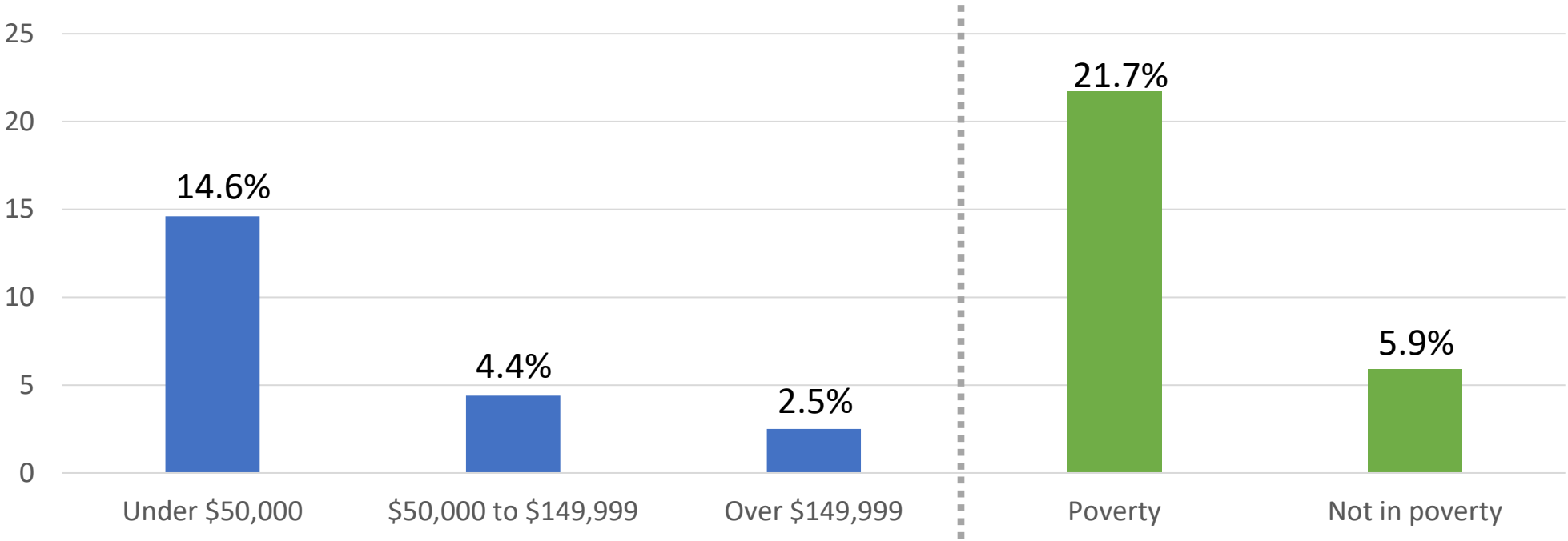


Without a Mortgage



# Homeowners with Lower Incomes Are More Likely to be Uninsured

Share of Households without Homeowners Insurance by Income and Poverty Status (Percent)



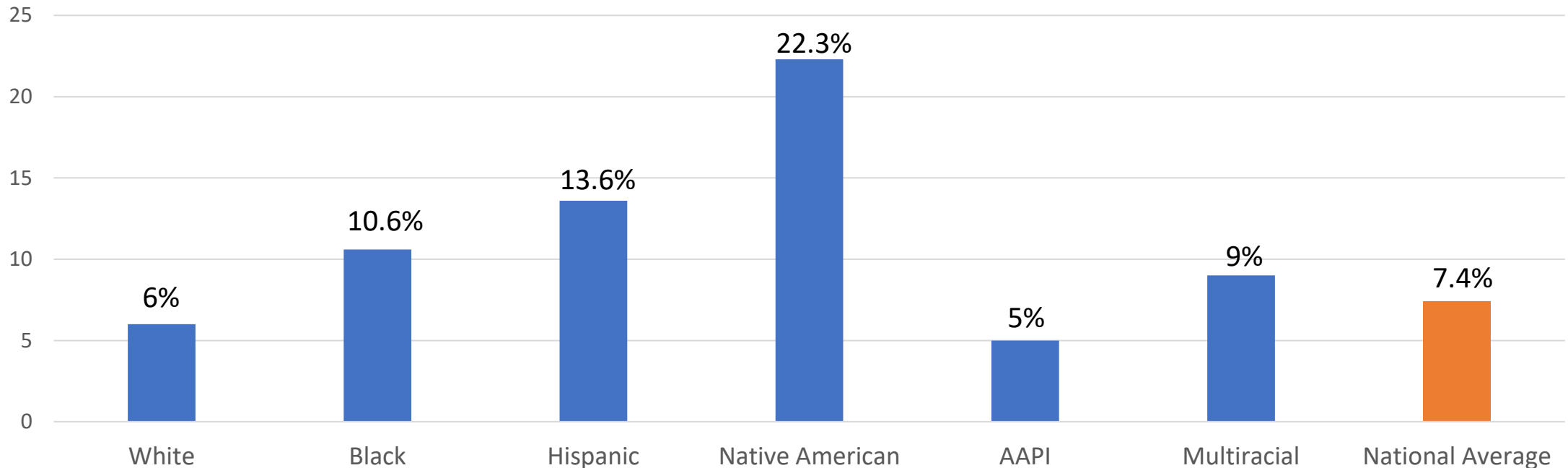
Source: Consumer Federation of America analysis of AHS data 2021.

Note: Poverty indicates households live below the federal poverty thresholds created by Census.



# Homeowners of Color Are More Likely to Lack Homeowners Insurance

Share of Households Without Homeowners Insurance by Race and Ethnicity (Percent)

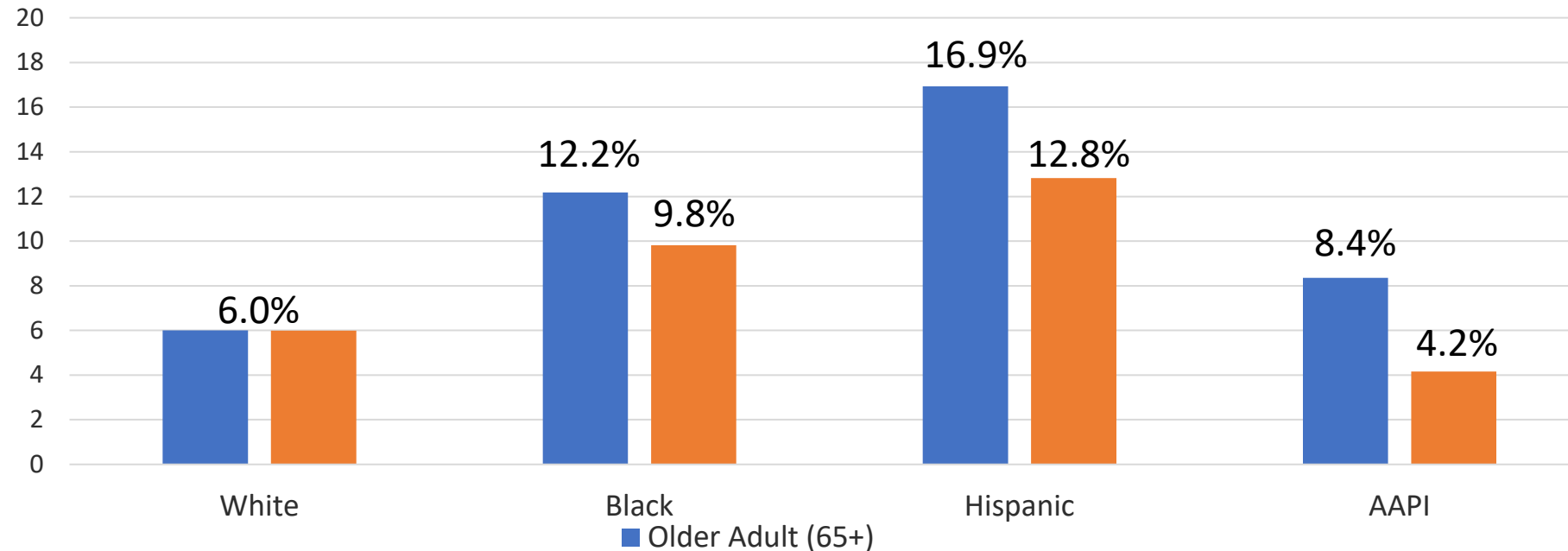


Source: Consumer Federation of America analysis of AHS data 2021.

Note: Black, White, Asian and Pacific Islander, Native American and Multiracial are non-Hispanic. Hispanic can be of any race(s).

# Older Adults Are More Likely To Lack Homeowners Insurance, Except Among White Households

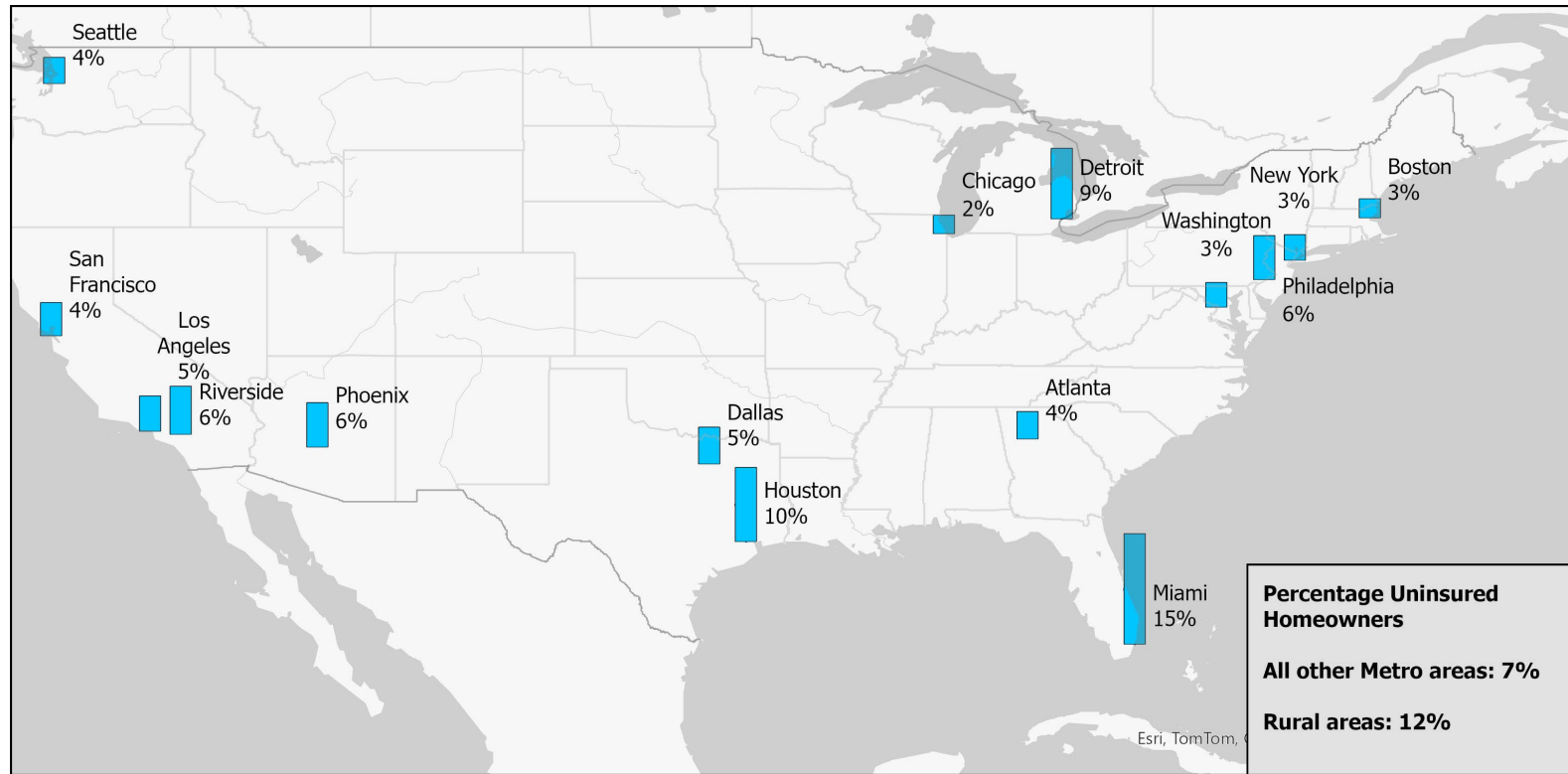
Share of Households without Homeowners Insurance by Race & Ethnicity and Age Group (Percent)



Source: Consumer Federation of America analysis of 2021 AHS data.

Note: White, Black, and Asian and Pacific Islander are non-Hispanic. Hispanic can be of any race(s). Older adult households are headed by someone over 64 years.

# Highest Shares of Uninsured Homeowners Found in Rural Areas and Metro Miami and Houston



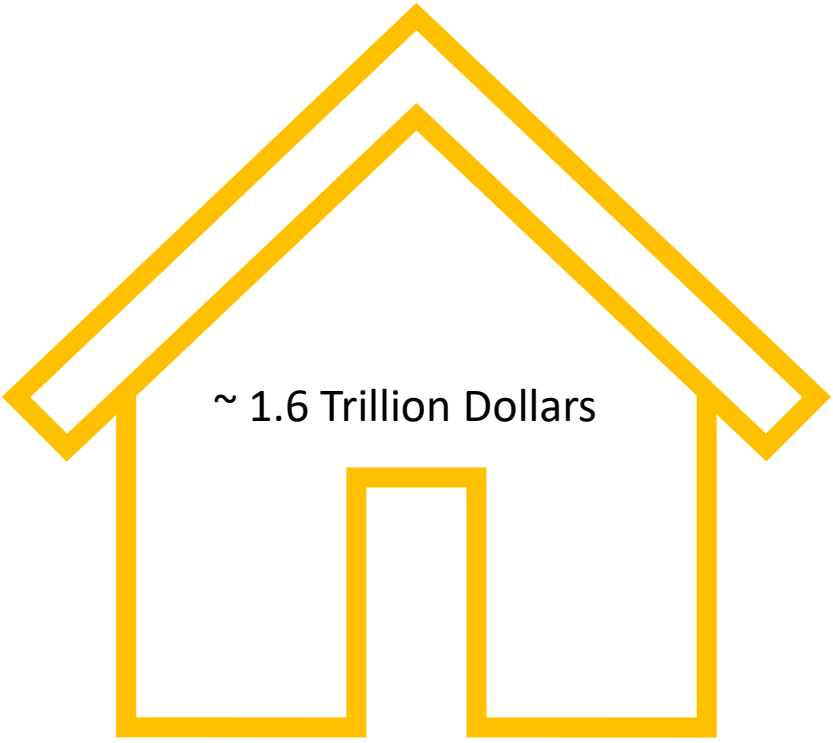
Source: Consumer Federation of America analysis of 2021 AHS data.

Note: Metro Areas Based on Census 2023 OMB CBSA code. Map made in ArcGIS.



# Being Uninsured Puts Trillions of Dollars of Owned-Occupied Homes at Risk

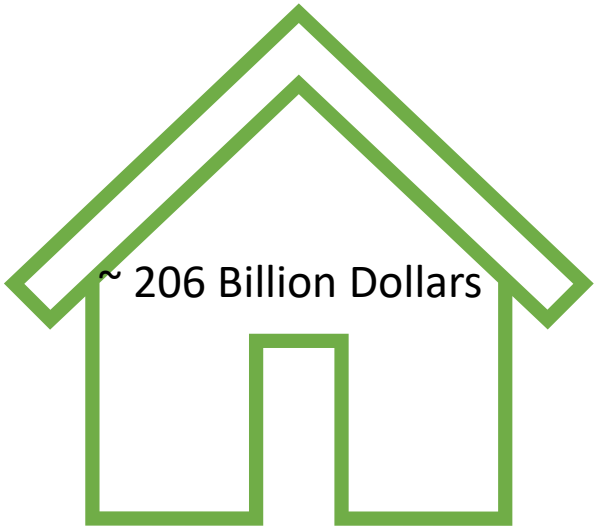
Estimated Amount of Home Value of Uninsured Owner-Occupied Property in 2021 (US Dollars)



*All Homes*



*Hispanic-Owned Homes*



*Black-Owned Homes*

# Top Ten States With the Most Uninsured Homeowners

Rank	State	Percent of Uninsured Homeowners
1	Mississippi	13%
2	New Mexico	13%
3	Louisiana	12%
4	West Virginia	11%
5	Alaska	11%
6	North Dakota	11%
7	Alabama	11%
8	Oklahoma	11%
9	Florida	10%
10	Texas	10%

# Our Policy Recommendations

- Collect more data to track pre-existing and emerging inequalities in homeowners insurance markets, and promote data transparency
- Invest in risk reduction through mitigation measures
- Create a public reinsurance mechanism to reduce insurers' overreliance on unregulated reinsurance
- Conduct additional research on racial equity and the homeownership insurance gap

**Any Questions?**



Michael DeLong

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# What the New Section 1557 Rule Means for Health Insurance Non-Discrimination Protections and Considerations for Regulators

NAIC Spring Meeting 2024, Consumer Liaison

Presented by:

- Wayne Turner, National Health Law Program
- Carl Schmid, HIV+Hep Policy Institute
- Kellan Baker, Whitman Walker Institute
- Dorianne Mason, National Women's Law Center

# Roadmap

- Section 1557 background, scope and applicability
- Discriminatory benefit design
- Prescription drug access
- Nondiscrimination on the basis of sex
- Health care refusals and exemptions
- Key issues for regulators

# **Section 1557: Overview and Regulatory History**

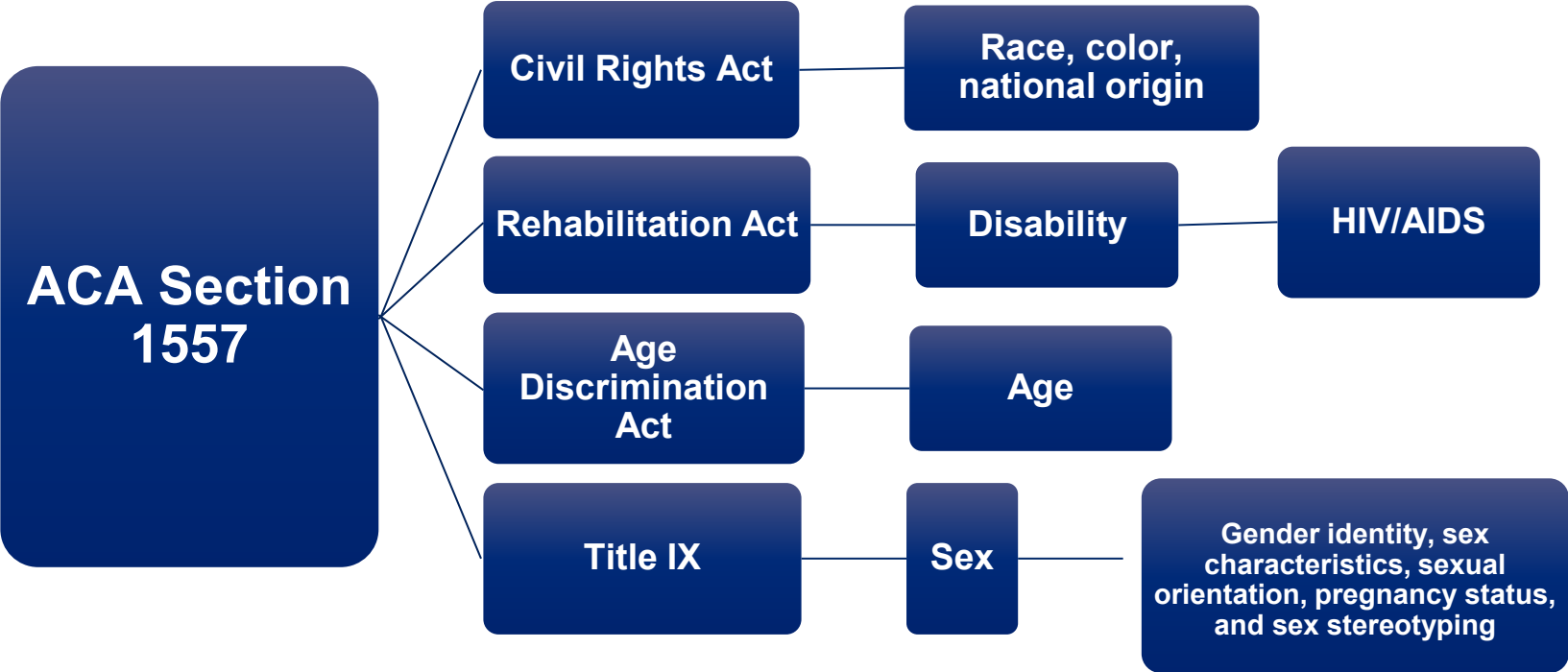
# ACA Nondiscrimination Protections

- **Market reforms** (e.g, no preexisting conditions exclusions, no lifetime or annual caps)
- **Essential health benefits** – benefit design must not discriminate based on “present or predicted disability, degree of medical dependency, quality of life, or other health conditions”
- **QHPs** – no marketing or benefit design that “discourages persons with significant health needs from enrolling”
- **Section 1557** – no discrimination in health programs or activities receiving federal financial assistance





# Section 1557: Nondiscrimination in Coverage and Care



# Section 1557 Timeline

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- ACA enacted – March 23, 2010
- Request for Information (RFI) – August 2013
- Notice of Proposed Rulemaking (NPRM) – September 2015
- Final 2016 Rule published – May 2016
- Trump administration NPRM – May 2019
- Final 2020 Rule published – June 2020
- [HHS Notice of Interpretation](#) on *Bostock* – May 2021
- NPRM – August-October 2022
- Final Rule expected – Spring 2024

# Changes in 2020 Final Rule

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- Narrowed applicability by exempting a broad array of federal health care programs and activities
- Declared that an entity “principally engaged in providing health *insurance* shall not be considered to be principally engaged in providing health *care*”
- Removed provisions against discriminatory health plan benefit design
- Eliminated regulatory protections against sex discrimination that included gender identity, sexual orientation, sex stereotyping, and pregnancy status
- Sanctioned discrimination by religiously affiliated hospitals, providers, and health plans
- Limited enforcement by restricting the ability to file court actions

# 2022 Proposed Changes - Applicability

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- Clarifies that §1557 applies to all federal health programs and activities (not just ACA)
- Providing or administering health insurance is a health program/activity
- Applies § 1557 to short term limited duration plans and limited benefit plans
- Applies to third party administrators and PBMs

# **Section 1557: Discriminatory Benefit Design**

# 2022 Proposed Rule: Discriminatory Benefit Design

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Builds upon NBPP examples of presumptive discriminatory design

- Cost sharing
- Medical necessity definitions
- Narrow networks
- Drug formularies
- Adverse tiering
- Utilization management
- Exclusions
- Visit limits
- Waiting periods
- Service areas
- Coercive wellness programs

# Section 1557: Prescription Drug Access

# 2022 Proposed Changes - Rx's

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- Applies to PBMs
- Benefit design includes coverage, exclusions, and limitations of benefits; prescription drug formularies;
  - cost sharing (including copays, coinsurance, and deductibles)
    - Placing all or almost all drugs to treat a condition on the highest tier
  - utilization management techniques (such as step therapy, prior authorization, durational or quantity limits)



# 2022 Proposed Changes - Rx's

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- Acknowledges UM is “standard industry practice.. but must be applied in a neutral, nondiscriminatory manner”
- Potential Discrimination
  - Excessive use or administration of utilization management tools that target a particular condition
    - Rx formularies that place utilization management on most or all drugs that treat a particular condition regardless of their costs that don't do this for other conditions.
- Where there is alleged discrimination, must be a legitimate, nondiscriminatory reason, based on clinical evidence

# Need for Enforcement - Rx's

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- State Insurance Regulators, CMS & OCR must ensure compliance w/laws & regulations (1557 & EHB)
  - Plan reviews, approvals, & complaints
- **North Carolina Blue Cross/Blue Shield**
  - Place almost all HIV Rx's, including generics, on highest tiers, all w/quantity limits
  - Complaint filed
    - No action by state insurance commissioners
    - OCR initiated review after plan corrected drug tiering, bought issuer reasoning that plan was based on clinical practices

# Need for Enforcement - Rx's

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- **Community Health Choice Texas**
  - Doesn't meet treatment guidelines
    - Excludes many antiretrovirals
    - Breaks up single tablet regimens
    - Covers old & discontinued drugs
  - Places drugs on highest tier
  - Complaint filed w/CMS, inadequate response & actions
- **Without enforcement, race to the bottom & jeopardize treatment nationwide**

# **Section 1557: Scope of Sex Nondiscrimination Protections**

# Restoration of the Full Scope of Sex Nondiscrimination Protections

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- **2016 rule:**
  - Gender identity, sex stereotypes, and pregnancy, included under the definition of sex
  - Specific examples of gender identity nondiscrimination in coverage and care
  - Followed previous action by ~20 state regulators to prohibit discrimination against transgender people, particularly in benefit design
- **2020 rule:**
  - Eliminated gender identity, sex stereotyping, and pregnancy nondiscrimination regulatory protections
  - Also eliminated sexual orientation and gender identity (SOGI) protections from various CMS rules

# Restoration of the Full Scope of Sex Nondiscrimination Protections

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- **2022 Rule:**

- Based on the 2020 Supreme Court decision in *Bostock v. Clayton County*, re-establishes gender identity nondiscrimination protections under the basis of sex and adds sexual orientation
- Re-establishes protections on the basis of sex stereotypes
- Includes “pregnancy or related conditions”
- Clarifies that sex-based distinctions are allowed, but only if they cause *de minimis* harm to beneficiaries or patients
- Clarifies that religious/conscience exemptions will be considered on a case-by-case basis by OCR under existing federal laws
- Does not require providers to perform services outside of their scope of practice or area of specialty
- Re-establishes CMS regulations that were eliminated by the 2020 rule

# Regulator and Industry Support for 2022 NPRM

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- **In 2022, 21 state insurance regulators sent a letter to HHS in support of the changes in the 2022 NPRM related to sex discrimination:**
  - “The proposed changes to the 2020 rule will promote the goal of robust civil rights protections and nondiscrimination in coverage while providing additional clarity for the consumers we serve and the companies we regulate”
  - “We are also aware that the proposed changes to the rule are consistent with several federal court rulings that have explicitly found that the sex nondiscrimination protections in Section 1557 prohibit discrimination against LGBTQ people.”
- **AHIP’s 2022 comments state:** “We strongly support ensuring that appropriate gender-affirming care is available and accessible to enrollees. We [are committed] to ensuring benefit designs and coverage decisions reflect evidence-based guidelines and recommendations and do not restrict coverage related to gender identity.”

# **Section 1557: Exceptions process and health care refusals**



# Proposals for Health Care Refusals

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- No blanket exemptions from § 1557 for religious or other covered entities
- Establishes procedures for submitting requests for exemptions to Office for Civil Rights
  - “Fact-sensitive, case-by-case analysis”
- Rescinds 45 C.F.R. § 92.6(b), where 2020 Final Rule incorporated the Danforth Amendment, Title IX’s exemption for abortion-related services

# Section 1557: What State Regulators Can Do

# What State Regulators Can Do

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- Ensure that insurers are aware of the new protections (for instance via release of bulletins and guidance)
- Review plans for discriminatory benefit design as part of certification process
  - This could include more in-depth review for particular service categories or conditions more likely to be subject to discriminatory plan design
- Review and revise the state's EHB benchmark plan selection to ensure it does not have exclusions or other benefit design features that contravene Section 1557's requirements
- Monitor and enforce compliance through complaint process, data calls, and market conduct exams
- Make data and reports from market conduct and other investigations public

# Practical Tips for Reviewing Benefit Design

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- Coverage exclusions that disproportionately affect certain populations
  - Gender affirming care, durable medical equipment
- Prior authorization criteria not clinically based
  - See Washington State's [E2SHB 1357](#) requiring PA be evidence-based, updated at least annually and accommodate evidence regarding appropriate care for people of color and gender differences
- Racial bias underlying [prescribing practices](#) and automated decision-making systems making coverage determinations
- Overuse of co-insurance for certain medical conditions and persons with significant health needs
- Narrow provider networks that prevent access to specialty care
- Visit limits which cap coverage without regard for medical necessity

# Questions?

## Contact:

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# Prior Authorization & Other Federal Updates

Presentation to NAIC Consumer Liaison Committee

March 15, 2024

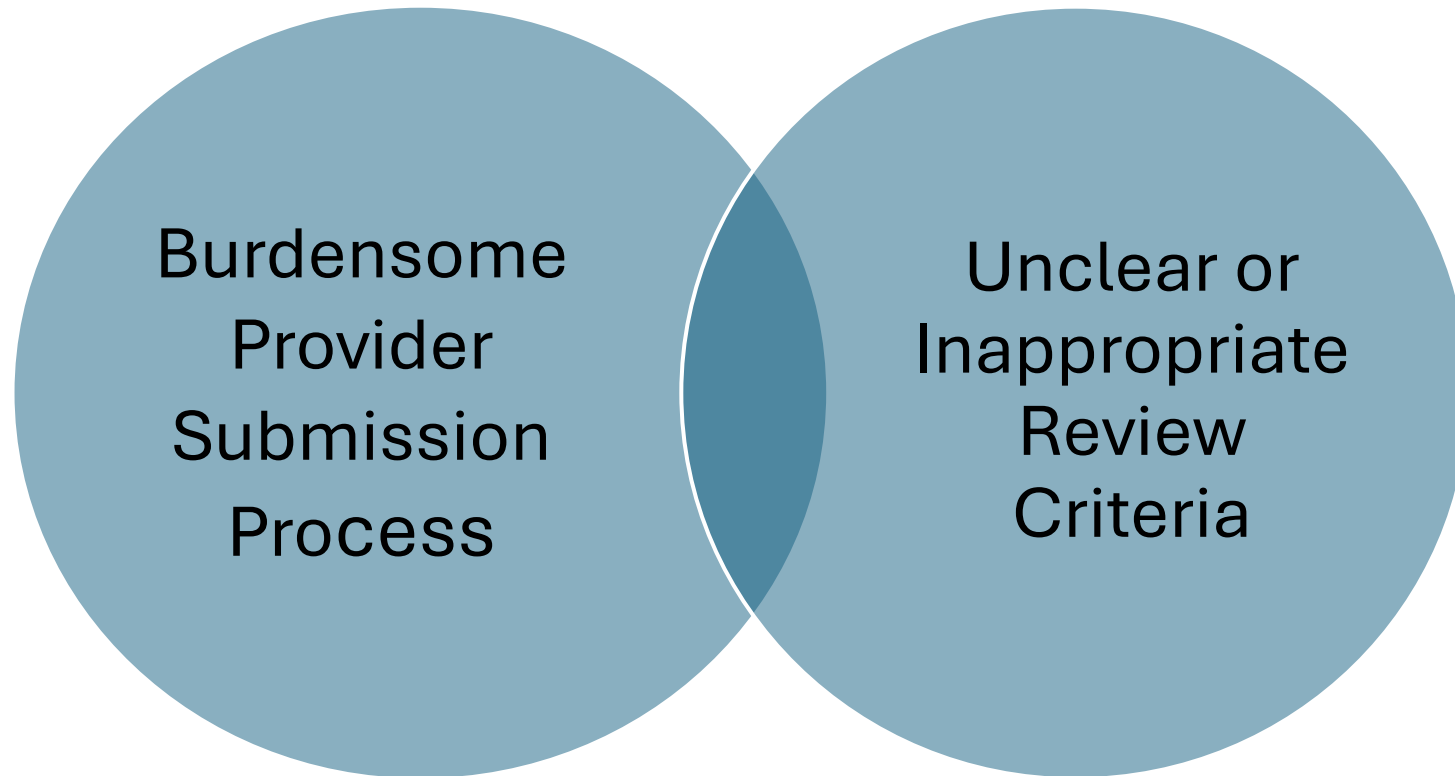
# Prior Authorization

## NAIC 2024 Spring National Meeting

Eric Ellsworth - Director, Health Data Strategy  
Consumers' Checkbook Center for the Study of Services

Harry Ting, PhD - Consumer Advocate & SHIP Counselor

# Fundamental Problems





# Harms to Consumers

- Delays lead to serious harm – 25% hospitalized, 19% life-threatening event, 9% disability, permanent body damage or death<sup>1</sup>
- Questionable denials
  - When generally accepted criteria are not used
  - Proprietary criteria that lack transparency
  - Reviewers who are not clinically qualified
- Increased provider expenses that translate to higher costs
- Difficulty of appealing denials
- Disproportionate harm to underrepresented & underserved

<sup>1</sup> 2022 AMA Prior Authorization Physician Survey, December 2022

# CMS Interoperability & Prior Authorization Rule Process

- Requires electronic data exchange tools, 2027
  - Medicare Advantage, Federally-Facilitated Exchange QHPs
  - All Medicaid & CHIP plans
- Tools convey if PA required, requirements, status & reasons if denied, 2027
- Initial PA decisions: expedited 72 hours; others 7 calendar days, except 15 days for QHPs, 2026
- Denials must be reviewed by qualified clinicians
- Payers must post annual PA statistics, 2026
- Creates financial incentive for providers to use tools, 2027

# CMS Interoperability & Prior Authorization Rule Criteria

- Requirements only for Medicare Advantage plans
  - Consistent with Medicare statutes,
  - Follows local & national coverage determinations
- Some improvement in transparency
  - Specifying information needed for specific PA decisions
  - Reasons for denial

# Shortcomings of the CMS Rule

- Excludes Rx prior authorization, even drugs covered under medical benefits
- Review process
  - Proprietary criteria permitted with no transparency
  - No decision timeline mandates for FFE QHPs
  - Absence of “gold carding”
- Inconsistent criteria across plans – confusing providers & patients
- State-based QHPs, insured commercial plans, ERISA plans excluded
- Annual reporting of PA statistics too aggregated
- Compliance – federal vs. state enforcement not well defined.

# Steps States Should Take

- Make state & CMS regulations as consistent as possible
  - PA decision timelines
  - Transparency rules
  - Reviewer qualifications
  - Data reporting
- Collect data to identify outlier plans
  - PA turnaround times & approval rates, *by category of service*
  - Reversal rates of adverse determinations
- Establish state role enforcing compliance with CMS rules

# Other Steps States Should Take

(if not already in place)

- Adopt elements of CMS rule
  - Public reporting of PA statistics – pct. initial approvals, pct. denials overturned
  - PA process transparency – standards, data requirements, reasons for denial
  - Clinically recognized standards – independent, peer-reviewed studies, professional society or government guidelines, with no exceptions for proprietary criteria
  - PA decision timelines – expedited 24 hrs, other 72 hrs
- Include Rx drugs – use NCPDP Script<sup>1</sup>
- Add gold carding – providers with high approval rates

<sup>1</sup> National Council for Prescription Drug Programs exchange tool endorsed by Office of the National Coordinator for Health Information Technology

# Steps NAIC Can Take

- Maintain inventory of state PA regulations
- Have NIPR compare outcomes under different state regulations
  - Decision timelines
  - Clinical standards
  - Gold carding
  - Appeal processes & timelines
- Collaborate to promote consistency of requirements across states – e.g., coding of procedures & education of providers

# Other Federal Updates

## NAIC 2024 Spring National Meeting

Caitlin Westerson

*Director of State External Affairs & Partnerships, United States of Care*



# Association Health Plans (AHPs) Proposed Rule

- **Background:** regulations were put in place in 2018 to allow some AHPs to be classified as large group coverage not subject to ACA consumer protections; these regulations were halted by a 2019 ruling
- **What's new:** the proposed rule would fully rescind the 2018 rule and return to pre-2018 guidance that included a more comprehensive review process
- **Status:** comments were due February 20, 2024
- **Timeline:** final rule could come in April as per the regulatory agenda (subject to change)

# Short-Term Limited-Duration Insurance (STLDI) Proposed Rule

- **Background:** in 2018, rules governing STLDI plans were expanding to allow them to last up to one year and be renewed for up to three years
- **What's new:** the proposed rule would limit these plans to three months and only allow them to be renewed for one month beyond that, and includes regulations to excepted benefit plans. *This rule has implications for the ongoing deliberations on model regulation 171.*
- **Status:** comments were due September 11, 2023
- **Timeline:** currently at OMB; final rule could come in April as per the regulatory agenda (subject to change)

# Notice of Benefit and Payment Parameters (NBPP) proposed rule

- **Background:** the NBPP is an annual rule that outlines the regulations for plans offered on the ACA marketplaces
- **What's new:** this year's proposed rule allowed states to add required benefits without triggering EHB cost defrayal requirements and removed the prohibition on including adult dental benefits as EHB. It also improved minimum national standards for state-based marketplaces and made changes to improve consumer enrollment processes.
- **Status:** comments were due January 8, 2024
- **Timeline:** currently at OMB; in prior years, final rules have typically been released in mid- to late-April (subject to change)

# Braidwood v. Becerra (Preventive Services)

- **Background:** Last year, a District Court determined that part of the ACA's no-cost preventive mandate was unconstitutional.
- **What's new:** The District Court's ruling was stayed (or paused) by the Fifth Circuit as it took up the case; the Fifth Circuit could affirm or reverse the lower ruling or expand it to include more or all preventive services subject to the no-cost mandate
- **Status:** Oral arguments were heard on March 4th before the Fifth Circuit Court of Appeals
- **Timeline:** A decision is expected later in 2024 but exact timing is unpredictable; regardless, the losing party is expected to appeal any decision to the Supreme Court for consideration. States are also taking action to codify ACA preventive services requirements into law

# Contact Us

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