



THE NELSON A.
ROCKEFELLER
INSTITUTE
OF GOVERNMENT



BROOKINGS



*The Public Policy
Research Arm of the
State University
of New York*

411 State Street
Albany, NY 12203-1003
(518) 443-5522

www.rockinst.org

MANAGING HEALTH REFORM

TEXAS: ROUND 1

State-Level Field Network Study
of the Implementation of the
Affordable Care Act





August 2014

Rockefeller Institute of Government
State University of New York

The Brookings Institution

Fels Institute of Government
University of Pennsylvania

Field Research Associates

	<p>Students and faculty from the Lyndon B. Johnson School of Public Affairs Policy Research Project 2013–2014</p> <p>Students and faculty from the Lyndon B. Johnson School of Public Affairs Policy Research Project 2013–2014 <i>Affordable Care Act Health Insurance Exchange Implementation: A Case Study in Austin and across Texas</i></p> <p>First row: Taylor Woodard, Victoria Walsh, Erin McManus, Mollie Bradlee, Emily Hoffman, and Camille Jackson. Second row: Jane Ross, Jane Vance, Ben Murguia, and Alison Simister. Third row: Dr. Samuel Richardson, Dr. David Warner, Daniel Kibert, Elizabeth Colvin, Mark Woodard, John Dinning, Jason Wible, and Chris LeSuer. Not pictured: Ruqiyyah Abu-Anbar</p>
	<p>David C. Warner, Professor of Public Affairs and Wilbur J. Cohen Professor in Health and Social Policy, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin</p> <p>david.warner@austin.utexas.edu, (512) 471-6277</p> <p>David Warner’s major research and teaching interests are in health finance, health policy and economics. A graduate of Princeton University and with a Syracuse University M(I)PA and Ph.D. in economics, he formerly taught at Wayne State University and Yale University and was deputy director of the Office of Program Analysis at the New York City Health and Hospitals Corporation.</p>
	<p>Samuel Richardson, Assistant Professor of Public Affairs, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin</p> <p>samr@utexas.edu, (512) 232-3687</p> <p>Samuel S. Richardson received his Ph.D. in Health Policy at Harvard University and holds a B.A. in Human Biology from Stanford University. A health economist by training, his research broadly addresses when and how government should intervene in health care markets. His current work focuses specifically on how health care providers respond to payment incentives, and how to set up payment policies that lead to efficient provision of high-quality care. His research has been published in JAMA and Health Services Research.</p>
	<p>Elizabeth Colvin, Director, Insure Central Texas at Foundation Communities</p> <p>elizabeth.colvin@foundcom.org, (512) 554-4409</p> <p>Elizabeth Colvin directs Insure Central Texas, a program of Foundation Communities. She received a J.D. from the University of Texas School of Law and holds a B.A. in math and history from Rice University.</p>

Contents

- Part 1 – Setting the State Context 1
 - 1.1 Decisions to Date 1
 - 1.2 Goal Alignment 11
- Part 2 – Implementation Tasks 12
 - 2.1 Exchange Priorities 12
 - 2.2 Leadership – Who Governs? 15
 - 2.3 Staffing 22
 - 2.4 Outreach and Consumer Education. 23
 - 2.5 Navigational Assistance 26
 - 2.6 Interagency and Intergovernmental Relations. 30
 - 2.7 QHP Availability and Program Articulation. 33
 - 2.8 Data Systems and Reporting. 41
- Part 3 – Supplement on Small Business Exchanges 43
 - 3.1 Organization of Small Business Exchanges 43
- Part 4 – Summary Analysis 44
 - 4.1 Policy Implications 44
 - 4.2. Possible Management Changes and
Their Policy Consequences 47
- Appendix A. Letters from Texas Governor Rick Perry
Regarding Implementation of ACA in Texas 51
- Appendix B. Organizational Charts for HHSC 59
- Appendix C. Number of Health Insurance Companies
Offering Coverage Through the Marketplace by
Texas County 61
- Appendix D. Regional Variation in Premium Rates 62
- Endnotes 64

TEXAS

ROUND 1

**State-Level Field
Network Study of the
Implementation of the
Affordable Care Act**

August 2014



**THE NELSON A.
ROCKEFELLER
INSTITUTE
OF GOVERNMENT**

State University of New
York
411 State Street
Albany, New York 12203
(518) 443-5522
www.rockinst.org

Carl Hayden
Chair, Board of Overseers

Thomas Gais
Director

Robert Bullock
Deputy Director for
Operations

Patricia Strach
Deputy Director for Research

Michael Cooper
Director of Publications

Michele Charbonneau
Staff Assistant for
Publications



Nancy L. Zimpher
Chancellor

MANAGING HEALTH REFORM

TEXAS: ROUND 1

State-Level Field Network Study of the Implementation of the Affordable Care Act

Part 1 – Setting the State Context

1.1. Decisions to Date

Since the Patient Protection and Affordable Care Act (ACA) was signed into law on March 23, 2010, Texas has reviewed and debated the different policy directives of the legislation. In 2011, Texas decided against administering a state-run health insurance exchange and opted in to a federally run exchange. This decision occurred prior to the Supreme Court decision on the constitutionality of ACA provisions. In 2013, after the 2012 Supreme Court decision allowed states to decide whether to expand Medicaid, Texas chose not to expand Medicaid eligibility and enrollment.

The Texas Legislature has revisited these decisions over the last two legislative sessions with Governor Rick Perry providing his perspective on the ACA and its position in Texas. Although there have been both supporters and opponents of a state-run health insurance exchange and Medicaid expansion, the decision to not support either of these policies ultimately came down to the governor and the Texas legislature. This section describes the actions of influential officials in Texas over the four years from the passage of the ACA to the launch of the online marketplace on October 1, 2013.

Actions in 2010

After passage of the ACA, political leaders in Texas reviewed the legal and fiscal implications of the federal legislation. On March 23, 2010, Texas Attorney General Greg Abbott joined twelve attorney generals from other states in a lawsuit challenging the constitutionality of the ACA, particularly the requirement

of an individual mandate, the requirement of states to expand Medicaid standards, and the imposition of a tax that these twelve states considered to be unconstitutional.¹

In April 2010, Perry wrote a letter to notify the U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius that Texas would not participate in one of the ACA provisions, specifically the operation of a second high-risk health insurance pool in Texas. In his letter, Perry wrote, "... the State of Texas cannot today commit to operating the new high-risk pool due to the lack of program rules or reliable federal funding." Furthermore, Perry questioned the adequacy of the \$5 billion in federal funding available for the implementation of the program.² Due to Perry's decision, HHS set up the federally funded Pre-Existing Condition Insurance Plan in Texas beginning in August 2010.³

The main state insurers of Texas requested funding for reimbursements under the Early Retiree Reinsurance Program (ERRP) also established by the ACA with \$5 billion in federal funds available nationwide. The Employees Retirement System, Teacher Retirement System of Texas (TRS), The University of Texas System, and Texas A&M University System received a total of \$69 million in fiscal year 2010 in reimbursements, with the majority provided to the TRS. The ERRP federal funding continued into 2011 and 2012, resulting in a total of approximately \$106 million in federal funds provided to the state insurance plans over the three years of the program's existence and an approximate grand total of \$444 million provided in Texas across all eligible entities in the state.⁴

The state's insurance regulator, the Texas Department of Insurance (TDI), under the direction of Commissioner Mike Geeslin, reviewed actions that would be needed to implement ACA provisions. Appointed by Perry in 2005, Geeslin was a former deputy commissioner of policy at TDI and previous advisor to Perry while Perry was lieutenant governor and governor.⁵ During 2010, TDI applied for and received three different grants from the federal government related to the ACA:

1. State Consumer Assistance Program: TDI applied for a grant related to the State Consumer Assistance Program in September and was awarded approximately \$2.8 million in October. TDI used these funds for a variety of activities and created the Consumer Health Assistance Program (CHAP), a hotline for consumers to receive information about health insurance.⁶
2. Premium Rate Reviews: TDI received a \$1 million grant to expand the agency's premium rate review capabilities. TDI used the funds to hire additional temporary legal and actuarial staff to perform premium rate reviews.⁷
3. Exchange Planning Grant: TDI and the Texas Health and Human Services Commission (HHSC) received a \$1

million grant to review the feasibility of operating a state-run exchange. Using \$100,000 of the federal grant, TDI worked with the Milliman actuarial firm on the market impact of the federal health care reform law and held a symposium to receive stakeholder input. After these activities, TDI returned the remainder of the funds to the federal government.⁸

In spring 2010, representatives from HHSC testified before different committees of the Texas House of Representatives and the Texas Senate on the impact of the ACA in Texas and, particularly, the ACA provisions relating to the Medicaid program. Medicaid eligibility varies depending on the particular population. In Texas, eligibility ranges from up to 12 percent of the federal poverty level (FPL) for a parent with two children entitled to receive Temporary Assistance for Needy Families (TANF) to up to 185 percent of the FPL for pregnant women and infants and up to 220 percent of the FPL for long-term care recipients. Texas exceeds the federally mandated coverage levels in Medicaid only for pregnant women and infants and long-term care recipients.⁹

Tom Suehs, who was HHSC commissioner at the time, testified that the ACA provisions would increase the number of Medicaid and Children's Health Insurance Program (CHIP) clients by 2.1 million and would result in a net increase in the cost of the Medicaid program and CHIP to the state by \$9.2 billion in general revenue between state fiscal years 2014 and 2019. In addition, HHSC estimated that the cost would continue to grow, eventually totaling \$27 billion in general revenue between state fiscal years 2014–23. This estimate assumed additional costs of approximately \$33.3 billion due to enrollment by the currently eligible but not insured Medicaid population, the expansion of Medicaid eligibility for newly eligible adults and older children, an increase in provider rates (beyond mandatory increases), and increased administrative costs. These costs were offset by savings of \$6.3 billion from a decline in clients in CHIP due to an enrollment shift to Medicaid and increased vendor drug rebate revenue. Testimony indicated that HHSC's cost estimate assumed additional provider rate increases beyond what was expected by the Congressional Budget Office (CBO) when estimating the cost of the ACA legislation to promote growth in the number of providers necessary to support the expanded client base.¹⁰

This original cost estimate by HHSC was higher than costs estimated by other organizations. For example, the Kaiser Commission on Medicaid and the Uninsured estimated that implementation of ACA legislation would cost Texas between \$2.6 and \$4.5 billion in increased general revenue expenditures between state fiscal years 2014–19.¹¹ Prior to the passage of the ACA, House Bill 497 from the 2009 legislative session required HHSC and TDI to provide a study on Medicaid by the end of 2010. In the legislatively mandated study released in December 2010, HHSC and TDI reviewed data on the state's Medicaid clients and

expenditures and the impact of no longer participating in the program. In its report, HHSC's range of estimated costs included one estimate that was significantly lower than the commission's early projections provided by Suehs in the spring. The study estimated that, at the lower end, the additional cost of the ACA's Medicaid provisions could be closer to approximately \$5 billion between state fiscal years 2014–19. In particular, the lower cost estimate removed the assumption of a voluntary increase in provider rates and included expected state tax revenue from premium taxes paid by Medicaid health plans.¹²

The study also reviewed the option of no longer participating in Medicaid. In summary, the review estimated the loss of approximately 60 percent of funding for Medicaid and CHIP from federal matching dollars if Texas no longer participated in the program. However, Texas citizens and businesses would still be obligated to provide tax dollars to the federal government that would be allocated to other states for their programs, and high uncompensated care costs would fall on hospitals and county governments. These concerns made the option to not participate in Medicaid appear unfeasible, but the study recommended pursuing changes to the current Medicaid program.¹³

By the end of 2010, any cost estimate of ACA provisions fostered additional concern within the Texas legislature due to the budgetary conditions at the time. Budgetary constraints from the economic recession and lower than expected sales tax revenues in Texas created the perception of a potential shortfall in available revenue to fund the budget for the next state fiscal biennium. In particular, the governor's office, the lieutenant governor, and the speaker of the House requested state agencies to reduce their current budgets for fiscal years 2010–11 by five percent.¹⁴

Texas uses a biennial budgeting system in which the legislature meets every two years for 140 days to set the budget for the upcoming two-year cycle.¹⁵ After 140 days, the governor can call back the legislature for a special session lasting up to thirty days.¹⁶ The governor defines what topics may be considered by the legislature during the special session. In the interim when the legislature is not meeting, the governor and Legislative Budget Board (a board of ten members consisting of the speaker of the house, lieutenant governor, the chairs of the House Appropriations Committee, Senate Finance Committee, and House Ways and Means Committee, three appointed senators, and two appointed representatives) monitor agency operations and can adjust appropriations through the use of budget execution authority if needed.¹⁷

As the legislature prepared to meet for the 82nd legislative session in January 2011, the potential costs of the ACA created concern amongst the state political leadership about their ability to fund the Medicaid program long term. There was particular concern regarding potential shortfalls if federal matching dollars were to decrease in the years beyond those established in the bill. In addition, prior to the legislative session, Perry published the

book, *Fed Up!*, in November. The book focuses on the empowerment of states and a discussion of overregulation from the federal government.¹⁸ Concerns relating to budgetary impacts and federal regulation were apparent as the legislature met in January 2011 and began to debate and consider state legislation relating to the ACA.

Actions in 2011

Budget concerns became a reality that month when Texas Comptroller of Public Accounts Susan Combs released her Biennial Revenue Estimate (BRE), which estimated a shortfall of \$4.3 billion for the fiscal year 2011.¹⁹ Additional estimates indicated that revenue available for fiscal years 2012 and 2013 could be \$27 billion less than the amount needed to continue spending at the current level on services in Texas under statutes at the time. This decline in available revenue led to a budget for fiscal years 2012 and 2013 that underfunded state Medicaid obligations by approximately \$4.3 billion in general revenue funds. These appropriations would need to be provided for the Medicaid program before the end of fiscal year 2013.²⁰

On January 13, Representative John Zerwas filed House Bill (HB) 636. Zerwas, an anesthesiologist and Republican representing Texas's 28th House District, was the chair of the Health and Human Services Subcommittee on the House Appropriations Committee.²¹ HB 636 was intended to set up the state health insurance exchange, called the Texas Health Insurance Connector.²² No action would be taken on the bill after March 1, with the bill left pending in committee. In a March 29 story by the *Texas Tribune*, Zerwas said he had been told that the governor's office did not approve of the bill, which meant the possibility of a veto of HB 636.²³

During the first called special session of the 82nd Legislature, 2009, lawmakers passed SB 7, which allowed the state to petition for a Medicaid 1115 waiver to allow Texas more autonomy in administering Medicaid.²⁴ On December 12, the Center for Medicare & Medicaid Services (CMS) approved Texas's request for the Section 1115 demonstration waiver through September 30, 2016.²⁵ Prior to this approval, Texas used an Upper Payment Limit program to provide hospitals with supplemental payments to offset low Medicaid reimbursement rates.²⁶ The 1115 waiver allows Texas to establish an uncompensated care (UC) pool and a Delivery System Reform Incentive Payment (DSRIP) pool, valued cumulatively at \$29 billion in all funds over a five-year period. The purpose of these two pools is to reimburse uncompensated care and to incentivize hospitals to update current practices to improve quality and cost-effectiveness.²⁷

In July 2011, TDI Commissioner Geeslin requested a delayed implementation of the medical loss ratio (MLR) provision of the ACA. The MLR requires insurance plans to maintain overhead costs at a level equal to or below a certain percentage of

premiums. Texas requested to use an ACA provision that allowed states to request a phase-in of the required percentages over three years. Ultimately, HHS denied the state's application and required the provision to take effect in 2012.²⁸

Later that month, the governor announced that Eleanor Kitzman had been appointed as the new commissioner of TDI. A native Texan, Kitzman came to TDI after leaving her position as director of the South Carolina Budget and Control Board, which she held after serving as the director of South Carolina's Department of Insurance.²⁹

Actions in 2012

Toward the beginning of 2012, it was announced that the Consumer Health Assistance Program, which had been funded with a \$2.8 million grant via the ACA, would be shut down in April due to funding issues. Some organizations believed that TDI would be eligible for approximately \$128,000 in federal funds to continue the program and requested that TDI apply for the money from HHS. Instead, TDI indicated that while it would continue to perform some of the services, the agency would not apply for additional federal funds for the program.³⁰

On March 23, 2012, the two year anniversary of the ACA being signed into law, the governor's website displayed a post regarding the law's passage.

(A)ccording to tradition, cotton is known as the gift for a second anniversary. But what do you get a federal government that wants to control everything? Unfortunately, the answer is more of your tax dollars. Obamacare doesn't do much to bring down the price of health care, but it does a lot to pass the costs along to the states.³¹

Perry would often repeat this criticism of the ACA as an example of federal overreach and of a program that would bring a heavy financial burden to Texas taxpayers.

On June 28th, the Supreme Court upheld the ACA in a five-to-four decision. The Court acknowledged that Congress's power to levy taxes was sufficient authorization for the law's individual mandate, which requires most Americans to either acquire insurance or pay a penalty. However, seven justices struck down the portion of the law requiring states to either expand their Medicaid programs or lose all federal Medicaid funding.³² Immediately following the decision, Perry released a statement critical of the Supreme Court's decision:

Freedom was frontally attacked by the passage of this monstrosity and the Court utterly failed in its duty to uphold the Constitutional limits placed on Washington. Now that the Supreme Court has abandoned us, we citizens must take action at every level of government and demand real reform, done with respect for our Constitution and our liberty.³³

HHSC Commissioner Suehs also issued a statement that day praising the decision to strike down the Medicaid expansion portion of the law. In his statement, Suehs explained that expanding Medicaid in the way the ACA had mandated would lead to “billions of dollars in extra costs down the road.” Furthermore, he stated that HHSC would continue to improve Texas Medicaid through the 1115 waiver, which would allow Texas to reform Medicaid provision in the state via local solutions.³⁴

On July 9th, Perry wrote a letter to HHS Secretary Sebelius. A facsimile of this letter is included in Appendix A of this report. In the letter, Perry expressed his complete opposition to the ACA. Perry wrote, “Neither a ‘state’ exchange nor the expansion of Medicaid under the Orwellian-named PPACA would result in better ‘patient protection’ or in more ‘affordable care.’”³⁵ This document would be cited on the governor’s website as the first time Texas indicated that it would not create its own exchange. That month, the HHSC released a report estimating that implementing the ACA in Texas would cost approximately \$15–16 billion over ten years as opposed to the originally cited \$27 billion.³⁶

In July 2012, the fiscal climate in Texas appeared to be improving due to increased revenue collections over estimates made in 2011. A report from the comptroller’s office, released on July 19th, estimated that Texas could collect increased revenue by \$4–5 billion above original projections for fiscal years 2012–2013. It was anticipated that some of this revenue may be needed to pay for the underfunding of Medicaid in the budget from 2011.³⁷ Later that month, on July 30, Perry announced that Kyle Janek, a physician and former member of the Texas Senate, would replace Suehs as the head of HHSC, a change that would become effective September 1st.³⁸

A provision of the ACA required states to select a benchmark plan by September 30, 2012, or the benchmark plan in the state would default to the small group plan with the largest enrollment in the state. Texas did not select a plan before the deadline and the default option was the Blue Cross Blue Shield Preferred Provider Organization plan.³⁹

In mid-November, Perry sent another letter to Sebelius largely reiterating the content of the July 9th letter. Most importantly, this letter confirmed that Texas would not implement a health insurance exchange. Perry challenged the idea of what he referred to as a “so-called exchange.” In the letter, Perry stated, “It is clear there is no such thing as a state exchange. Instead, this is a federally mandated exchange with rules dictated by Washington....”⁴⁰

Actions in 2013

The 83rd legislative session began with the announcement of an unexpected budget surplus of \$8.8 billion for the 2014–15 biennium.^{41,42} The budget surplus came as a surprise because comptroller Combs had estimated a shortfall of \$4.3 billion for the 2010–11 biennium and because tax revenue was underestimated

in the 2012–13 projection report.^{43,44} Republican leaders such as Perry, Lieutenant Governor David Dewhurst, and Combs cautioned Texas lawmakers not to see this as an opportunity to fully replenish funding cuts made during the 82nd legislative session in 2011. Instead, they encouraged lawmakers to interpret the surplus as a sign that fiscal conservatism enabled Texas to fare well in the midst of a national recession.⁴⁵

The debate over options to expand Medicaid in Texas has continued, with several policy groups weighing in, despite the Supreme Court ruling overturning mandated Medicaid expansion. One conservative policy group, Texas Public Policy Foundation (TPPF), put forth an overhaul plan that would incorporate asset tests as a means for screening existing and prospective Medicaid recipients.⁴⁶ Over the course of 2013, Perry has supported the use of asset testing as a necessary aspect of Medicaid eligibility multiple times.

Some researchers such as Billy Hamilton, a former deputy comptroller of public accounts, sought to quell concerns of fiscal conservatives. Hamilton provided consulting services for Methodist Healthcare Ministries of South Texas and Texas Impact. During his research, Hamilton found that the state could only gain by expanding Medicaid and receiving federal funding in turn. According to the *Texas Tribune*, “[Hamilton] argued that for an investment of \$15 billion, Texas could draw down \$100 billion in federal funds and expand health care coverage to 2 million low-income Texans over 10 years.”⁴⁷ Furthermore, Hamilton stated that taking advantage of federal funds through Medicaid expansion would facilitate future block grants and would not prevent Texas from reducing Medicaid coverage in the future should federal funding decrease.⁴⁸

Meanwhile, the Texas House of Representative reviewed options for a Texas alternative to expanding Medicaid. In March 2013, Representative Zerwas filed HB 3791, which sought to provide an alternative solution to increasing health care coverage. Specifically, the legislation provided guidelines for a federal block grant request, highlighted ways for Texas to reform Medicaid, and established a “program to potentially draw down federal financing to help individuals at or below 133 percent of the poverty line find private market coverage.”⁴⁹ The bill received bipartisan support as well as endorsements from the Texas Association of Businesses and the Texas Hospital Association (THA).⁵⁰ However, HB 3791 was ultimately left on the House floor. A number of legislators speculated this was due to a potential veto by Perry.^{51,52} In addition, there was debate regarding the inclusion of a rider in the state’s 2014–15 General Appropriations Act (GAA), the bill that provides appropriations for fiscal years 2014 and 2015. This rider would provide direction to HHSC on discussions of a potential Medicaid expansion with the federal government. Tommy Williams, a Republican and the chairman of the Senate Finance Committee, authored the rider. The Senate included the rider in its

version of the General Appropriations Bill. However, when the House and Senate went to conference committee on the General Appropriations Bill, the House issued a nonbinding motion to budget conferees that the rider should not be included in the final version of the bill. Both Representative Jim Pitts, the Republican chairman of the House Appropriations Committee, and Zerwas supported the Senate rider.⁵³ The rider was ultimately not included in the 2014–15 GAA.⁵⁴

Ultimately, the Texas Legislature passed Senate Bill (SB) 7, written by Senator Jane Nelson, that sought to cap Medicaid costs and to assess the essentiality of services more stringently.⁵⁵ One provision of the bill effectively limits the population under current Medicaid criteria:

Under this Act, the Health and Human Services Commission may only provide medical assistance to a person who would have been otherwise eligible for medical assistance or for whom federal matching funds were available under the eligibility criteria for medical assistance in effect on December 31, 2013.⁵⁶

During 2013, TDI notified insurance companies and health maintenance organizations that it would only provide policy form reviews of insurance plans based on state policies and regulations. In addition, TDI indicated that it would continue to perform rate reviews to determine if the increases conformed with laws in the Texas Insurance Code.⁵⁷ In response, the Center for Consumer Information and Insurance Oversight (CCIIO) sent a letter to the same organizations indicating that, due to Texas not incorporating market reforms associated with the ACA into state law and the resultant lack of state-legislated enforcement authority, the responsibility for enforcement would fall under the jurisdiction of CMS. Soon after, CCIIO also informed organizations that Texas no longer had an Effective Rate Review Program and CMS would be responsible for reviewing rate increases to comply with provisions of the ACA.⁵⁸

In June 2013, TDI notified insurance companies that they could renew individual and small group policies in late 2013. These renewals were allowed even if the policies were not due to expire until later and even if they did not meet the ACA minimum coverage requirements. The upshot of this decision has been that few Texans received notices that their plans would be cancelled at the end of 2013. For most in the individual and small group markets, the cancellation of policies not compliant with minimum coverage requirements has been pushed back to late 2014.⁵⁹

SB 1795, a bill that was drafted before federal regulations for navigators were made public, aimed to provide TDI with the authorization to regulate Texas insurance navigators. The federal guidelines that require navigators to “complete 20 to 30 hours of training, pass a certification test, and renew their certification annually” were released in July 2013.⁶⁰ On September 17, Perry

wrote a letter to TDI Commissioner Julia Rathgeber, directing the organization to implement additional rules for navigators. Rathgeber, former deputy chief of staff to Dewhurst, was approved as commissioner of TDI after the previous appointee, Eleanor Kitzman, was unable to attain nomination approval from the Senate Nominations Committee.⁶¹ Some of the rules Perry requested were 40 hours of additional training to supplement the federal standard, an additional training exam, and the ability for TDI to charge navigators for the services provided in overseeing these activities. A facsimile of Perry's letter to Rathgeber is included in Appendix A of this report.⁶²

The author of SB 1795, Senator Kirk Watson, responded to both Perry and Rathgeber, explaining that these requests might not be consistent with the intent of the bill and that some of the requests for proposed rules violated federal policy. One measure asked that navigators pass on insurance applicants' information to TDI. However, navigators are not permitted to keep or report data on those they help during enrollment.⁶³ Perry also directed TDI to prohibit navigators from comparing plans for clients. According to federal guidelines, navigators are explicitly allowed to provide comparisons among plans, though advising consumers to select a particular plan is prohibited.⁶⁴

Around the time that Perry directed TDI to implement new navigator regulations, he also wrote two memos to HHSC Executive Commissioner Janek. One memo asked for HHSC to collect asset and resource data for all Medicaid applicants. The ACA prohibits asset and resource testing to be used as a screening tool for Medicaid applicants, but the governor relayed to Janek that he hoped data collection would demonstrate the impact of the ACA on Texas.⁶⁵ In another memo to Janek, Perry asked HHSC to create a Medicaid reform waiver that would not expand Medicaid; instead the waiver would request a federal block grant and incorporate asset testing as a reform measure.⁶⁶ These memos were sent just over a month after Sebelius visited a few Texas cities to discuss the rollout of the ACA as well as the possibility of a Texas solution for expanding Medicaid. During a stop in Austin, Sebelius suggested the federal government was open to negotiating terms for Medicaid expansion in Texas.⁶⁷ Though Perry did not meet with Sebelius, he did provide a press release in response to her visit, which stated, "With due respect, the secretary and our president are missing the point: It's not that Americans don't understand Obamacare, it's that we understand it all too well."⁶⁸

While there has been some interest in developing a Texas alternative to expanding Medicaid within the Texas Legislature, this has been overshadowed by lawmakers' desire to comply with the terms Perry has set forth for molding Texas's health insurance policy and to avoid being seen as supporting the ACA or Medicaid expansion, as they demonstrated through the final reception of HB 3791.^{69,70}

1.2. Goal Alignment

The political leadership in Texas has taken a primarily oppositional approach to the ACA during the implementation of the law. Immediately following the passage of the ACA, the attorney general of Texas joined other states in a legal challenge to many provisions of the legislation. At the same time the lawsuit was being filed by the Texas judicial system, the Texas legislative branch chose not to implement a state health insurance exchange and opted to use a federally run exchange. Representing the executive branch in Texas, Perry has repeatedly indicated his opposition to the ACA and its implementation in Texas. Most recently, the Texas legislature decided against expanding Medicaid. In the years since the passage of the ACA, political leadership in Texas has remained relatively unchanged with the same individuals elected to the Governor's Office, Lieutenant Governor's Office, Office of the Attorney General, and in leadership positions of the legislature. The continued presence of these individuals opposed to the ACA has shaped the political climate in Texas and the state's views and actions towards the ACA.

The two main state agencies with rule-making authority over provisions relating to the ACA, HHSC and TDI, have had mixed responses to the ACA. Since the passage of the ACA, HHSC has consistently requested more flexibility from the federal government relating to the Medicaid program. In particular, former HHSC Commissioner Suehs released a statement after the Supreme Court decision on the ACA, noting, "I remain concerned that expanding Medicaid without reforming it only multiplies the tremendous budget pressure the program puts on states.... The best long-term solution is for Congress to grant states more flexibility to tailor solutions that best meet their needs."⁷¹

In addition, Suehs and representatives from HHSC were questioned in 2010 about the agency's initial cost estimate relating to the expansion of Medicaid. The initial estimate by HHSC stated that Medicaid expansion would require an additional \$27 billion in general revenue funds from fiscal year 2014 through 2023. This estimate was significantly higher than estimates by other organizations and resulted in confusion regarding the cost from members in both the state and federal government.⁷² Ultimately, HHSC's estimate was revised downward, but the initial cost estimate did create concern amongst the budget leaders in the state.

Recently, Perry has requested HHSC to continue collecting information on assets and resources of Medicaid clients despite the fact that the ACA directly prohibits the use of the information for eligibility purposes. This data collection is in opposition to provisions within the ACA regarding the use of asset tests when screening eligibility in Medicaid.⁷³

TDI, the other main state agency involved with the ACA, initially began exploring options that would be necessary for Texas to comply with the provisions of the legislation. In 2010, TDI applied for and used some federal funds relating to the ACA.

However, the agency ended up returning some federal money relating to the state health insurance exchange planning and chose not to apply for additional federal funding.^{74,75} Eventually TDI determined that the agency did not have the statutory authority to enforce regulations relating to the ACA; therefore, TDI will continue to only enforce state regulations, which may not include provisions of the federal law. CMS is now responsible for the enforcement of federal market reforms in Texas.⁷⁶ The decision to not enforce provisions of the ACA makes Texas one of only six states that does not have the state's own regulatory agency providing this function.^{77,78}

In addition, Perry has requested that TDI review the federal rules on navigators and put forward more stringent requirements to be applied in Texas. Since this request, TDI has written a letter to Sebelius outlining TDI's concerns regarding navigators. Furthermore, TDI held a stakeholder meeting on the imposition of additional requirements for training, licensing, and background checks.⁷⁹ Recently, gubernatorial candidate and Texas Attorney General Greg Abbott also requested TDI Commissioner Rathgeber to impose more stringent requirements on navigators in Texas.⁸⁰

Texas has also impacted the implementation of the ACA on the federal level. Ted Cruz, a vocal opponent of the ACA, was elected to the United States Senate from Texas. Cruz defeated Dewhurst for the Republican nomination in a runoff election by claiming to have more conservative views.⁸¹ In fall 2013, Cruz performed a twenty-one-hour filibuster primarily focused on opposition to the ACA. He also supported the House of Representatives's refusing to pass a budget and causing a shutdown of the government unless changes were made to the ACA.⁸² Additionally, President Obama and Sebelius have both called on Texas to expand Medicaid due to the large uninsured population in the state.^{83,84}

Texas politics influenced actions of the two state agencies primarily involved with the implementation and regulation of the ACA to ensure that the actions of each conform to the political leanings in Texas. The political leadership in Texas has taken a primarily oppositional view of the ACA and has repeatedly indicated disagreement and displeasure with requirements to comply with the legislation.

Part 2 — Implementation Tasks

2.1. Exchange Priorities

The implementation of the Patient Protection and Affordable Care Act (PCACA) in Texas involves work in several areas:

- Development of a health insurance marketplace;
- Education of consumers, enrollment assistance;
- Developing tracking and evaluation mechanisms;

- Adjusting regulatory and coordination mechanisms to meet ACA requirements.

Texas decided to participate in a federally facilitated exchange (FFE), leaving much of the responsibility for the marketplace implementation to the federal government. State agencies have made some adjustments in recognition of the changes required under the ACA, but only so far as they are obligated under the law. Nonprofit organizations, health centers, and private foundations have executed many implementation tasks. With the assistance of federal and private funds, these organizations have begun to establish mechanisms for ACA outreach, navigation, and evaluation. However, technical difficulties with the federal marketplace website have impeded enrollment.

Texas has a large and diverse uninsured population, and many of the uninsured lack knowledge about the ACA.⁸⁵ However, there has been little coordinated effort in Texas towards educating the public about the law. The state government has been minimally involved, especially in the months preceding the marketplace rollout. In January 2011, TDI established the Consumer Health and Assistance Program with federal funding. However, this funding has since expired and the program ended in April 2012.⁸⁶ Beyond this, state agencies have educational materials available on their websites, and TDI will present educational programs upon request. In contrast, many private entities have significant consumer education campaigns, which are discussed in more detail in Section 2.4. Texans have also seen significant coverage by the media and some consumer education assistance from local government. With the exception of the efforts of a few statewide coalitions such as Cover Texas Now and Texas Well and Healthy, most education efforts are locally concentrated.^{87,88} Generally, organizations target specific populations for outreach, often from within communities where they already operate.

Private organizations are involved in ACA consumer education in many states, including Texas. In contrast, the state government's role in Texas has been passive, especially when compared with the governments of states with state-facilitated marketplaces. For example, Oregon, Maryland, and Nevada have each devoted significant state funding towards developing advertising campaigns encouraging citizens to enroll in health insurance plans. Among many approaches, these campaigns have involved print, radio, and television advertising, as well as partnerships with drug stores and supermarkets.⁸⁹ In Texas, this type of marketing is being handled by the private and nonprofit sectors.

Texas state government has offered little navigational support to consumers, leaving these tasks primarily to federal navigator grant recipients and other nonprofit organizations that help enroll individuals. Eight Texas organizations received federal grants to hire navigators, constituting the highest total grant money awarded to any single state. Additionally, the navigator grant recipients, as well as other groups, enlist certified application

counselors (CACs) to help consumers navigate the marketplace. Some federal funding was awarded to community health centers for this purpose.⁹⁰ But, aside from official federal navigators, most funding for enrollment assistance comes from private sources. Insurance brokers can also play a role in assisting with enrollment.⁹¹

Although potential navigators must meet federal requirements before beginning their activities, Perry's proposal for more stringent requirements are leading some organizations to reconsider their participation in marketplace navigation activities.⁹² Although no additional requirements have yet been applied to navigators in Texas, TDI Associate Commissioner Jamie Walker, in an October 31st letter to Watson, expressed TDI's intentions to formulate and enact state-level standards while working with the federal Department of Health and Human Services to improve federal standards.⁹³ This pattern of restriction on navigators can be seen in other states with Republican-dominated governments. For example, Georgia requires extensive background checks of its navigators before they can help consumers.⁹⁴

The main adjustment for government agencies in Texas is the use of modified adjusted gross income (MAGI) in Medicaid determination in place of asset testing, as well as the transfer of Medicaid applications from the federal marketplace to state agencies. Presently, HHS is making determinations on behalf of Texas in order to facilitate this transition and plans to transfer final authority on January 1, 2014. Although other states are using the FFE, several have worked to integrate these systems independently. Tennessee, for example, issued a request for proposals for contractors to suggest ways to integrate the state Medicaid and CHIP system with the federal marketplace.⁹⁵ Similarly, New Mexico devoted \$1 million in federal grant money to update state eligibility systems, and eleven states are participating in the public-private partnership, Enroll UX 2014, aimed at developing successful enrollment exchange systems.^{96,97} To date, Texas has not taken part in these additional activities.

State data collection and implementation evaluation programs are comparatively minimal. CMS has released initial enrollment numbers and plans to release updates monthly. However, this is nationwide data that does not include a state-by-state breakdown.⁹⁸ States operating their own exchanges under the ACA have begun reporting initial enrollment numbers, and a few using the federal exchange have reported independent state data. In contrast to Texas, Kentucky has developed an integrated portal through the state exchange, Kynect, to determine eligibility and track enrollment.⁹⁹ Kentucky has published enrollment and application statistics on the governor's website.¹⁰⁰ In New Jersey, the Department of Banking and Insurance has helped fund the Center for State Health Policy, designed to study enrollment issues and New Jersey insurance coverage under the ACA.¹⁰¹

Private organizations have taken the lead in tracking enrollment in the absence of state-level involvement within Texas.

Depending on the type of organization and its associated goals, the purpose of data collection varies. Organizations' data collection efforts aim to examine and improve operations, specifically outreach; to fulfill obligations to funders by reporting enrollment statistics; to analyze statistics in order to promote a particular policy agenda; or to provide transparency.

Nonprofit organizations involved in enrollment activities are presently tracking individuals as they work through the education and enrollment process to determine how many people the organization reaches and who eventually enrolls in a Qualified Health Plan. Some of these organizations have established arrangements to share this data with foundations or think tanks, such as the Center for Public Policy Priorities, that are studying implementation on a macro level and providing policy recommendations based on their findings.¹⁰²

2.2. Leadership – Who Governs?

The Governor of Texas

Texas governors are elected every four years, and there is no term limit. Governors have constitutional and statutory duties that include the power to (1) sign or veto bills passed by the legislature, (2) convene a special session of the legislature, (3) recommend a budget and budget priorities, and (4) appoint Texans to state offices, advisory bodies, and task forces.¹⁰³ Each of these powers enables the governor to have considerable influence over how legislation, including the ACA, is implemented in Texas.

The governor's veto power includes the power to veto bills, concurrent resolutions, and appropriation items. The governor can also veto specific items in the legislature's budget bill, rather than the entire bill, through the line-item veto.¹⁰⁴ Since Perry was elected in 2000, he has vetoed 248 bills, which is more than any other Texas governor.¹⁰⁵ According to State Representative Zerwas, the threat of Perry's veto may have had some influence on the death of House Bill 3791, which would have provided a "Texas solution" to Medicaid reform under the ACA, and is discussed below.¹⁰⁶

The governor also has the constitutional power to call special sessions of the legislature and set the session's agenda. A special session can meet no longer than thirty days and is called to focus on a problem or respond to a crisis that was not addressed in regular session.

The governor has the power to recommend a budget for two years and speak publicly about budget priorities. In Texas, the legislature and the Legislative Budget Board (LBB) hold considerable power over the budgetary process. With the approval of the LBB, the governor has the authority to transfer funds between agencies and programs in emergency situations.¹⁰⁷

The governor can also influence the legislative process through the power of appointment. The governor makes

hundreds of appointments to state boards, commissions, and agencies. Perry's appointees include Executive Commissioner Janek of the Health and Human Services Commission and Commissioner Rathgeber of the Texas Department of Insurance.¹⁰⁸ Of the 111 state agencies that report directly to the governor's office, these two in particular have been involved in decision-making regarding how Texas will participate in the implementation of the ACA.^{109,110,111}

Perry was elected as a Democrat to the Texas House of Representatives in 1984. He was then elected agricultural commissioner as a Republican in 1990 and lieutenant governor in 1998. He assumed the office of governor in December 2000, when George W. Bush was elected president. Perry was reelected in 2002, 2006, and 2010. On July 8, 2013, he stated that he would not seek a fourth full term as governor.

Perry has been an active, vocal opponent of the ACA with public statements on record since the 2009 debate on the bill. For example, Perry spoke on October 1, 2013, at a campaign event in New Jersey¹¹² where he said: "If this health care law is forced upon this country, the young men and women in this audience are the ones who are really going to pay the price. And that, I will suggest to you, reaches to the point of being a felony toward them and their future. That is a criminal act, from my perspective, to put that type of burden on them, to mortgage their future like that. America cannot stand that. America cannot accept that."

Representative Zerwas introduced a bill during the 2013 legislative session seeking a "Texas solution" to expand coverage to poor adults. The bill, HB 3791, would direct the HHSC commissioner to pursue a federal waiver from full Medicaid expansion while seeking federal assistance for expanded coverage.^{113,114} The bill enjoyed bipartisan support, including the endorsement of the Texas Association of Business.¹¹⁵ The bill was stopped in a House committee, and in March of 2013, Zerwas was reportedly told that Perry's office did not support the measure.¹¹⁶

Perry issued four public letters in the months before the October 1, 2013 implementation of the exchange, voicing his opposition to the law. (See Appendix A for the full text of these letters.)

1. To HHS Secretary Sebelius, July 9, 2012.¹¹⁷ In this letter Perry stated, "I oppose both the expansion of Medicaid as provided in the Patient Protection and Affordable Care Act and the creation of a so-called 'state' insurance exchange, because both represent brazen intrusions into the sovereignty of our state."
2. To HHSC Executive Commissioner Janek, September 16, 2013.¹¹⁸ Perry stated, "Despite the fact that President Obama has said, 'We can't simply put more people into a broken system that doesn't work,' that is precisely what Medicaid expansion under Obamacare strives to accomplish. Seemingly, the president and his administration are content to simply throw money at a problem

and hope that any problems will resolve themselves.” Perry went on to restate clearly that Texas will not expand Medicaid under the ACA. Perry instructed Janek to apply for a waiver that would provide a block financial grant to Texas for Medicaid reform as detailed in the letter.

3. To Janek, September 16, 2013.¹¹⁹ In this letter, Perry stated, “Among its egregious provisions, Obamacare, if implemented, prevents states from including personal accountability measures in the Medicaid eligibility determination process. Prohibiting tools such as asset and resource testing will further burden Texas taxpayers with additional spending in the state budget by allowing individuals who should not qualify based on personal resources to receive Medicaid services.” Perry instructed Janek to develop a mechanism to collect and analyze income data on Medicaid applicants. Perry stated the purpose of this mechanism was to calculate the impact of provisions of the ACA on the state of Texas.
4. To TDI Commissioner Rathgeber, September 17, 2013.¹²⁰ In this letter, Perry stated, “I am directing TDI to use its authority under S.B. 1795 and create rules to ensure that navigators are well-trained, qualified, and capable of protecting Texans’ privacy.” Rathgeber is instructed to implement a series of additional requirements that include creating a TDI-approved training course of forty hours and requiring navigators to pass a rigorous exam based on this training, as well as having TDI maintain a database of navigators that includes background checks, regulatory checks, and fingerprints. Additional requirements are outlined in the letter.

Legislative Budget Board

The Legislative Budget Board of Texas was founded in 1949 to be responsible for the continual review of the state budget. In 1973, the LBB assumed additional responsibilities to evaluate agency programs and to estimate expected costs that would result from legislation passed in that session. The Medicaid Analysis and Cost Control Office (MACC) was formed as part of the LBB in 1991. The MACC works to increase federal receipts by focusing (primarily) on the Medicaid program.¹²¹

The LBB is a permanent joint committee of the Texas legislature with its primary purpose to recommend legislative appropriations for all agencies of state government. All state agencies are required to submit budgets to the LBB for review and recommendations. The LBB provides the Texas legislature with a recommended state budget at the beginning of each legislative session. These sessions occur starting in early January of odd-numbered

years. According to the LBB's website, "The Board's authority is broad and its influence on state government spending is significant."¹²²

The LBB is composed of five members from the Texas House of Representatives and five members from the Texas Senate. The membership of the board is dictated by statute and includes these officers: (1) the lieutenant governor as a joint chair; (2) the speaker of the House of Representatives as a joint chair; (3) the chair of the House Committee on Appropriations; (4) the chair of the House Committee on Ways and Means; (5) the chair of the Senate Finance Committee; (6) two House members appointed by the speaker; and (7) three Senate members appointed by the lieutenant governor.

Ursula M. Parks became the sixth director of the LBB in 2012. Parks joined the LBB as a financial analyst in 1994 and became an LBB team manager in 2001. Parks became assistant director in 2007. She holds a bachelor's degree from American University.

The LBB has additional responsibilities that fall into three categories: (1) those mandated by general law; (2) those directed by the General Appropriations Act; and (3) those designated by the board and its staff. The responsibilities of the LBB dictated by statute are as follows:

- Adopt a constitutional spending limit (Section 316, Government Code; Article 8, Section 22, Texas Constitution);
- Prepare a General Appropriations Bill draft (Section 322.008(a), Government Code);
- Prepare a budget estimates document (Section 322.008), Government Code);
- Prepare a performance report (Section 322.011), Government Code);
- Guide, review, and finalize agency strategic plans (Section 2056, Government Code);
- Prepare fiscal notes and impact statements (Section 314, Government Code); and
- Take necessary budget execution actions (Section 317, Government Code).¹²³

The LBB prepared an overview of the impact of the ACA on the state budget for the 2013 legislative session. This document is included in the January 2013 "Texas State Government Effectiveness and Efficiency Report."¹²⁴ Among the report's key findings, Texas would be awarded more than \$669 million in federal grants as result of the ACA from 2010–13. Texas health and human services agencies received 72 percent (\$481 million) of this funding through grants to the HHSC, the Department of Aging and Disability Services (DADS), and the Department of State Health Services (DSHS). An additional \$276 million in ACA-related grants is expected in 2014–15. The state expects ACA-related costs of \$151 million for 2014–15 and this cost will be partially offset by an

estimated \$82 million in savings through the Children's Health Insurance Program and other programs. The LBB predicted that ACA-related costs would continue into the future. Predicted future costs fall into five categories: (1) possible expansion of Medicaid; (2) implementation of future ACA provisions; (3) loss of future funding to continue rate increases for primary care physicians; (4) providing funding through HHSC to other physicians who provide the same services; and (5) HHSC plans to expand its automated system to handle a higher Medicaid caseload. A detailed breakdown of ACA-related costs and grants is included in the report.

Texas Health and Human Services Commission

Most of the health and human services provided by the state of Texas are administered through the HHSC and its departments, the DADS, the Department of Assistive and Rehabilitative Services (DARS), the Department of Family and Protective Services (DFPS), and the DSHS. See Appendix B for an organizational chart of HHSC.

In 2003, House Bill (HB) 2292 consolidated twelve health and human service agencies into the five agencies listed above. The law also organized all of the executive policy-making authority under the executive commissioner of the HHSC. This structure is outlined in detail in Appendix B. This reorganization centralized power over Texas health and human services with the HHSC executive commissioner. The governor also exerts influence over HHSC, DADS, DARS, DFPS, and DSHS with his authority to appoint the executive commissioner and deputy commissioners. The four agencies under the HHSC have advisory councils with no rulemaking authority.¹²⁵

As detailed in the "Texas Health and Human Service Commission Self Evaluation Report" dated September 2013, the HSSC executes five key functions: (1) HHS system oversight; (2) Medicaid service delivery; (3) other social services; (4) detection and deterrence of fraud, waste, and abuse; and (5) eligibility determination.¹²⁶

HHSC is led by Janek, who was appointed to this position by Perry on September 1, 2012. In this position, Janek is responsible for the oversight of five health and human services agencies. "Texas Health and Human Services Commission Sunset Self-Evaluation Report" states that as of June 1, 2013, these five agencies had approximately 12,070 full-time employees (FTEs) and a budget totaling \$22.4 billion in fiscal year 2012. HHSC connects Texans to Temporary Assistance for Needy Families (TANF), Medicaid, CHIP, and the Supplemental Nutrition Assistance Program (SNAP) through the Office of Social Services (OSS).^{127,128}

Janek graduated from Texas A&M University and completed medical school at The University of Texas Medical Branch in Galveston. Janek has been in private practice as an anesthesiologist since 1986. Prior to his appointment as executive commissioner of

HHSC, Janek served for eight years in the Texas House of Representatives and five years in the Texas Senate.

In October 2012, Janek appointed Kay Ghahremani as the Texas associate commissioner for Medicaid and CHIP.¹²⁹ Ghahremani holds a master's degree from the LBJ School of Public Affairs. Prior to taking the position, she served with HHSC for over fifteen years, most recently as Medicaid/CHIP policy director. As director and then associate commissioner, Ghahremani gave public presentations covering the ACA on behalf of HHSC on August 17, 2012,¹³⁰ August 30, 2012,¹³¹ and February 19, 2013.¹³²

Office of Social Services of HHSC

The Office of Social Services is organized under HHSC and is led by the deputy executive commissioner for social services. OSS is responsible for determining program eligibility for TANF, CHIP, Medicaid, and food assistance programs. OSS also works closely with community organizations to provide additional social services.¹³³ The website YourTexasBenefits.com is maintained by OSS and is intended to be the key portal for connecting Texans to these benefits. Today, more than 9,000 state employees work for OSS in 269 offices throughout the state. See Appendix B for an organizational chart of OSS.

Stephanie Muth serves as deputy executive commissioner for OSS. The executive commissioner hires for this position, which is responsible for day-to-day operations, including overseeing the five divisions: Eligibility Operations; Community Access and Services; Program Innovation; Policy Strategy, Analysis, and Development; and Business and Operations Support. Muth, a graduate of the LBJ School of Public Affairs, assumed this position in November of 2011. Previously, she served as chief of staff and HHSC's associate commissioner for consumer and external affairs. She has held the position of director of external relations and she has worked for the former Department of Human Services and the Department of Family and Protective Services. Muth also worked for three years in the Texas House of Representatives.¹³⁴

Texas Department of Insurance

The Texas Department of Insurance is the regulator for all insurance companies and insurance policies sold in Texas. According to the TDI "Annual Audit Plan" dated September 2013, TDI is organized around nine key functions: (1) licensing, certification and registration; (2) form, rate, and advertising review; (3) examination, monitoring, and solvency intervention; (4) research and analysis; (5) education, outreach, and customer assistance; (6) complaint and dispute resolution; (7) enforcement, fraud, and investigations; (8) inspections and consultations; and (9) support services.¹³⁵ The TDI planned budget for fiscal year 2012 was \$152,936,537 from the TDI operating budget dated December 1, 2011.¹³⁶

TDI is led by Rathgeber, who was appointed by Perry on May 27, 2013, and was confirmed by the Texas Senate on June 14, 2013. Prior to joining TDI, she served as deputy chief of staff in the office of Dewhurst. Rathgeber completed her undergraduate and law degrees at The University of Texas at Austin and has worked in Texas state agencies for more than twenty-two years.

At this time, TDI has elected not to involve the agency either in developing an exchange or in conducting rate review for ACA requirements. CCIIO awarded TDI a \$1 million exchange grant on September 30, 2010.¹³⁷ According to the CCIIO's website for the award, this grant was intended for three purposes: (1) coordinating Texas's exchange planning efforts between the TDI and HHSC; (2) examining specific circumstances to Texas; and (3) developing considerations about setting up regional exchanges within the state. A total of \$96,425 was spent on an education and information session in 2011 per Section IV.F. of TDI's operating budget for Fiscal Year 2012 (Budgetary Impacts Related to Federal Healthcare Reform Schedule). Of the remaining portion of the grant, \$900,000 was eventually returned to CCIIO. For rate and form review, TDI will approve all plans for state requirements, but has stated that the department does not have the authority to review plans for federal requirements. Insurers will file plans with both the state and federal government for review. In response to questions about what role it might play in ACA implementation, TDI created a federal health care reform resource page on its website.¹³⁸

U.S. Health and Human Services Regional Office – Dallas, Texas

With regard to Medicaid expansion, HHS Secretary Sebelius is quoted in the *Texas Tribune* on August 08, 2013.¹³⁹ "We are eager to have discussions with Texas about a program that could look uniquely Texan," Sebelius said. "But as far as I know, those conversations, at least with the state officials, are not taking place right now." This is consistent with public statements from the governor's office, HHSC, and TDI. In short, the federal government is leading all ACA implementation efforts today in Texas.

The HHS Region VI office is located in Dallas. Region VI is responsible for overseeing HHS policy in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas and is led by HHS Regional Director Marjorie McColl Petty. She has served in this role since 2009. Prior to her role at HHS, Petty has also served as a state senator in Kansas and a member of the Topeka City Council. She received a JD from Washburn University School of Law and a Master of Education/Counseling degree from the University of Kansas. Petty participated in a panel at *Texas Tribune* Fest on September 28, 2013, with Janek.¹⁴⁰ She expressed openness to working with the state of Texas for a "Texas solution" to ACA implementation, matching the previous statement from Sebelius.

2.3. Staffing

Both HHSC and the TDI have assumed new responsibilities in response to the ACA and are currently in the process of carrying out these responsibilities. Texas chose to participate in the federally facilitated exchange, and state-level staffing changes for the purpose of implementing the ACA have been minimal. The state's limited involvement in facilitating the implementation of the ACA has resulted in grassroots and local efforts on outreach and application assistance. This is further discussed in Sections 2.4 and 2.5 of this report.

HHSC has not made any staffing changes as a result of the ACA. However, some HHSC staff members have been assigned additional responsibilities related to the ACA, including coordinating with federal agencies to develop a referral system that will work with the exchange. All manpower dedicated to ACA-specific tasks comes from existing HHSC staffing. HHSC does not anticipate hiring new staff for ACA-related work in the near future.¹⁴¹

Furthermore, HHSC's Office of Social Services contains 9,000 employees across 269 offices that include eligibility workers responsible for connecting Texans to food, medical, and cash assistance services.¹⁴² Eligibility workers have received training to help Texans apply for health insurance through the marketplace. These eligibility workers are neither certified application counselors nor health insurance navigators, but they are prepared to answer questions and provide assistance to those interested.¹⁴³

Similar to HHSC, TDI has not hired additional permanent staff as a result of the ACA, despite estimates in TDI's 2011 strategic plan that additional actuaries would need to be hired to implement the ACA.¹⁴⁴ However, TDI did hire six temporary staff to participate in the rate review process prior to Texas losing its effective rate review status in April 2013, which eliminated TDI's need for additional rate review staff. Although there have been no ACA-related permanent staffing changes, Texas Senate Bill (SB) 1795 granted TDI new duties related to limited oversight of health insurance navigators and allotted the agency a number of duties related to this oversight. The bulk of these duties are assigned to the TDI commissioner, who is responsible for the following:

- Regularly obtaining a list of all navigators in the state and who employs them;
- Developing navigator rules, when necessary, to ensure that navigators comply with new state and federal laws;
- Evaluating federal rules and requirements for navigators to determine whether they are sufficient to allow navigators to "perform the required duties;"
- Working with the HHS in a "good faith effort" to address any inadequacies that TDI may find in the navigator rules; and

- Developing Texas-specific navigator rules if the concerns of TDI are not addressed by HHS “after a reasonable interval.”

SB 1795 also authorizes TDI to develop a state registry for all navigators that collects information on navigators carrying out services in Texas and enables TDI to monitor navigator compliance with applicable standards.¹⁴⁵ Perry proposed additional responsibilities for TDI in the September 17, 2013 letter referenced in Section 2.2. (See Appendix A.)

2.4. Outreach and Consumer Education

In Texas, an estimated 3.5 million people are eligible to purchase insurance in the federally facilitated marketplace.¹⁴⁶ This represents a diverse population from across the state, and many of this group lack understanding of the ACA or knowledge of what may be available to them.¹⁴⁷ However, state agencies have taken a relatively passive approach toward educating the public about the changes expected with the implementation of the ACA. In the absence of strong state government leadership, nonprofit organizations, Community Health Centers (CHCs), and local governments have engaged in education and outreach. Consequently, most of the efforts across the state are decentralized and often locally coordinated.

Organizations working in Texas identify several common challenges to education and outreach among the potentially eligible population. Many believe that two of the greatest challenges will be to overcome misconceptions and ignorance regarding the ACA and also to provide basic health insurance literacy to a population that may not be familiar with health insurance systems.¹⁴⁸ Mimi Garcia, state director for Texas of the advocacy group Enroll America, stated that the uninsured are frequently skeptical that they will be able to find a health insurance plan they can afford or one that will include coverage for their specific medical needs.¹⁴⁹ Beyond this, many of those eligible to enroll in the marketplace lack the computer skills necessary to take advantage of online enrollment or may not possess the requisite email address.¹⁵⁰ Others lack transportation to enrollment centers or may be unable to afford health insurance, even with a federal subsidy.¹⁵¹ Not only is outreach and education regarding the ACA necessary, but enrollment assistance is also a critical component of reaching those eligible to enroll through the marketplace. Many organizations performing outreach and enrollment are not providing navigational assistance. However, most of those providing navigational assistance are also offering some form of basic consumer education, which is frequently needed prior to beginning to compare the plans available through the marketplace.

In Texas, most organizations involved in outreach and consumer education activities existed in the health care advocacy field prior to the passage of the ACA. However, Enroll America

is a new organization that is working in several states that, like Texas, have high numbers of uninsured. Enroll America is led by representatives from major health care industry groups and nonprofits and has roots tied to Families USA, a health care consumer advocacy organization.^{152,153} Its stated goal is to “maximize the number of uninsured Americans who enroll in health coverage made available by the Affordable Care Act.”¹⁵⁴ Enroll America engaged in data collection and analysis to identify the uninsured in Texas. As a part of its “Get Covered America” campaign, it plans to work with community organizations as well as individual volunteers to educate people regarding the ACA. This grassroots effort focuses on one-on-one meetings. Enroll America primarily targets the urban uninsured in Texas, but it also intends to work with partner organizations across the state.¹⁵⁵

Other organizations involved in outreach and education are working primarily with populations they have historically targeted or communities closely associated with those populations. CHCs are doing extensive consumer education, as well as assisting consumers in the marketplace. These campaigns are some of the most geographically far-reaching efforts in Texas. Because CHCs target populations that often do not have health insurance coverage, they have adopted innovative approaches towards outreach, such as requesting doctors or nurses to write “prescriptions” for health insurance. Approximately 75 percent of CHCs have been involved in some kind of outreach and education prior to the ACA and are now leveraging their experience in assisting people with enrollment in Medicaid, CHIP, and other programs. Across the state, CHCs received over \$9 million from the Health Resources and Services Administration (part of HHS) for consumer assistance. They have identified 561,044 health center patients as uninsured and hope that 350,000 individuals will enroll in health coverage through CHCs.¹⁵⁶

Many other consumer education activities across the state are concentrated at the local level. These efforts are often executed by nonprofits that presently have similar missions, have historically worked in health care advocacy, or serve populations that would benefit from enrollment in health insurance. For example, Foundation Communities works with low-income groups in Austin, providing housing, tutoring, and tax preparation assistance among other activities. It plans to reach out to existing clients, advertising its health insurance enrollment assistance, and using existing volunteers to assist those clients. It hopes to enroll 5,000 people in health insurance, a number derived from its experience in the tax preparation assistance program.¹⁵⁷

In Houston, Children’s Defense Fund is calling upon existing relationships with schools to talk with principals and nurses to determine the best methods to educate families about options available to them through the ACA. Among other activities, the organization is also targeting faith communities and small

businesses statewide and partnering with the Fiesta Mart grocery chain to host sign-up events. Most of these activities are an extension of outreach and assistance previously provided to families eligible for Medicaid and CHIP.¹⁵⁸ Although it seems to be primarily focused on policy, the Texas Organizing Project is a statewide organization that also works at the grassroots level, often with local nonprofits or community organizations. The project has sponsored educational events and presentations related to the ACA, targeting communities that could potentially benefit from enrollment in marketplace insurance plans. Many of the organizations providing consumer education have used materials published by the Kaiser Family Foundation to assist in explaining ACA benefits to consumers.¹⁵⁹

Blue Cross Blue Shield of Texas, one of the largest insurance providers in the state, has also launched Be Covered Texas. The campaign involves an educational website, neighborhood events, a TextMe campaign, and a Spread the Word campaign.¹⁶⁰ This is the only major educational campaign by insurance companies in the state, but others may follow.

Local media outlets have also played a significant role in providing information about the ACA to consumers. Media coverage, especially on enrollment assistance centers, has been extensive, and many organizations reported being contacted by local media to elaborate on their efforts. Local outlets of Univision, a Spanish language channel, have been especially involved with wide coverage and phone banks fielding consumer questions about the ACA.¹⁶¹

Just as most outreach activities in the state have been handled by private organizations, state government has been largely uninvolved in coordinating these efforts. Two efforts, the Cover Texas Now coalition¹⁶² and the Texas Well and Healthy campaign,¹⁶³ represent the largest statewide coordinated programming. These are headed by a coalition of organizations from across the state that uses grassroots tactics to educate consumers and to advocate for health care reform. Cover Texas Now is an alliance of a large number of faith-based, nonprofit, health care industry, and policy advocacy organizations. The Texas Well and Healthy campaign is a joint effort of Texans Care for Children, Engage Texas, Children's Defense Fund of Texas, and the Center for Public Policy Priorities, which is linked to Cover Texas Now. Beyond these statewide efforts, coordination has primarily happened on the local level. For example, organizations doing consumer outreach in the Austin area have agreed on a common promotional flyer.¹⁶⁴

Generally, local governments across the state have been receptive to involvement in outreach activities. In some areas they have played a large role in coordinating consumer education and helping people access navigational assistance. For example, the Houston Department of Health and Human Services and the City of Houston are involved in the Enroll Gulf Coast Marketplace

Collaborative to coordinate efforts in Harris and surrounding counties.¹⁶⁵ In San Antonio, information about the ACA is available on the city's website and enrollment assistance is offered at public libraries.¹⁶⁶

At the state level, government agency involvement has been relatively minor. State agencies involved in the health care sector, such as the TDI and HHSC, do have information available for consumers; however, outreach activities are minimal. In 2011, TDI established, with federal funding, the Consumer Health Assistance Program, which included a hotline for answering consumers' questions. However, the program was discontinued when federal funding ran out in 2012.¹⁶⁷ Educational materials remain on the CHAP website and the hotline now connects directly to TDI. Upon request and depending on availability of resources, TDI still offers educational presentations regarding changes due to the ACA.¹⁶⁸ Overall, state government consumer education is relatively passive compared with that of private organizations across the state.

Because Texas has chosen to have a federally facilitated marketplace, numerous organizations reference educational materials available on the federal marketplace webpage or from the CMS.^{169,170} This has provided some infrastructure for consumer education about the ACA in Texas. However, most of the outreach towards the large number of uninsured across the state is being handled at a more grassroots level. With such a decentralized effort, the number of consumers who will be reached and what populations will be best prepared to enroll in health insurance through the marketplace remains uncertain going into the open enrollment period.

2.5. Navigational Assistance

Navigators and certified application counselors working within a loose network of mainly nonprofit organizations perform the bulk of navigational assistance in Texas. Navigator organizations, as defined in the ACA, engage in consumer education, facilitate enrollment, and refer consumers to appropriate outside agencies for additional help.¹⁷¹ The CMS designated eight such organizations that work in Texas to receive navigator grants. These organizations received approximately \$10.9 million, although two of the grantees will be operating in other states as well (see Table 2.1). The recipient of the largest grant, United Way of Tarrant County (UWTC), operates as a navigator statewide through partnerships with seventeen subgrantees across Texas, together known as the Consumer Health Insurance Marketplace Enrollment Services (CHIMES) consortium. The other grantees are more focused geographically in the state's major metropolitan areas, including Houston, Dallas, and El Paso.¹⁷²

Training individuals acting as navigators under the grantee organizations has proven contentious in Texas. Per the ACA, the required proficiency of individual navigators is determined at the

Table 2.1. Navigator Grant Recipients in Texas¹⁷³

<i>Organization</i>	<i>Geographic Area</i>	<i>Amount of Grant</i>
United Way of Metropolitan Tarrant County (& subgrantees)	Statewide	\$5,889,181
Migrant Health Promotion, Inc.	Lower Rio Grande Valley	\$589,750
National Hispanic Council on Aging	Dallas	\$646,825
Change Happens	Houston	\$785,000
United Way of El Paso County (& subgrantees)	El Paso	\$642,121
Southern United Neighborhoods	Southeast, Southwest, Panhandle of Texas	\$600,678
East Texas Behavioral Healthcare Network (& subgrantees)	75 counties statewide	\$1,337,520
National Urban League	Dallas, Houston	\$376,800

organizational level.¹⁷⁴ The federal requirements that all navigators must pass – including a twenty to thirty hour training, an examination, and annual certification renewal – were announced in July 2013.¹⁷⁵ A provision in SB 1795, the Texas state law regarding navigator activity in the state, allows the TDI to place further state-level controls on navigators, should the federal requirements be deemed insufficient.¹⁷⁶ On September 17th, two weeks before the beginning of open enrollment, Perry instructed TDI Commissioner Rathgeber to enact controls stricter than those outlined by the federal requirements, including an additional forty hours of training, an additional examination, and a requirement to report data on consumers to TDI.¹⁷⁷ Senator Watson, the author of SB 1795, accused Perry of deliberately obstructing the implementation of the ACA by distorting the purpose of the law.¹⁷⁸ Perry maintained that his requirements reflected legitimate concerns over the handling of personally identifiable information and other issues. In response to Perry’s request, but before TDI took any action toward implementing these proposed regulations, one partner of East Texas Behavioral Health Network (ETBHN) and five partners of United Way of Tarrant County (UWTC) opted out of providing assistance under the grant.^{179,180} UWTC has replaced three of those organizations with local groups operating in the same areas, and ETBHN is engaging another local group to maintain its current area of coverage.^{181,182} UWTC has replaced three of those organizations with local groups operating in the same areas.¹⁸³ Although no additional state requirements were in place for navigators as of late October, in an October 31st letter to Watson, TDI Associate Commissioner Walker expressed the department’s intention to address several perceived inadequacies in the

federal rules by adopting stricter state-level rules while working with federal agencies to reform the federal ones. According to the letter, TDI and other stakeholders in the Texas marketplace are concerned that the federally mandated training and regulations lack Texas-specific information on Medicaid, fail to establish specific confidentiality guidelines for personally identifiable information, and do not require background checks of prospective navigators.¹⁸⁴

Aside from navigators, enrollment assistance also comes from certified application counselors, who generally work with non-navigator organizations such as other nonprofits, Community Health Centers, and other social service agencies. CACs differ from navigators in that their duties do not include generalized consumer education and outreach, their training is less rigorous, and conflicts of interest do not bar them from providing enrollment assistance (although they must disclose any such conflicts upon completing their training).¹⁸⁵ CAC training, which is available publicly through CMS, covers basic topics on insurance, the federal marketplace, eligibility for subsidies, and privacy and security, but does not provide in-depth coverage on topics like community outreach and grant reporting that are required of navigators. An examination is also required before a CAC can become certified.¹⁸⁶ Because Texas has a federally facilitated marketplace, organizations in the state that already provide health or social services can apply to become CAC organizations through CMS once they develop screening processes for individuals that will serve as CACs.¹⁸⁷ Since many CAC organizations are already involved in outreach and consumer education activities, grants for those purposes also provide some funding for enrollment assistance programs.¹⁸⁸

Texas has the highest uninsured rate in the United States with more than six million Texans, about a quarter of the state's population, lacking insurance.¹⁸⁹ Massive enrollment in the marketplace by individuals in Texas has been a priority for the federal government and for Texas-based nonprofits. However, a number of factors would prevent full enrollment. Roughly 15 percent of this group is made up of undocumented immigrants, who are not eligible to shop on the marketplace. Beyond that, many low-income Texans fall into the Medicaid coverage gap, meaning they have incomes below the federal poverty line but above Medicaid eligibility limits. For these people, purchasing insurance would present undue financial hardship, so it is unlikely that they would enroll. Overall, the HHSC estimates that 15 percent of Texans will remain uninsured after ACA implementation, assuming that Texas does not expand Medicaid.¹⁹⁰ Estimates of the capacities of individual organizations to meet this demand vary, as much of the information available is based on the services they offered before the ACA. For example, Change Happens, a federal navigator grant recipient, bases its expectations on the number of people it helped to enroll in family health benefits like CHIP.¹⁹¹ A

requirement to reach and/or assist a certain number of people is included in the grants of many organizations. For example, United Way of Tarrant County is required to reach 450,000 potential consumers through outreach events and assist 55,000 people in enrolling.¹⁹² UWTC expects to easily exceed these benchmarks based on current enthusiasm for outreach and enrollment events.¹⁹³

Recipients of federal navigator grants are based almost entirely in the state's major metropolitan areas,¹⁹⁴ and funding for outreach and consumer education is concentrated in those areas as well.¹⁹⁵ This distribution reflects the high numbers of uninsured in these areas — Dallas, El Paso, Houston, San Antonio, Fort Worth, and Austin are all home to more than 100,000 uninsured, representing 23–33 percent of their populations.¹⁹⁶ Federal grantees such as Migrant Health Promotion and the National Hispanic Council on Aging also constitute a focus on the large Latino population of Texas. The ACA requires that assistance and materials must be provided in “a manner that is culturally and linguistically appropriate” to these consumers, so many organizations have retained bilingual volunteers to help reach Spanish-speaking populations through navigation assistance and printed materials.¹⁹⁷

Many organizations now providing navigators and/or CACs were already involved in administering health care or other services within their communities before participating with the ACA. Navigator grant recipients represent a mix of community foundations, health providers, and social advocacy organizations, while the bulk of the money for hiring and training CACs went to community health clinics and other local nonprofits. Providing assistance through existing entities has proven helpful, as they already have mechanisms for referring consumers to agencies that can help an individual enroll in nonmarketplace benefit programs such as Medicaid or CHIP via the ACA's “no wrong door” policy.¹⁹⁸

Navigator grantee organizations are involved in both consumer outreach and enrollment assistance through a variety of programs. In order to educate members of the public on the provisions of the ACA and the help they can receive in enrolling on the marketplace, grantee organizations host community health forums and health and wellness fairs, attend educational events sponsored by churches and other community centers, hold Q&A sessions for the public, and canvas in high-need communities.^{199,200,201} Entities like UWTC and Enroll El Paso hold several events around their geographical areas daily.²⁰² These groups and others organizing events publish event details prominently on their websites.²⁰³ These events also connect consumers with navigators, who can help individuals with enrollment at subsequent events or through phone banks at the consumers' convenience.²⁰⁴ Individuals can also schedule appointments with navigators online, an option that is made available for consumers with access barriers, such as lack of technology, a physical disability, mobility issues, or limited fluency in English.^{205,206}

With little help coming from state government, nonprofit organizations in Texas, aided by federal grant money, have stepped up to offer enrollment assistance to the millions of Texans who currently lack health insurance. Although a large proportion of these people will remain uncovered because of low income or immigration status, leaders at the organizations conducting navigation assistance remain optimistic that they will be able to help those who qualify under the ACA.

2.6. Interagency and Intergovernmental Relations

2.6(a) Interagency Relations. TDI and HHSC had partnered to explore exchange implementation plans prior to Perry's announcement that Texas would not establish a state-based exchange. On September 30, 2010, HHS awarded TDI a \$1 million exchange planning grant. TDI used this funding to contract with the Milliman, an actuarial firm, to consider options for both a state and a federally run health insurance exchange and to gauge the impact of the ACA on the health insurance market in Texas.^{207,208,209} Grant funding was also used to identify subcontractors to assist with the exchange planning process, to collect stakeholder feedback, and to explore the state's policy options. Additionally, Texas held a public planning symposium in early 2011 to solicit public comments.²¹⁰ Planning and ACA-related interagency collaboration came to an end on July 9, 2012, when Perry announced that Texas would not establish a state-run exchange.²¹¹

On August 1, 2012, TDI and HHSC leadership met with members of the Texas Senate Committee on Health and Human Services and members of the Texas Senate Committee on State Affairs to discuss implementation of the ACA.²¹² In a press release following the meeting, Senator Jose Rodriguez stated that, "Unfortunately, our Governor has shut the door on full implementation of the ACA by denying our state agencies and legislators the ability to expand Medicaid and create a state insurance exchange."²¹³ In Texas, the federal government has assumed all ACA and marketplace responsibilities. Therefore, state agencies, including HHSC and TDI, are not currently collaborating in regard to ACA implementation.

2.6(b) Intergovernmental Relations. Communication between federal agencies, including CMS and the Center of Consumer Information and Insurance Oversight, and state agencies, including HHSC and TDI, has been limited. Both Texas state and federal agencies have spoken of the need for a "uniquely Texas solution," to implementing the ACA in Texas. On August 8, 2013, Sebelius met with leaders in the Texas health care industry to discuss the ACA. When speaking to reporters at Austin City Hall, Sebelius said, "We are eager to have discussions with Texas about a program that could look uniquely Texas. But as far as I know, those conversations, at least with the state officials, are not taking place right now." Perry later responded that, in order to minimize the

damage the ACA would cause the Texas economy and state budget, Texas refused to set up a state-run exchange or expand Medicaid.²¹⁴

Although Texas has ceded many ACA-related responsibilities to the federal government, some collaboration is necessary for enabling the data exchange. For example, HHS currently determines eligibility for the Texas Children's Health Insurance Program and Medicaid for individuals who apply through the marketplace. Until January 1, 2014, HHSC elected to accept all Medicaid and CHIP eligibility determinations by the marketplace. After January 1st, the authority for HHS to make Medicaid and CHIP eligibility determinations will be reduced to the authority to "assess" eligibility; at this point HHSC will begin to make final eligibility determinations.²¹⁵ Texans can also continue to apply for Medicaid and CHIP through YourTexasBenefits.com, as they have done in the past.

HHS and HHSC are collaborating to properly coordinate the referral of applicants between the marketplace and HHSC's own application system for Medicaid and CHIP, over which Texas will retain control.²¹⁶ The transfer of eligibility referrals was scheduled to start on October 1st; however, the referral system between the marketplace and HHSC was not in place. HHS and HHSC began testing account transfers starting on October 23rd. The date for official transfer of referrals was initially set for November 1st, but in early November, the deadline was pushed back to the end of the month.²¹⁷ In a statement released in early October, Janek stated, "This federal glitch could lead to delays in children getting health coverage. [HHSC] let workers in offices around the state know about this issue so they can make sure families have accurate information." HHSC is encouraging people who think they may be eligible for Medicaid and CHIP to apply directly on YourTexasBenefits.com.²¹⁸ The agency posted a link to HealthCare.gov on its website for individuals looking to apply for benefits and health insurance.²¹⁹ Eligibility workers have continued to conduct Medicaid and CHIP determinations as they have done in the past.²²⁰

In preparation for the launch of the marketplace, HHSC participated in regularly scheduled conference calls with CMS regarding various topics, such as marketplace functionality, information technology (IT), and policy issues. These calls have continued since October 1st as HHSC and HHS work to address glitches in the coordination of the federal and state IT systems. Through these conference calls and other communication, HHS has provided HHSC with technology requirements and documents to implement the data and account exchange between the marketplace and existing HHSC IT systems. HHSC officials stated that the frequency of regularly scheduled conference calls has increased drastically in the past couple of months.²²¹ For example, since the October 1st rollout, HHSC IT staff members reported participating in daily conference calls with CMS.²²² HHSC IT staff

members have also been in daily contact with Quality Software Services Inc. (QSSI), a unit of United Health Group that was hired by the federal government to build a “data hub” that will allow people to buy insurance on the marketplace.²²³ Overall, HHSC IT staff reported having a good working relationship with CMS and contracted partners.²²⁴

In response to the governor’s directive for HHSC to continue collecting asset and resource information, the agency has included questions related to assets in draft versions of new enrollment application forms. While recently proposed HHSC Medicaid rules state that asset information does not affect eligibility, the draft application forms do not include this statement. During a public meeting in early November 2013, HHSC told advocates that it would soon submit a draft application to HHS for formal approval. HHSC staff confirmed that the draft being submitted to HHS would not indicate that providing asset information is optional.²²⁵

In a July 2011 letter to HHS, then-TDI Commissioner Geeslin requested a delay in the implementation of the medical loss ratio (MLR) provision of the ACA that would require insurance companies to devote at least 80 percent of their premium dollars directly to health care services. TDI was concerned that this new rule would “stifle competition in the market and constrain many Texans’ access to coverage.”²²⁶ Fifteen Texas state representatives and eight U.S. representatives from Texas opposed TDI’s request in writing. The request to delay this provision was denied by HHS in January 2012. In a letter evaluating TDI’s application, CCIIO Director Steve Larson wrote, “The evidence presented does not establish a reasonable likelihood that the application of an 80 percent MLR standard will destabilize Texas’s individual market.”²²⁷

In September 2010, TDI received federal funding to establish a state-run Consumer Health Assistance Program in Texas. With this funding, CHAP staff “gave public service announcements, made field presentations, and [took] calls on a hotline that helped an estimated 9,000 Texans” in 2011. Continued grant funding would have been used to help consumers enroll in health insurance through the marketplace and file complaints and appeals against health plans. In May 2012, TDI decided not to reapply for Consumer Assistance Program funding. A TDI spokesperson said, “TDI continues to assist consumers with health insurance claims and appeals, answer questions, assist consumers in shopping for coverage, and provide general information about health insurance options.”²²⁸

CCIIO invited all states involved in the federally facilitated exchange to participate in a plan management partnership. States were asked to assume the responsibility of enforcing federal insurance regulations and measures under the ACA, such as new benefit mandates, cost-sharing guidelines, and rules on how insurers rate customers.²²⁹ However, on March 13, 2013, TDI

notified CMS that the agency would not incorporate the market rating reforms of the ACA into its review process and that it would no longer participate in the Effective Rate Review Program.²³⁰ Only three other states participating in the FFE told CCIIO they would not assume these responsibilities.²³¹ As a result, TDI has no authority to regulate and enforce ACA market provisions. Insurance companies participating in the marketplace are required to follow both state and federal law and they are subject to dual regulation, meaning they must file with both Texas and the federal government. Texas was notified on March 29, 2013, in a letter from HHS that the state had lost the right to do “effective rate review” because TDI could not incorporate market rating reforms into its review process.²³²

2.6(c) Federal Coordination. HHS has eleven operating divisions, one of which is CMS. CMS combines the oversight of the Medicare program, the federal portion of the Medicaid and CHIP programs, the marketplace, and any related quality assurance activities.²³³ CMS oversees ten regional offices (ROs). The ROs are organized into four consortia: Consortium for Medicare Health Plans Operations (CMHPO), Consortium for Financial Management and Fee for Service Operations (CFMFFSO), Consortium for Medicaid and Children’s Health Operations (CMCHO), and Consortium for Quality Improvement and Survey & Certification Operations (CQISCO).²³⁴ The Dallas regional office, Region 6, is the consortium administrator for the CQISCO. Additionally, for issues related to Medicare, Medicaid, and CHIP in Region 6 (Arkansas, Oklahoma, Louisiana, New Mexico, and Texas), the Dallas regional office is the primary point of contact.²³⁵

CCIIO provides national leadership in setting and enforcing standards for health insurance and is charged with helping implement ACA reforms.²³⁶ CCIIO is also working with individual states to establish marketplaces.²³⁷ Texas state officials have worked with partners at HHS, CMS, the Dallas regional office, and CCIIO in implementing ACA provisions.

2.7. QHP Availability and Program Articulation

2.7(a) Qualified Health Plans (QHPs). A Qualified Health Plan refers to the standardized health insurance plans that will be offered through the exchanges. Specifically, QHPs incorporate all of the changes to health insurance mandated by the ACA, including essential health benefits and limits on deductibles and out-of-pocket maximums.²³⁸ Each QHP must include services that fall into the following ten categories: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance abuse disorder services, prescription drugs, rehabilitative and habilitative services, laboratory services, preventative and wellness services, and pediatric services, including pediatric dentistry.²³⁹ HHS reviewed current QHPs offered in the exchange for compliance with the ACA.²⁴⁰

The QHPs available on the exchanges are classified according to five categories: bronze, silver, gold, platinum, and catastrophic. Catastrophic plans are only available to consumers age thirty and younger. The metal classes are offered to all consumers and reflect the estimated actuarial value to the consumer over the lifetime of the plan. Bronze plans are the entry-level plans, and have a 60 percent actuarial value. Silver, gold, and platinum plans have actuarial values of 70 percent, 80 percent, and 90 percent, respectively.²⁴¹ Any consumer who qualifies for and intends to use cost-sharing subsidies must choose a silver plan.²⁴² Many insurance companies, including both regional and national carriers, are participating on the exchange and will offer plans that will be available to Texans. This is a major change compared with the historical nature of health insurance in Texas, where consumers in 74 percent of counties had only one or two companies to choose from. Not all plans will be offered in all rating areas, however; some rating areas have significantly more plans being offered than others.

There are 1,098 QHPs spread across all twenty-six rating areas in Texas.²⁴³ Each rating area will have an average of forty-two QHPs available in all categories.²⁴⁴ There are 344 bronze plans, 377 silver plans, 299 gold plans, nine platinum plans, and sixty-nine catastrophic plans available for purchase in Texas.²⁴⁵ However, the number of QHPs available varies widely between different rating areas; some rating areas have as few as twenty-five QHPs available, whereas others have more than seventy. In areas where relatively few options are available, as few as two insurance companies will be operating through the marketplace. In areas where relatively more options are available, up to seven different insurance companies will be making plans available. Appendix C of this report shows the number of insurers operating in each county in Texas.

Many insurance companies that operated in Texas prior to ACA implementation will offer QHPs on the marketplace. Three of the top four accident and health insurers by 2011 market share, Blue Cross Blue Shield, Aetna, and Humana, will be offering QHPs in Texas through the marketplace. UnitedHealthcare, number two in the state by 2011 market share, is not participating in the health insurance marketplace. HMO providers are more of a mixed picture. UnitedHealthcare is affiliated with the largest HMO provider in the state, UnitedHealth Benefits. Like UnitedHealthcare, UnitedHealth Benefits is not participating in the marketplace. The second largest HMO provider, Amerigroup, is also not participating on the exchange in Texas. However, other large HMOs are participating, including Aetna, Humana, Scott & White, and Superior, all of which are in the top ten by 2011 market share.²⁴⁶

Under the ACA, health insurance companies can only set premium rates based upon family structure, geography, actuarial value, tobacco use, participation in a health promotion program, and age.²⁴⁷ The following summary tables detail the premium

amounts that consumers at two different ages, twenty-five years old and fifty years old, can expect to pay for QHPs purchased through the marketplace. The premium amounts listed below represent averages across the twenty-six rating areas in Texas and were obtained by using the Health Insurance Marketplace Premiums for 2014 Databook, compiled and published by the Office of the Assistant Secretary for Planning and Evaluation at HHS.²⁴⁸ The state minimum-cost catastrophic, bronze, silver, second lowest-cost silver, and lowest-cost gold plans are also included for comparison. Appendix D of this report details regional variations in premium rates throughout the twenty-six rating areas.

Table 2.2. Monthly Premiums for a Twenty-Five-Year-Old Consumer

	<i>Average Lowest-Cost Catastrophic</i>	<i>Average Lowest-Cost Bronze</i>	<i>Average Lowest-Cost Silver</i>	<i>Average 2nd Lowest-Cost Silver</i>	<i>Average Lowest-Cost Gold</i>
Twenty-Five-Year-Old Consumer (monthly premiums)	\$146.62	\$132.70	\$177.79	\$186.14	\$214.70
	<i>Minimum Catastrophic in Texas</i>	<i>Minimum Bronze in Texas</i>	<i>Minimum Silver in Texas</i>	<i>2nd Lowest Silver in Texas</i>	<i>Lowest Gold in Texas</i>
	\$93.91	\$103.97	\$146.15	\$148.25	\$166.70

Insurance companies are authorized to charge up to three times the premium rate for a sixty-four-year-old individual as for a twenty-one-year-old individual.²⁴⁹ The amounts listed in the summary tables indicate that health insurance companies in Texas are charging higher premium amounts based upon age. Tobacco users may also face higher premiums. Under the ACA, insurance companies will be authorized to assess a 50 percent surcharge to any tobacco user. Additionally, the ACA ensures that no premium tax credits can be used to assist with the tobacco surcharge.²⁵⁰

Insurance companies have yet to engage in widespread advertising or marketing of QHPs as a result of the glitches in the marketplace. However, due to the restrictions placed upon health insurance plans sold in the marketplace, insurers will need to make every effort to differentiate their plans from competitors' plans. In a memorandum issued earlier this year, the White House stated that about 90 percent of consumers who shop for health insurance plans on the marketplace will have five or more different insurance companies to choose from when purchasing a plan, spurring competitiveness among insurers.²⁵¹

In addition to changing the attributes and costs of health insurance plans, the ACA is also changing the health care insurance market. Insurers are no longer permitted to deny consumers coverage if they have a preexisting health condition. HHS estimates that 10,694,840 nonelderly Texans have preexisting conditions. These consumers will now be able to obtain coverage, and 9,592 Texans have already gained coverage through the Pre-Existing Condition Insurance Plan since passage of the ACA. Health

insurance companies are now required to spend 80 cents of every dollar consumers pay in premium amounts on medical care or quality improvements to health care, or they must provide the consumer with a refund of the portion of every 80 cents per dollar that was not spent on health care costs. During 2013, HHS estimates that 726,237 Texans will receive \$46,327,708 in premium payment refunds. Finally, the ACA bans lifetime limits on health benefits. HHS estimates that prior to the passage of the ACA, 7,536,000 Texans faced lifetime limits on health benefits.²⁵²

In response to the health insurance marketplace changes brought by the ACA, the Texas Legislature passed Senate Bill 1367, which abolished the state high risk pool.²⁵³ Since 1998, the Texas Health Insurance Pool has provided coverage to Texans who could not qualify for insurance due to preexisting conditions. With the abolition of the pool on January 1, 2014, an estimated 22,912 Texans will be required to shop for insurance on the marketplace.²⁵⁴ On November 18, 2013, due to continued technical difficulties with the marketplace, Dewhurst, the lieutenant governor, sent a letter to Rathgeber, the head of TDI, requesting a delay in the abolition of the high risk pool. Dewhurst cited continued concerns that people with preexisting conditions who were currently participating in the high risk pool would be unable to purchase insurance through the marketplace by December 15, 2013, and would suffer a gap in coverage.²⁵⁵

2.7(b) Clearinghouse or Active Purchaser Exchange. No information is available as of November 27, 2013.

2.7(c) Program Articulation. Beginning January 1, 2014, the HHSC will use MAGI-based eligibility levels and will discontinue the use of an asset test for determining Medicaid eligibility. In accordance with HHS requirements, HHSC will also begin using a streamlined application for Medicaid, CHIP, and the health insurance marketplace. HHSC has modified the application slightly to include information necessary for Texas eligibility policies and procedures (e.g., intent to stay in Texas). HHSC will follow up with individuals transferred by the marketplace in order to obtain this additional information and to verify income. For those interested in applying for nonhealth care services, HHSC will maintain an integrated application (H1010-E), which can be used to apply for all HHSC programs including SNAP, TANF, MEPD, TANF-level (adult) Medicaid, and Children's Medicaid.

For those individuals applying through:

- **The Marketplace:** HHSC will accept federal determinations of Medicaid eligibility through December 31, 2013. That is, HHSC will accept the federal verification of MAGI-based eligibility as the final decision of eligibility, and the individual will be enrolled once HHSC has received the electronic account transfer from the marketplace. Individuals determined eligible by the marketplace through December 1, 2013, will not receive coverage until January 1, 2014.

Beginning January 1, 2014, HHSC will accept assessments of eligibility from the marketplace. That is, an individual will not be eligible for Medicaid until HHSC has verified income. After receiving an electronic account transfer from the marketplace, HHSC may also follow up with an individual to determine if they are eligible for coverage in 2014.

Electronic account transfers from the marketplace were scheduled to begin October 1, 2013, but this was delayed until the end of November. Given difficulties in establishing a system for account transfers, HHSC is encouraging people who think they may be eligible for Medicaid and CHIP to apply directly through the state website, YourTexasBenefits.com.

- **HHSC:** If an individual applies to HHSC and does not qualify for Medicaid and/or CHIP, HHSC will direct them to the marketplace. HHSC eligibility workers are required to provide application assistance to individuals looking for health insurance through the marketplace. All eligibility workers have participated in trainings in preparation for ACA implementation.

Beginning January 1, 2014, HHSC will be required to electronically transfer all application information to the marketplace. At the time of this report, HHSC did not have a method for transferring application information to the marketplace and it is uncertain whether a system will be in place by January 1st.

2.7(d) States That Did Not Expand Medicaid. Under the ACA, beginning in January 2014 nonelderly adults with incomes at or below 138 percent of the federal poverty level could get Medicaid coverage with minimal out-of-pocket costs. The Supreme Court's ruling on the ACA put this expansion decision in the hands of individual states. In those states that do not expand Medicaid, there will be a significant number of citizens who are ineligible for subsidies and credits in the marketplace (because they earn less than 100 percent of the FPL) but are also ineligible for Medicaid (because they are childless adults or their incomes fall above state-set MAGI eligibility levels). There are currently no state or federal initiatives to cover this gap in coverage.

The Urban Institute has estimated that 1,748,000 uninsured Texan adults (ages nineteen to sixty-four) would be newly eligible for Medicaid if Texas were to expand its Medicaid program.²⁵⁶ Of these individuals, 1,326,000 could fall into the Medicaid gap in coverage, as they earn less than 100 percent of the FPL and will be ineligible for federal tax credits and subsidies. Texas Medicaid/CHIP eligibility levels as a percentage of the FPL are as seen in Table 2.5 on the following page.²⁵⁷

As seen in the table, Texas already covers pregnant women and children (either through Medicaid or CHIP) at or above 133

Table 2.4. HHSC/Marketplace Application Procedures

HHSC/Marketplace “No Wrong Door” Procedures ²⁵⁸		
	October 1 – December 31, 2013	Beginning January 1, 2014
HHSC	<ol style="list-style-type: none"> 1. HHSC will assess eligibility under 2013 guidelines. 2. If determined eligible under 2013 guidelines, the individual will be immediately enrolled in Medicaid/CHIP. 3. If deemed ineligible in 2013, HHSC will send applicants a notice informing them that they may be eligible for subsidies in the marketplace. HHSC eligibility workers will provide application assistance for those interested in applying for health insurance through the marketplace. <p><i>Note: HHSC will not screen for 2014 eligibility.</i></p>	<ol style="list-style-type: none"> 1. HHSC will assess for eligibility under 2014 guidelines. 2. If the individual is eligible, they will be enrolled in Medicaid/CHIP. 3. For all individuals deemed ineligible, HHSC makes an electronic account transfer to the marketplace. HHSC eligibility workers will provide application assistance for those interested in applying for health insurance through the marketplace.
Marketplace	<ol style="list-style-type: none"> 1. Marketplace will make a determination of 2014 eligibility for Medicaid/CHIP benefits. 2. The individual’s application information will be transferred to HHSC. 3. HHSC may follow up with the individual in order to determine whether the individual meets 2013 enrollment requirements. Additional information and/or documentation may be required. 4. If an individual meets 2013 enrollment requirements, HHSC will enroll them immediately. 5. If an individual does not meet 2013 enrollment requirements, they will be enrolled in Medicaid/CHIP beginning January 1, 2014. 	<ol style="list-style-type: none"> 1. The marketplace will make an assessment of eligibility for Medicaid/CHIP benefits beginning in 2014. 2. The individual’s application information will be transferred to HHSC. 3. HHSC may follow up with the individual in order to request additional information and to verify income.

percent of the FPL. However, only a small fraction of parents are covered, and childless adults are not covered at all. The following is a snapshot of the current adult uninsured population in Texas that would be eligible for Medicaid if the program were to be expanded:

- 67.5 percent are adults without dependent children; 32.5 percent are parents with dependent children (compared with 82.4 percent and 17.6 percent, respectively, nationwide).
- 47.9 percent are Hispanic (the largest of any state), 33 percent are white, and 14.4 percent are black (compared with 19.4 percent, 54.9 percent, and 18.7 percent, respectively, nationwide).
- 12.2 percent are legal immigrants (compared with 6.1 percent nationally).
- 51.7 percent are women, 71 percent of whom are between nineteen and forty-four years old.²⁵⁹

The decision to not expand Medicaid eligibility will likely have an effect upon hospitals in Texas. Historically, the Disproportionate Share Hospital (DSH) and Upper Payment Limit (UPL)

Table 2.5. Comparison of Current and MAGI Eligibility Levels

	<i>Current Eligibility Levels</i>	<i>2014 MAGI Eligibility Levels</i>
Childless adults	Not covered	Not covered
Low-income Parents (nonworking)	12 percent	15 percent
Low-income parents (working)	25 percent	–
Newborns (< 1 year)	185 percent	198 percent
Ages 1–5	133 percent	144 percent
Ages 6–18	100 percent	133 percent
CHIP	200 percent	201 percent
Pregnant women	185 percent	198 percent

programs were two mechanisms in Texas used to reimburse hospitals for costs associated with providing care to indigent or Medicaid patients. Disproportionate share hospitals often provide care to large numbers of Medicaid or uninsured patients and are entitled to receive additional payments from the state Medicaid program to mitigate the costs of serving these populations.²⁶⁰ The DSH program is funded by federal Medicaid dollars and by the state through contributions from state and local government entities.²⁶¹ Prior to 2011, hospitals in Texas also received compensation from the state UPL program to offset Medicaid reimbursement rates. As with the DSH program, the UPL program was funded by federal Medicaid dollars and by the state through contributions from state and local government entities.²⁶²

In December 2011, HHS approved Texas’s application for a Section 1115 demonstration waiver, allowing the state to use Medicaid funding to establish an uncompensated care (UC) pool and a Delivery System Reform Incentive Payment (DSRIP) pool, valued cumulatively at \$29 billion over a five-year period. The UC pool will be used to reimburse providers of indigent health care services. The DSRIP pool is designed to implement a managed-care Medicaid program and to incentivize quality improvement and cost-effectiveness in health care delivery.²⁶³ Funding through the UC and DSRIP pools replaced and enhanced funding provided under the UPL program.²⁶⁴

The ACA authorizes states to expand Medicaid eligibility to children and adults under age sixty-five with incomes of up to 133 percent of the FPL. In anticipation of expanded Medicaid eligibility, the ACA also reduces the amount of DSH funding available to states and requires that state DSH funding target uncompensated care costs.²⁶⁵ Because Texas has not expanded Medicaid eligibility, disproportionate share hospitals can expect to receive less

reimbursement for providing care to indigent or Medicaid patients. Additionally, the Texas Hospital Association (THA) anticipates that funding provided by the UC pool established under Texas's 1115 waiver will not mitigate reductions to DSH funding.²⁶⁶ Federal DSH funding reductions will begin in January 2014.

For 2013 to 2022, the Kaiser Commission on Medicaid and the Uninsured estimates state and federal Medicaid payments to Texas hospitals at \$111.7 billion, if the state opts to expand Medicaid eligibility to the fullest extent permitted by the ACA. Over the same period, if Texas does not expand Medicaid eligibility, Texas hospitals may only receive \$86.9 billion in federal and state Medicaid payments.²⁶⁷ Similarly, a report published by Billy Hamilton Consulting for Texas Impact and Methodist Healthcare Ministries of South Texas, Inc., also concluded that federal Medicaid dollars gained through expansion of Medicaid eligibility would significantly reduce uncompensated care costs for Texas charity and nonprofit hospitals, assuming moderate enrollment in Medicaid services by individuals at or below 133 percent of the FPL.²⁶⁸

During the most recent legislative session, key trade associations supported limited expansions to Medicaid. THA voiced its support for House Bill (HB) 3791, which would have allowed the state to use federal Medicaid dollars to subsidize private insurance options for those eligible for Medicaid.²⁶⁹ Similarly, the Texas Medical Association Board of Trustees adopted a resolution during the session calling for legislators to explore nontraditional approaches to expanding coverage and improving Medicaid services in Texas.²⁷⁰

Although the Texas legislature is currently recessed until 2015, businesses, trade organizations, and consumer advocacy groups are continuing to push for expansion of Medicaid eligibility in Texas. Coalitions and initiatives, such as Texas Well and Healthy, Cover Texas Now, and Texas Left Me Out, educate consumers and community leaders about marketplace enrollment and the benefits of expanding Medicaid eligibility. These organizations and their affiliates use a broad array of strategies to promote expansion of Medicaid eligibility. One strategy is a grassroots advocacy approach of educating local leaders about Medicaid and the ACA so that they can disseminate information to others living in their community. Other strategies to promote Medicaid expansion include producing policy briefs, training constituent services staff in legislators' offices, and using social and traditional media to publicize advocacy efforts. During the recent legislative session, consumer advocacy organizations also engaged in issue-based lobbying in support of Medicaid expansion.²⁷¹

Currently, organizations are focusing on gathering positive marketplace enrollment stories and the stories of Texans who are unable to access affordable health care coverage because Medicaid was not expanded. These stories will augment the 40,000 signatures Cover Texas Now and its affiliates were able to collect from supporters of Medicaid expansion earlier this year.²⁷²

In September 2013, HHS approved Arkansas' application for a Section 1115 demonstration waiver.²⁷³ The demonstration will allow Arkansas to transmit federal Medicaid dollars to qualifying adults between the ages of nineteen and sixty-five with incomes at or below 138 percent of the FPL. These Medicaid recipients will use transmitted funds to cover premium costs for QHPs purchased on the marketplace.²⁷⁴ Arkansas' Section 1115 demonstration implements Medicaid expansion similar to the proposals of Texas HB 3791. If Arkansas is successful in using Medicaid dollars to subsidize private coverage for individuals at or below 138 percent of the FPL, Texas might attempt to implement a similar program.

2.7(e) Government and Markets. To be completed at a later date.

2.8. Data Systems and Reporting

The ACA emphasizes the importance of data collection and analysis in order to better identify disparities within the health care system. Under the ACA, health care entities, including critical-access hospitals, ambulatory surgical centers, long-term care facilities, psychiatric facilities, and hospice providers must collect and report data in order to assess quality and value of health services.²⁷⁵ On a network level, insurance companies seeking certification for Qualified Health Plans must submit enrollment, disenrollment, and claim statistics to the marketplace, the HHS secretary, and the state insurance commissioner.²⁷⁶ As with many ACA implementation tasks in Texas, the federal government is conducting these evaluations. Under a directive from Perry, the TDI only examines plan data with respect to state laws, even though state insurance commissioners assist in the collection and reporting of plan data.²⁷⁷ TDI is not presently collecting ACA-related data.²⁷⁸

As a result of the federal government and local organizations taking the lead on data analysis activities, the state has maintained its current data analysis systems with few adjustments. The primary change for Texas agencies is the new Medicaid determination process, which requires use of Modified Adjusted Gross Income and removes asset testing. To assist in this transition, HHS will make all final Medicaid and CHIP eligibility determinations until January 1st.²⁷⁹ HHS will transfer accounts of eligible individuals electronically to HHSC, which will automatically accept the marketplace determinations. After this date, the marketplace will only make a preliminary eligibility determination before it transfers accounts to HHSC for a final determination. HHS and HHSC are working to coordinate this process. HHS initially scheduled account transfer to begin with open enrollment on October 1st, but system delays pushed transfers to the end of November.²⁸⁰

Private and nonprofit organizations are conducting much of the data collection and monitoring activities in Texas. Most of these activities occur on three different levels: enrollment, policy,

and governmental. On an enrollment level, some nonprofit organizations and medical centers are collecting individual information to improve internal operations and outreach strategies. Organizations such as Foundation Communities have created survey forms to identify effective marketing techniques and to report enrollment numbers to donors.²⁸¹ Similarly, Enroll America tracks individuals throughout the enrollment process to determine the number of people it reaches and who eventually enroll.²⁸² To better focus outreach, Enroll America uses census data and other demographic information to model which characteristics are key determinants of an individual's likelihood of being insured. Enroll America's outreach efforts are tailored to those who are less likely to already be insured.²⁸³

The policy level includes several organizations that collect data from marketplace enrollment centers or from polling mechanisms to identify trends in health insurance enrollment. One prominent use of these data is to analyze the number of citizens who are ineligible for premium subsidies. In Texas, citizens with income less than 100 percent of the FPL but more than the Texas Medicaid threshold fall into a coverage gap. Organizations seek to use information about the magnitude of this gap to advocate for Medicaid expansion in Texas. The Center for Public Policy Priorities (CPPP) has taken the lead on these activities and is using these data in support of the expansion campaign under the coalition Texas Well and Healthy.²⁸⁴ La Fe Policy Research and Education Center, which is based in San Antonio, draws from its existing databases to track enrollment trends and identify advocacy needs.²⁸⁵ Furthermore, organizations such as CPPP employ experts and data analysts to make policy recommendations. In September 2012, CPPP compiled data from the U.S. Bureau of the Census, HHSC, and a variety of demographers and independent experts in order to examine the ACA's impact in each Texas county.²⁸⁶ Meanwhile, Methodist Healthcare Ministries has a contract with former director of the Census Steven Murdock and Billy Hamilton, the former deputy comptroller of Texas, to estimate the impact of the ACA in Texas.²⁸⁷ Similar studies are occurring nationally, with organizations such as the Kaiser Family Foundation monitoring implementation in each state.²⁸⁸

The Center for Medicare & Medicaid Services is in charge of monitoring the federal marketplace website and tracking enrollment numbers on a governmental level. As of October 25, 2013, CMS reports nearly 700,000 completed applications nationwide on HealthCare.gov. CMS intends to update these numbers monthly.²⁸⁹ States facilitating their own exchanges have also released their enrollment numbers.²⁹⁰ At this time, there are no Texas-specific data available, and no information has been released announcing when these data will be made public.

Part 3 — Supplement on Small Business Exchanges

3.1. Organization of Small Business Exchanges

The ACA sets up a specific exchange program for small business owners, known as the Small Business Health Options Program (SHOP). The SHOP marketplace will be made available to small business owners as a means of providing better access to a competitive health insurance marketplace for small firms.

To be eligible for SHOP, small businesses must meet several requirements. In Texas, a business must have its primary business address located in the state. The other requirements concern employees. For a business to be eligible, it must have at least one common law employee and no more than fifty full-time equivalent (FTE) employees. Finally, the owner must offer health insurance coverage received through SHOP to all employees.

1. As of November 7, 2013, the SHOP marketplace was functional. The enrollment process consists of the following:
2. Employers can access www.HealthCare.gov to create an account and then download a paper eligibility application.
3. After completing the application, the employer mails it to HHS. Employers can expect to be contacted by HHS with their eligibility status.
4. If eligible, employers can then access an online version of SHOP to select a particular plan for their employees. Employers then notify their employees of the offer of coverage and employees will be able to accept or decline the offer.
5. In Texas, 75 percent of employees must participate in the coverage offered by the employer in order for a business to participate in SHOP. However, there is an exception to this rule for the initial enrollment period from November 15 to December 15, 2013.²⁹¹
6. In general, an employer must submit the insurance offer application along with all employee applications by the fifteenth of the month in order for coverage to start on the first of the following month. Employers may apply for coverage once a year. Once an employer has applied and selected the coverage option, they may not make changes within the following twelve month period. Employers must meet the minimum participation rate at the end of the twelve month period in order to re-enroll into the same health plan.

Enrollment periods are determined by the employer and can be held at any time. The minimum requirements for open enrollment periods are that they begin at least sixty days before the end of the plan year and last at least thirty days.²⁹²

Employees will also be able to access alternative coverage through the individual marketplace. However, if the offer from the employer meets the 60 percent actuarial value threshold and is considered affordable, employees who decline coverage through their employer will not be eligible for premium credits or cost-sharing through the individual marketplace.

Some employers will have access to tax credits. The Small Business Health Care Tax Credit is worth up to 50 percent of the employer's contribution towards employees' premium costs. For tax-exempt employers, the credit is worth up to 35 percent of those costs. To qualify, an employer must have fewer than twenty-five full-time employees making an average of \$50,000 or less. Additionally, the employer must pay at least 50 percent of full-time employees' premium costs. The tax credit is highest for companies with fewer than ten employees who are paid an average of \$25,000 or less.

Across all of Texas, 4,604 Qualified Health Plans are being offered through SHOP in the twenty-six rating areas. QHP availability varies widely across areas. Some areas have as few as fifteen SHOP plans offered, while others have hundreds. However, all plans currently being offered through SHOP come from only two insurers: Blue Cross Blue Shield of Texas and FirstCare Health Plans.

Outreach in the state of Texas has been limited. The National Federation of Independent Business has provided some information about the SHOP enrollment process as well as warnings about potential scams involving a fake SHOP.²⁹³ The Texas Small Business Association makes no mention of SHOP on its website.²⁹⁴ The Texas Association of Business, while not specifically focused on small business, has been more active with outreach.²⁹⁵

Part 4 – Summary Analysis

4.1 Policy Implications

Three major policy decisions were made by the state of Texas regarding the implementation of the ACA. Texas elected not to expand Medicaid coverage beyond the low levels currently in effect and chose not to develop a health insurance exchange. Furthermore, the Texas Department of Insurance decided not to take on any of the functions mandated by the ACA that can be deferred to the federal government. To better understand why Texas made these policy decisions, each must be examined in the context of the Texas economy and both state and national politics.

The Decision Not to Expand Medicaid

If Texas does not expand Medicaid in the long term, this decision could have substantial impacts on coverage and on the finances of hospitals, clinics, and local taxing authorities. It is estimated that the 1,326,000 Texans below 100 percent of the FPL would be eligible for Medicaid if it were expanded.²⁹⁶ Currently,

Texas has been able to cover much of the deficit in financing for uncompensated care through disproportionate share hospital payments, an upper payment limit program, and more recently, the 1115 waiver. However, it is likely that these sources of funds will be declining. Indeed, the DSH funds are scheduled to be phased down with the implementation of the ACA. In a report commissioned by Methodist Healthcare Ministries of South Texas and Texas Impact, Hamilton reported that “for an investment of \$15 billion, Texas could draw down \$100 billion in federal funds” by expanding Medicaid over ten years.²⁹⁷ He also projected that Texas could realize an increase in tax receipts of \$1.8 billion between 2014 and 2017, which would cover roughly half of the increased state match.²⁹⁸ Hamilton, a former deputy comptroller of public accounts, pointed out that Medicaid expansion would cover an additional one million adults below 138 percent of FPL, assuming modest uptake, and would increase Texas’s economic output by an estimated \$67.9 billion during fiscal 2014–17.²⁹⁹ However, it must be remembered that until January 2014, failure to implement Medicaid expansion is only rhetorical since the expansion would not take place until that time.

Texas Senate Bill 7 stated that Medicaid could not be extended to anyone who was not eligible on December 31, 2013. Although the governor and the legislature are committed to not expanding Medicaid coverage at all, the door may be slightly open to a Texas solution similar to the Arkansas waiver, which would allow federal money that would have gone into Medicaid expansion to instead be used to help individuals purchase private insurance on the exchange, or something similar. It is likely that any such initiative would not be worked out until spring 2014 at the earliest and would depend on the willingness of the federal government. It will be interesting to see what the other nineteen states that so far have not expanded Medicaid choose to do. However, in many of those states adults in families with children under the poverty line are likely to have more coverage than they do in Texas.

The ability to address the issue of Medicaid expansion has been on hold as the 2014 Texas state election and the 2016 presidential campaigns begin. Perry will not seek reelection as governor in 2014. Instead, there is speculation he will focus on a bid for the presidency in 2016. Senator Cruz recently led Perry by 22 points in a poll on the potential 2016 Republican candidates.³⁰⁰ Some argue that Perry, by both supporting John Cornyn as well as being critical of Cruz’s tactics in the filibuster and support of the shutdown, is trying to set himself apart from Cruz in being considered for the presidential nomination.³⁰¹ It should be noted that Perry also remarked that New Jersey Governor Chris Christie is inadequately conservative to win the Republican presidential nomination. To a lesser extent, Dewhurst has also refocused the scope of his reelection campaign efforts to echo Cruz’s message on the ACA. Dewhurst faces three rivals for the Republican nomination who are trying to move to his right. For the Texas

gubernatorial race, Greg Abbott, the attorney general, is running with much less opposition in the Republican primary in March. It is likely that the Democratic nominees will be two state senators: Wendy Davis for governor and Leticia Van de Putte for lieutenant governor. Both Democratic candidates support the expansion of Medicaid to 138 percent of the poverty level for those eligible as permitted by the ACA.

The Decision to Let the Federal Government Run the Exchange

Texas's decision to let the federal government run the exchange has translated to virtually no coordination with the state in implementing the marketplace. Unfortunately, the very slow and ragged rollout of the federal website has meant that virtually no one had signed up until mid-November. This is especially important in Texas because of the large number of uninsured individuals who will not be eligible for Medicaid as others in their situation might be in many states. Although the roughly 1.33 million below the FPL who would have been eligible for Medicaid will not qualify for subsidies on the exchange, a large number of people between 100 percent and 138 percent of the FPL and noncitizen legal residents who are below the poverty line will be eligible. Most of this population will qualify for substantial subsidies, not only for premium tax credits, but also for out-of-pocket expenses as well. However, many of these individuals will have a number of special needs. For example, some are of limited literacy or are non-English speakers. Outreach to this population has been accomplished primarily through public service spots, a very limited number of federally funded navigators, and Community Health Centers and other nonprofit and community organizations that have staffed their efforts with volunteers who have become CACs. Although during October and much of November the websites were not usable, many of the trips by potential applicants to enrollment centers were useful in educating them about their options, the paperwork they would need, and the subsidies they would likely be eligible to receive. Since enrollment does not become official until the insurance company receives the first premium payment, it is not likely that many would have enrolled during this time even if the marketplace had been operational. However, given that as many as one million Texans will likely choose the marketplace option, it will be interesting to see just how many are enrolled by January 1st and by March 31, 2014.

Texas has not been funding outreach campaigns or even encouraging enrollment in the marketplace. TDI recently issued draft regulations that would substantially increase the training and other requirements for navigators, although it is likely that these regulations will not be finalized until March. The hands-off approach taken by the state during exchange implementation, as well as the selection and qualification of insurance plans on the exchange, has led to very little transparency in the entire process.

The federal government did not announce the plans included on the exchange or the premium rates until quite late in the process, and problems with the marketplace have made it very difficult to navigate. It will be interesting to monitor how well the federal exchange operates going forward and how successful it is in arranging coverage for the many who might be interested in enrolling, especially if the state keeps trying to impede its efforts.

The Decision to Cede Much of the Insurance Regulation to the Federal Government

TDI is taking no responsibility for implementing reasonable rate increases, Medical Loss Ratio surveillance and refunds, and network adequacy on the exchanges, or overseeing the reinsurance, risk corridors, and other tasks on the exchange or between the exchange and the private market. This means the federal government needs to develop the capacity to undertake these tasks in Texas. The way in which these policies are implemented, the ability of the government to develop an improved interface between enrollees and insurance companies, and the administration of premium and co-pay subsidies effectively will be crucial to the relationships between the federal government and the insurance industry. As the traditional regulator of the insurance industry in Texas, TDI might be drawn into conflicts and misunderstandings between the industry and the federal government.

4.2. Possible Management Changes and Their Policy Consequences

Texas faces a number of management challenges in implementing health reform. These include issues stemming from the state's choice not to expand Medicaid, misinformation about the ACA among Texas citizens, and the adversarial position Texas's top political leaders have taken towards the legislation.

Texas's decision to use the federal exchange instead of implementing its own state-run exchange has resulted in some confusing authority issues. The TDI originally said that it would not enforce the ACA beyond cases where the federal law happens to also be state law.³⁰² If the state continues to leave regulation of QHPs to the federal government, HHS will need to increase its capacity in the state. This could result in confusion as insurers in the state will need to deal with two separate sets of regulators.

More recently, state leaders want to exercise heavy oversight over federal navigators in Texas.³⁰³ On December 3rd, TDI proposed additional requirements for navigators, including forty hours of privacy training, criminal background checks, and demonstration of financial responsibility.³⁰⁴ The proposal does not include a mandate that navigators report information about their clients to TDI, which had been requested by Perry but appears to violate federal law.³⁰⁵ These requirements are now open for public comment, and final regulations will not be implemented before March 1, 2014.

The state's decision not to expand Medicaid may also result in challenges in terms of dealing with the high rate of uninsured Texans and financial burdens placed on employers and health care providers. A report by former Texas Deputy Comptroller Hamilton, prepared for Methodist Healthcare Ministries of South Texas, Inc., argues that Texas, with six million uninsured residents and the lowest ranking among all states for its health insurance coverage rate, will receive no benefits by rejecting Medicaid expansion. This decision leaves few health care options besides emergency services for Texas residents earning less than 100 percent of the federal poverty level.³⁰⁶ Responding to concerns about the financial viability of expanding the program, Hamilton writes that such concerns often ignore the fact that the state government already spends \$15 billion in adult health care. This \$15 billion, he says, is the same amount it takes in state match funding to cover the expansion for a decade.³⁰⁷

State Senator Robert F. Deuell, a physician, issued a brief response to the Hamilton report. "While I do not dispute the numbers regarding the cost to the state and the federal government for the expansion, I do question Mr. Hamilton's conclusions of the positive benefits regarding savings, increased tax revenue, effects on the economy, and job creation."³⁰⁸ Deuell listed several concerns such as the federal government being unable to pay for the expansion of Medicaid and concerns about the financial burden left to the state were the federal government to withdraw matching funds at some point in the future.³⁰⁹ Deuell also expressed his opposition to increasing taxes to fund a government program.³¹⁰ Also in response to the Hamilton report, a representative from the Texas Public Policy Foundation told the *Dallas Morning News* that the report's numbers do not properly account for the costs generated by new Medicaid enrollees forced to use emergency services because they lack access to proper primary health care.³¹¹

Additionally, there are predictions of burdens on employers in states that chose not to expand Medicaid, stemming from the ACA's requirement that companies with at least fifty full-time equivalent employees offer health coverage, starting in 2015.³¹² If that coverage is not offered, or if coverage is offered and found to be inadequate, employees may be eligible for subsidized health care under the ACA. Without Medicaid expansion, employees without health care earning between 100 percent and 138 percent of the FPL will have to look to the ACA for subsidized health care using premium tax credits, whereas these employees would be covered by Medicaid in states that chose expansion. Employers will have to pay a shared responsibility payment of up to \$3,000 per tax credit-using employee, or \$2,000 for each full-time employee minus thirty.³¹³ One 2012 study predicted that this could cause annual federal tax penalties on Texas employers to be \$299 to \$448 million greater than they would be in the case of Medicaid expansion.³¹⁴

Another challenge the state faces is the high degree of misinformation about the ACA among its citizens. In a November press release, Mark Bellman, president of the Texas Association of Health Underwriters (TAHU), wrote, "Polls continue to reflect a broad lack of understanding about the law, confusion about the process and choices for enrollment and an increased frustration with the glitches that have plagued the rollout of the Health Exchanges."³¹⁵ TAHU lists ten areas that it claims appear to generate the most confusion among Texans. These include a belief that purchasing insurance through the health exchange is mandatory, that such purchases guarantee lower costs through subsidies, that the ACA has been postponed, and that the exchange itself allows consumers to compare policies inside and outside the exchange.³¹⁶

Recently, the problematic rollout of the HealthCare.gov website has made some lawmakers call for postponing the shuttering of Texas's high-risk pool program. In mid-November, Democratic State Senator Kirk Watson said, "Today, we do not have assurance that problems with the www.HealthCare.gov online application will be resolved by the Dec. 15 deadline."³¹⁷ On the other side of the aisle, Dewhurst, the lieutenant governor, is also calling for the high risk pool to be maintained for an unspecified period of time beyond the original January 1 cutoff date.³¹⁸ Consequently, the Texas commissioner of insurance decided to delay the cancellation of the pool for ninety days, with the new cancellation date being March 31, 2014.³¹⁹

Outside the possible expanded navigator oversight, there is little indication that the state management systems or arrangements will change regarding the ACA. When asked, a representative from TDI said that the state government was not exploring contingency plans should the state want to take a more hands-on approach towards the ACA. TDI has had no recent interface with other state agencies, such as the Texas Department of Health and Human Services, concerning the rollout of the ACA.

It remains to be seen the degree to which this opposition stems from state Republican politicians positioning themselves for primary elections in the spring (or, in the case of Perry, a presumed presidential run in 2016). The state has not yet felt the impact of disproportionate share hospital payment reductions that will begin in January 2014, and policymakers will be anticipating further funding reductions when the current 1115 waiver period ends in late 2016.

Therefore, there may be a political window after the 2014 primary season for a Texas solution to Medicaid expansion, likely mirroring the Arkansas approach of subsidizing the Medicaid expansion population in the marketplace. It is worth noting that while Senate Bill 7 precludes Medicaid expansion, per se, it does not bar the HHSC commissioner from drawing down federal monies to cover this population through the marketplace. Given the generosity of the federal match for Medicaid expansion, and the important political constituencies that may be harmed by the

state's failure to expand, we expect that Texas will provide coverage to the Medicaid expansion population eventually, but the timing of such an expansion is ultimately unknown.

Appendix A
Letters from Texas Governor Rick Perry
Regarding Implementation of ACA in Texas

1. Letter from Texas Governor Rick Perry to HHS Secretary Kathleen Sebelius, July 9, 2012, opposing the expansion of Medicaid in Texas.³²⁰
2. Letter from Texas Governor Rick Perry to HHSC Executive Commissioner Kyle Janek, September 16, 2013, directing HHSC to asset test Medicaid applicants.³²¹
3. Letter from Texas Governor Rick Perry to HHSC Executive Commissioner Kyle Janek, September 16, 2013, directing HHSC to request a Medicaid reform waiver.³²²
4. Letter from Texas Governor Rick Perry to TDI Commissioner Julia Rathgeber, September 17, 2013, requesting the creation of new rules for navigators.³²³

**OFFICE OF THE GOVERNOR**

RICK PERRY
GOVERNOR

July 9, 2012

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

In the ObamaCare plan, the federal government sought to force the states to expand their Medicaid programs by – in the words of the Supreme Court – putting a gun to their heads. Now that the “gun to the head” has been removed, please relay this message to the President: I oppose both the expansion of Medicaid as provided in the Patient Protection and Affordable Care Act and the creation of a so-called “state” insurance exchange, because both represent brazen intrusions into the sovereignty of our state.

I stand proudly with the growing chorus of governors who reject the PPACA power grab. Thank God and our nation’s founders that we have the right to do so.

Neither a “state” exchange nor the expansion of Medicaid under the Orwellian-named PPACA would result in better “patient protection” or in more “affordable care.” What they would do is make Texas a mere appendage of the federal government when it comes to health care.

The PPACA does not truly allow states to create and operate their own exchanges. Instead, it gives the federal government the final say as to which insurance plans can operate in a so-called “state” exchange, what benefits those plans must provide, and what price controls and cost limits will apply. It leaves many questions to be answered later through federal “future rulemaking.” In short, it essentially treats the states like subcontractors through which the federal government can control the insurance markets and pursue federal priorities rather than those of the individual states.

Through its proposed expansion of Medicaid, the PPACA would simply enlarge a broken system that is already financially unsustainable. Medicaid is a system of inflexible mandates, one-size-fits-all requirements, and wasteful, bureaucratic inefficiencies. Expanding it as the PPACA

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 (512)463-2000 (VOICE)/DIAL 7-1-1 FOR RELAY SERVICES
VISIT WWW.TEXASONLINE.COM THE OFFICIAL WEB SITE OF THE STATE OF TEXAS

The Honorable Kathleen Sebelius
July 9, 2012
Page 2

provides would only exacerbate the failure of the current system, and would threaten even Texas with financial ruin.

I look forward to implementing health care solutions that are right for the people of Texas. I urge you to support me in that effort. In the meantime, the PPACA's unsound encroachments will find no foothold here.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The letters are cursive and slanted to the right.

Rick Perry
Governor

RP:kwp

cc: The Honorable David Dewhurst
The Honorable Joe Straus

**OFFICE OF THE GOVERNOR**

RICK PERRY
GOVERNOR

September 16, 2013

Kyle Janek, M.D.
Executive Commissioner
Texas Health and Human Services Commission (HHSC)
4900 North Lamar Boulevard, 4th Floor
Austin, Texas 78751-3247

Dear Commissioner Janek:

I am writing to direct HHSC to develop and implement a mechanism for collecting and analyzing income, asset and resource information for applicants during the Medicaid application process. This information will enable the state to document the full and true impact certain provisions of the Patient Protection and Affordable Care Act (Obamacare) will have on our state, assuming Obamacare's Medicaid provisions are fully implemented on January 1, 2014.

Among its egregious provisions, Obamacare, if implemented, precludes states from including personal accountability measures in the Medicaid eligibility determination process. Prohibiting tools such as asset and resource testing will further burden Texas taxpayers with additional spending in the state budget by allowing individuals who should not qualify based upon personal resources to receive Medicaid services.

The collection of data by HHSC will not affect the determination of an individual's eligibility for Medicaid, but will merely be used for state impact analysis. Furthermore, HHSC should analyze and compare the data to current Texas eligibility standards prior to the next legislative session and report the agency's findings to the Office of the Governor, Office of the Lieutenant Governor, Office of the Speaker and the Legislative Budget Board.

Please do not hesitate to contact my office if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry".

Rick Perry
Governor

RP:kkp

**OFFICE OF THE GOVERNOR**

RICK PERRY
GOVERNOR

September 16, 2013

Kyle Janek, M.D.
Executive Commissioner
Texas Health and Human Services Commission (HHSC)
4900 North Lamar Boulevard, 4th Floor
Austin, Texas 78751-3247

Dear Commissioner Janek:

I am writing to direct HHSC to develop and seek a Medicaid Reform Waiver that will enable Texas to operate a more cost-effective, efficient and flexible Medicaid program for individuals who are currently eligible for Medicaid.

As you know, the Texas Legislature firmly rejected any expansion of our state's Medicaid program under the auspices of the Patient Protection and Affordable Care Act (Obamacare) during the 83rd Legislative Session. Despite the fact that President Obama has said, "we can't simply put more people into a broken system that doesn't work," that is precisely what Medicaid expansion under Obamacare strives to accomplish. Seemingly, the president and his administration are content to simply throw money at a problem and hope that any problems will resolve themselves.

My response, and the response of the Texas Legislature, has been crystal clear: Texas will not expand Medicaid under Obamacare.

While Medicaid serves as a safety net for those individuals most in need, the current trajectory of the program is unsustainable. From 1990 to 2010, national Medicaid expenditures (both state and federal funds) rose from \$73.7 billion to \$401.4 billion, an increase of 445 percent. Over the same period of time, the national Medicaid caseload rose from 22.8 million individuals to 53.6 million, an increase of 135 percent. Recent data from the Congressional Budget Office (CBO) shows that national Medicaid expenditures from 2012 to 2023 will total well over \$8 trillion, with the federal government projected to spend \$4.8 trillion. States, meanwhile, will dole out well over \$3 trillion in Medicaid expenditures during that period.

The fact is, Medicaid is broken, unsustainable and in dire need of fundamental reform. Without reform, states will see other critical priorities crowded out and will face choices between raising taxes on individuals and businesses and cutting services in core functions of government.

The waiver application should in no way seek to expand Medicaid eligibility as envisioned by Obamacare. Rather, it should propose practical reforms that will enable our state to provide a safety net for Texans in a fiscally responsible manner. In developing this waiver proposal, our

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 (512)463-2000 (VOICE)/DIAL 7-1-1 FOR RELAY SERVICES
VISIT WWW.TEXASONLINE.COM THE OFFICIAL WEB SITE OF THE STATE OF TEXAS

Kyle Janek, M.D.
September 16, 2013
Page 2

goal must be to create more efficient health care coverage options for low-income individuals who are eligible for Medicaid services in Texas, as provided by the Texas Medicaid state plan.

The waiver should request federal Medicaid funds through a block grant and should give Texas the flexibility to transform our program into one that encourages personal responsibility, reduces dependence on the government, reigns in program cost growth and efficiently improves coordination of care. Specifically, the waiver should seek to:

- reduce the need to gain federal approval for changes to the state Medicaid plan;
- allow asset and resource testing;
- allow six-month eligibility with active renewal;
- encourage personal responsibility through expanded wellness and cost-sharing initiatives that include copayments, deductibles, premium payments, missed appointment fees or other cost-sharing initiatives;
- promote flexible spending accounts or other similar initiatives;
- allow for customized benefit plans; and
- incent private sector alternatives.

These critical reforms will produce a more innovative and efficient program, enable existing state and federal dollars to go further and improve access and outcomes for recipients. Texas will continue to meet the needs of our citizens through these kinds of state-based solutions, rather than subject Texans to the pervasive overreach of Obamacare on so many aspects of health care.

I look forward to working with you as HHSC develops this waiver and pursues these common sense reforms for our state.

Sincerely,



Rick Perry
Governor

RP:kkp

**OFFICE OF THE GOVERNOR**RICK PERRY
GOVERNOR

September 17, 2013

Ms. Julia Rathgeber
Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

Dear Commissioner Rathgeber:

During the 83rd regular session, the Texas Legislature passed and I signed into law Senate Bill 1795, which authorized the creation of rules regulating a navigator program to assist Texans in signing up for the federal health care exchange, which is a requirement under the Patient Protection and Affordable Care Act, otherwise known as Obamacare.

SB 1795 allows TDI to create and enforce regulations governing those persons who seek to work as navigators and specifically allows TDI to adopt more stringent regulations than federal rules. SB 1795 also prohibits navigators in Texas from engaging in electioneering activities.

The U.S. Department of Health and Human Services has repeatedly delayed explaining how its navigators were going to be created, how they were going to operate, and how they were going to be regulated.

Because of the nature of navigators' work and because they will be collecting confidential information, including birth dates, social security numbers and financial information, it is imperative that Texas train navigators on the collection and security of such data.

To that end, I am directing TDI to use its authority under S.B. 1795 and create rules to ensure that navigators are well-trained, qualified, and capable of protecting Texans' privacy.

Therefore, as TDI develops rules for regulating navigators, please ensure your rules require that navigators:

- Be at least 18 years old and demonstrate knowledge and capability to perform the services of a navigator;
- Provide proof of U.S. citizenship or legal residency;
- Complete a comprehensive, TDI-approved training course of a minimum of 40 hours coursework in addition to any federal coursework;
- Pass a rigorous exam based on that training course and covering job functions and privacy protections, among other topics;

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 (512)463-2000 (VOICE)/DIAL 7-1-1 FOR RELAY SERVICES
VISIT WWW.TEXASONLINE.COM THE OFFICIAL WEB SITE OF THE STATE OF TEXAS

Ms. Julia Rathgeber
September 17, 2013
Page 2

- Refrain from selling, soliciting, or negotiating health insurance, and from recommending a plan, providing advice regarding substantive benefits or comparative benefits of different plans;
- Submit to initial and periodic background and regulatory checks;
- Report to TDI on a regular basis the names of those persons they sign up for the federal health care exchange, and locations at which sign-ups take place.
- Show state issued identification and credentialing when approaching individuals, in advance of entering their home, or when otherwise intruding on their privacy.

Furthermore, TDI rules for the navigator program should:

- Create and require continuing education requirements;
- Require TDI to maintain a comprehensive database of navigators and their relevant information which includes background checks, regulatory checks and fingerprints;
- Include in TDI's database information on names of persons who were signed up in the federal health exchange by navigators and the locations at which they were signed up;
- Institute time, place, and manner requirements for navigator activity, including limiting registration of persons only between the hours of 8am and 8pm;
- Allow TDI to charge a fee sufficient to cover the costs of licensing, education, administration, and all other activities associated with the navigator program;
- Institute a surety bond for repayment to the state for any navigator's failure to secure confidential information, failure to maintain necessary training and certification, and improperly including ineligible individuals in the program;
- Give TDI the authority to suspend, or have registration revoked, for non-compliance or failure to meet any of the requirements created in rule or statute; and
- Give TDI the authority to take enforcement action against any person or entity that is holding itself out as, or performing the duties of, a navigator without being registered.

In addition to these, I trust that you will look at all of the ideas before you and give serious consideration to any additional proposals that seek to protect Texans and their privacy.

I look forward to working with you as we move through the rulemaking process.

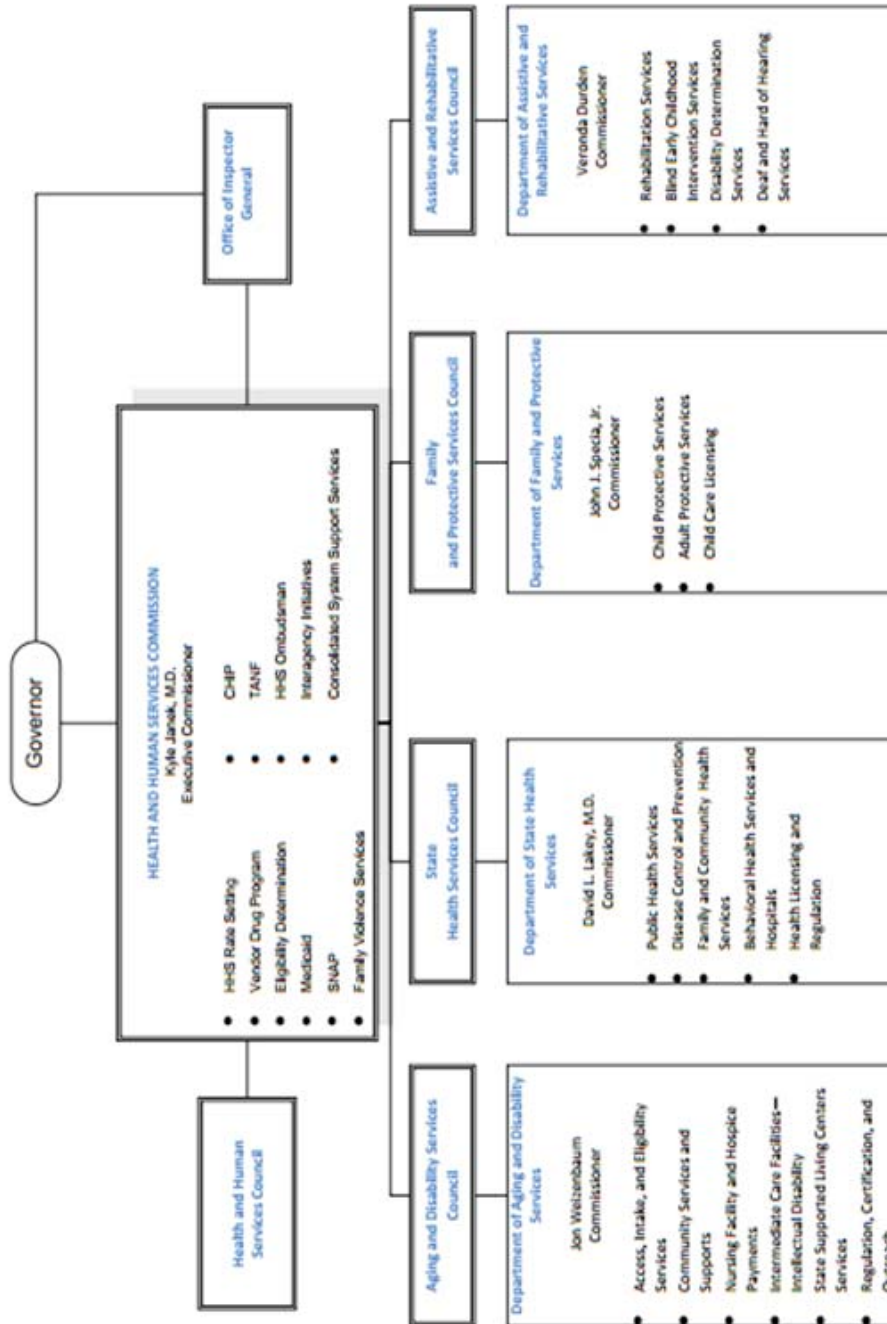
Sincerely,



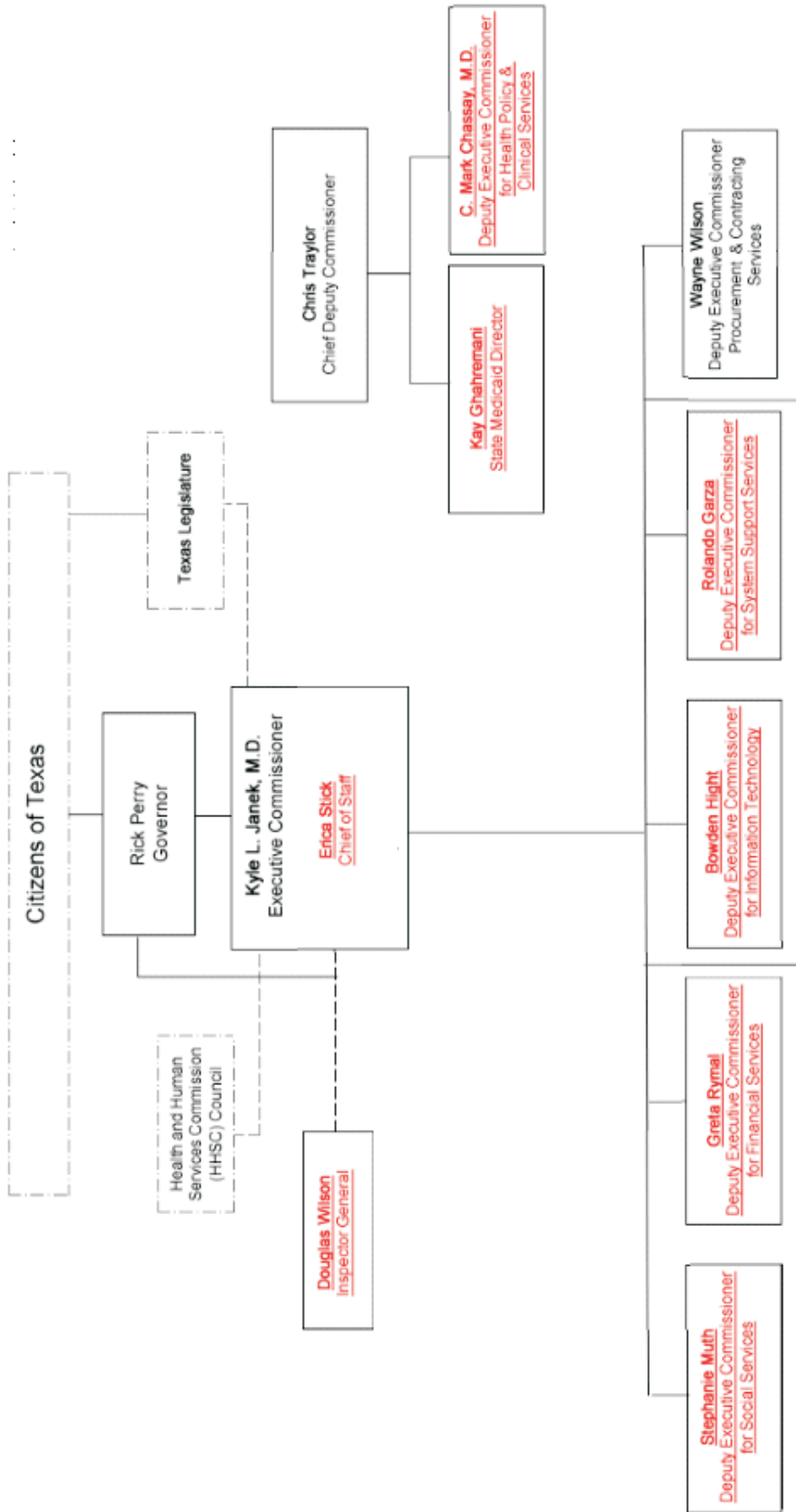
Rick Perry
Governor

RP:msk

Appendix B Organizational Charts for HHSC^{324,325}



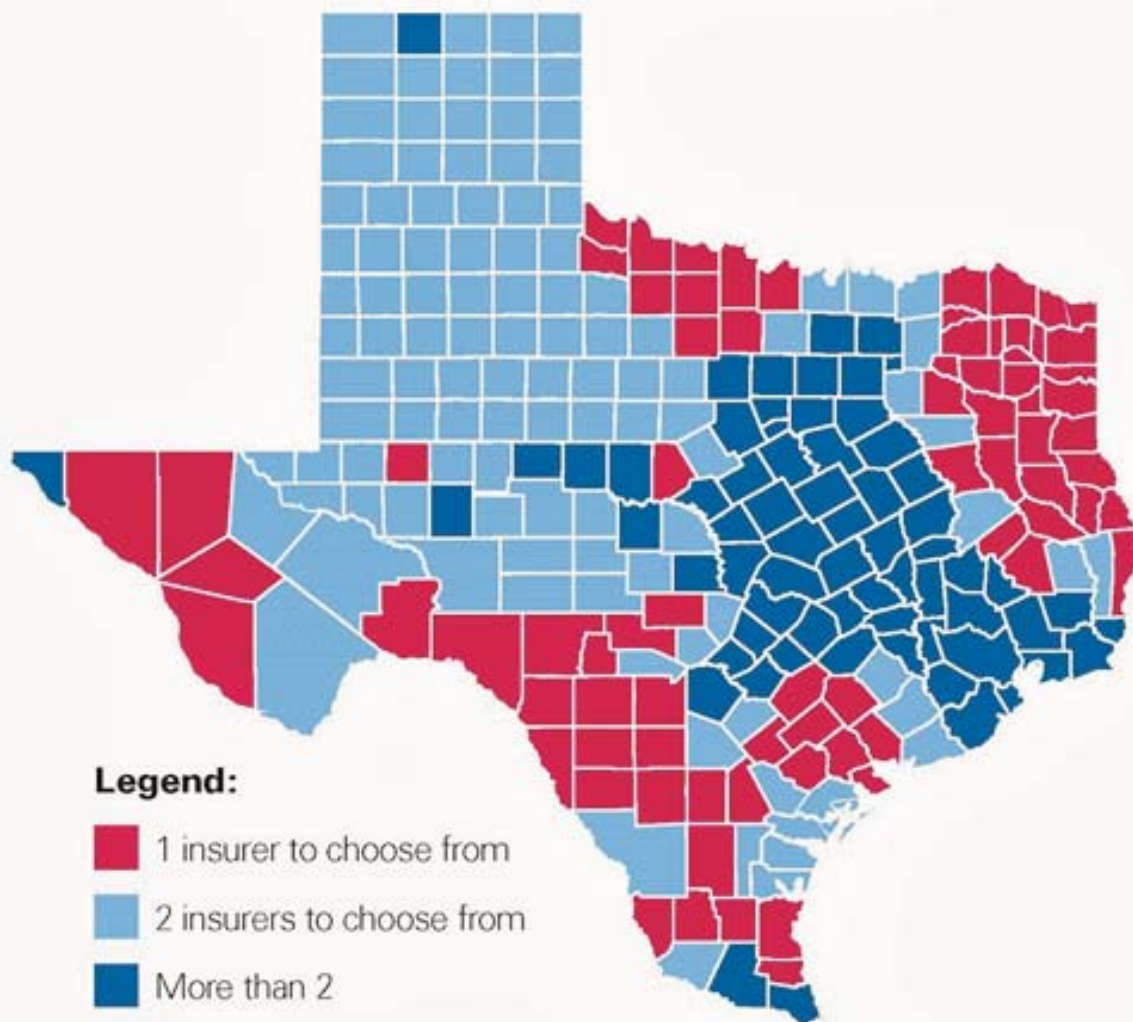
HEALTH AND HUMAN SERVICES COMMISSION



Appendix C
Number of Health Insurance Companies Offering Coverage
Through the Marketplace by Texas County³²⁶

Texans' Choices of Marketplace Health Insurers

Of the 254 counties in Texas, 76 of them had only one health insurer providing benefits through the marketplace when it opened in October. 111 counties had just two insurers offering coverage.



Source: Healthcare.gov. Information current as of Oct. 1, 2013.

Appendix D Regional Variation in Premium Rates³²⁷

Rating Area	Counties	Largest City	Premium amounts in dollars for a 21-year-old consumer						
			Lowest Cost Catastrophic	Lowest Cost Bronze	Lowest Cost Silver	Lowest Cost Silver	Lowest Cost Silver	Lowest Cost Gold	
1	Callahan, Jones, Taylor	Arlene	171.02	172.17	187.43	193.26	200.05		
2	Arundel, Carson, Porter, Randall	Amathlo	156.43	130.89	171.44	176.77	210.42		
3	Bourgeois, Caldwell, Hays, Harris, Williamson	Austin	104.04	137.73	161.11	193.32	183.77		
4	Hardin, Jefferson, Orange	Seamont	143.78	145.19	205.90	212.40	255.73		
5	Carson	Hartgen	139.86	163.56	148.36	371.42	180.25		
6	Beason, Buchanan, Robertson	Baytown	161.33	128.32	181.69	187.34	203.00		
7	Aransas, Nueces, San Patricio	Sanctor	119.46	131.13	184.99	183.96	211.00		
8	Collin, Dallas, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant, Wise	Dallas-Fort Worth	165.42	145.72	206.65	213.07	295.64		
9	El Paso	El Paso	145.03	113.63	163.12	166.13	197.76		
10	Austin, Bexar, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto	Houston	125.73	133.25	186.10	191.89	222.04		
11	Bell, Coryell, Lampasas	Temple	138.00	119.48	169.43	174.70	207.96		
12	Walls	Laudo	141.08	113.78	161.35	166.37	198.04		
13	Grainger, Rock, Upshur	Longview	165.43	127.85	181.28	186.92	222.50		
14	Crosby, Lubbock	Lubbock	169.90	151.30	180.30	191.59	228.54		
15	Hidalgo	McAllen	95.54	104.15	143.57	147.66	166.04		
16	Midland	Midland	165.60	124.18	176.11	181.18	216.15		
17	Ector	Odessa	151.18	116.89	165.90	171.06	203.63		
18	Leon, Tom Green	San Angelo	165.42	130.03	187.23	193.05	226.30		
19	Brewster, Brewer, Comal, Guadalupe, Kendall, Medina, Wilson	San Antonio	163.79	132.04	160.75	187.25	183.33		
20	Grayson	Sherman	138.93	144.46	204.86	211.23	251.45		
21	Bowie	Texarkana	138.88	122.62	173.90	179.70	213.44		
22	Smith	Tyler	146.91	125.72	178.29	183.33	218.85		
23	Callison, Goliad	Port Lavaca	160.00	150.18	184.61	196.55	206.59		
24	Madison	Waco	106.53	150.72	164.97	183.48	188.17		
25	Archer, Clay, Wichita	Wichita Falls	181.69	147.65	208.35	213.86	266.96		
26	All other counties	None	104.04	127.11	161.11	180.25	183.77		

Appendix D Sources

Health Insurance Marketplace Premiums for 2014 Databook, U.S. Department of Health and Human Services, September 25, 2013,

http://aspe.hhs.gov/health/reports/2013/MarketplacePremiums/datasheet_home.cfm.

“Texas Geographic Rating Areas: Including State Specific Geographic Divisions,” Centers for Medicare and Medicaid Services, n.d.,

<http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/tx-gra.html>.

Rating Area 26, “All other counties,” includes these Texas counties:

Jim Wells, Andrews, Henderson, Matagorda, Bee, Howard, Fannin, Hutchinson, Washington, Brown, Navarro, Val Verde, Moore, Maverick, Wharton, Gillespie, Cooke, Hood, Somervell, Deaf Smith, Walker, Cherokee, Kerr, Kenedy, Kleberg, Dawson, Hockley, Angelina, Burnet, Harrison, Palo Pinto, Titus, Nacogdoches, Anderson, Gray, Roberts, Lamar, Reeves, Hale, Willacy, Starr, Erath, Hopkins, Nolan, Uvalde, Wilbarger, Camp, Cass, Castro, Childress, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cottle, Crane, Crockett, Culbertson, Dallam, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Fallas, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Glasscock, Gonzales, Grimes, Upton, Van Zandt, Ward, Wheeler, Winkler, Wood, Yoakum, Young, Zapata, Zavala, Brooks, Bailey, Baylor, Blanco, Borden, Bosque, Brewster, Briscoe, Shackelford, Shelby, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Trinity, Tyler, Raines, Reagan, Real, Red River, Refugio, Runnels, Sabine, San Augustine, San Saba, Schleicher, Morris, Motley, Newton, Nolan, Ochitree, Oldham, Panola, Parmer, Pecos, Polk, Presidio, Madison, Marion, Martin, Mason, McCulloch, McMullen, Menard, Milam, Mills, Mitchell, Montague, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Houston, Hudspeth, Jack, Jackson, Jasper, Jim Hogg, Jeff Davis, Karnes, Kent, Kimble, King, Kinney, Knox, La Salle, Lamb, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn

Endnotes

- 1 “Attorney General Abbott Challenges the Constitutionality of Federal Health Care Takeover,” Office of the Attorney General of Texas, March 23, 2010, <https://www.oag.state.tx.us/oagNews/release.php?id=3273>.
- 2 Rick Perry, letter to HHS Secretary Kathleen Sebelius, Office of the Governor of the State of Texas, April 30, 2010, <http://governor.state.tx.us/files/press-office/O-SebeliusKathleen20100430.pdf>.
- 3 “Coverage of Uninsurable Pre-existing Conditions: State and Federal High-Risk Pools,” National Conference of State Legislatures, Updated April 2014, <http://www.ncsl.org/issues-research/health/high-risk-pools-for-health-coverage.aspx>.
- 4 *Federal Healthcare Reform Legislative Primer*, Legislative Budget Board, February 2011, http://www.lbb.state.tx.us/Federal_Funds/Other_Publications/Federal%20Healthcare%20Reform%20Legislative%20Primer%20212011.pdf.
- 5 “Gov. Rick Perry Appoints Mike Geeslin as Insurance Commissioner,” Office of the Governor of the State of Texas, June 7, 2005, <http://governor.state.tx.us/news/appointment/5087/>.
- 6 Mike Geeslin, “Commissioner’s Bulletin #B-0051-10 to Insurers Licensed to Write Accident and Health Insurance in Texas and all Health Maintenance Organizations,” Texas Department of Insurance, December 15, 2010, <http://www.tdi.texas.gov/bulletins/2010/cc50.html>.
- 7 Katrina Daniel, “2012 Federal Health Reform Summary,” presentation at the Joint Meeting of the House Committees on Insurance and Public Health, Texas Department of Insurance, February 27, 2012, <http://www.tdi.texas.gov/reports/documents/FHRsummary.pdf>.
- 8 Ibid.
- 9 *Texas Medicaid and CHIP in Perspective: Ninth Edition*, Texas Health and Human Services Commission, January 2013, <http://www.hhsc.state.tx.us/medicaid/about/PB/PinkBook.pdf>.
- 10 Thomas M. Suehs, “Federal Health Care Reform – Impact to Texas Health and Human Services,” presentation at the Joint Hearing of the Senate Health and Human Services and State Affairs Committees, Texas Health and Human Services Commission, March 31, 2010, http://www.hhsc.state.tx.us/news/presentations/2010/FedHlthReform_0310.pdf.
- 11 John Holahan and Irene Headen, *Medicaid Coverage and Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL*, Kaiser Commission on Medicaid and the Uninsured, May 2010, http://static.texastribune.org/media/documents/Kaiser_Report.pdf.
- 12 *Impact on Texas if Medicaid is Eliminated*, Texas Health and Human Services Commission and Texas Department of Insurance, December 2010, http://www.hhsc.state.tx.us/hb-497_122010.pdf.
- 13 Ibid.
- 14 David Dewhurst, Rick Perry, and Joe Straus, letter to state agency board chairs and others, Office of the Governor of the State of Texas, January 15, 2010, http://governor.state.tx.us/files/press-office/budget_letter.pdf.
- 15 “Writing the state budget,” *State Finance Report No. 83-2*, House Research Organization, Texas House of Representatives, February 8, 2013, <http://www.hro.house.state.tx.us/pdf/focus/writing83.pdf>.
- 16 “Frequently asked questions about special sessions,” Legislative Reference Library, updated June 8, 2011, <http://www.lrl.state.tx.us/sessions/specialSessions/FAQ.cfm>.
- 17 “Writing the state budget.”
- 18 NPR Staff, “Texas Gov. Rick Perry is ‘Fed Up!’” *National Public Radio Books*, November 5, 2010, <http://www.npr.org/templates/story/story.php?storyId=131048009>.
- 19 Texas Comptroller of Public Accounts, “Biennial Revenue Estimate 2012–2013,” *Texas Transparency*, January 2011, http://www.texastransparency.org/State_Finance/Budget_Finance/Reports/Biennial_Revenue_Estimate/bre2012/.
- 20 Legislative Budget Board Staff, *Fiscal Size-Up: 2012–13 Biennium*, Legislative Budget Board, January 2012, http://www.lbb.state.tx.us/Appropriations_Bills/Fiscal_Size-up.pdf.

- 21 “Texas House Member Rep. John Zerwas, District 28,” Texas House of Representatives, n.d., <http://www.house.state.tx.us/members/member-page/?district=28>.
- 22 “82nd Legislative Session Bills: HB636,” *Texas Tribune*, n.d., <http://www.texastribune.org/session/82R/bills/HB636/>.
- 23 Emily Ramshaw, “Zerwas: Texas Health Insurance Exchange May Be Dead,” *Texas Tribune*, March 29, 2011, <http://www.texastribune.org/2011/03/29/zerwas-texas-health-insurance-exchange-may-be-dead/>.
- 24 Becca Aaronson, “House OKs Bill to Seek Federal Medicaid Waiver,” *Texas Tribune*, June 10, 2011, <http://www.texastribune.org/2011/06/10/house-oks-bill-to-seek-federal-medicaid-waiver/>.
- 25 “Waiver Overview and Background Resources,” Texas Health and Human Services Commission, n.d., <http://www.hhsc.state.tx.us/1115-Waiver-Overview.shtml>.
- 26 Thomas M. Suehs, “Presentation to the House Committee on County Affairs: Upper Payment Limit (UPL) & Disproportionate Share Hospital (DSH) Programs,” presentation at the House Committee on County Affairs, Texas Health and Human Services Commission, March 8, 2011, <http://www.hhsc.state.tx.us/news/presentations/2011/House-County-Affairs-DSH-UPL-3082011.pdf>.
- 27 “Waiver Overview and Background Resources.”
- 28 Becca Aaronson, “Feds Reject Texas’ Request to Delay Insurance Reform,” *Texas Tribune*, January 27, 2012, <http://www.texastribune.org/2012/01/27/feds-reject-texas-request-delay-health-reforms/>.
- 29 Ross Ramsey, “Kitzman is Perry’s New Insurance Commissioner,” *Texas Tribune*, July 20, 2011, <http://www.texastribune.org/2011/07/20/kitzman-perrys-new-insurance-commissioner/>.
- 30 Minjae Park, “TDI Won’t Seek Federal Funds to Prolong Health Program,” *Texas Tribune*, May 18, 2012, <http://www.texastribune.org/2012/05/18/texas-declines-funds-health-coverage-education/>.
- 31 “Obamacare: Nothing to Celebrate,” Office of the Governor of the State of Texas, March 23, 2012, <http://governor.state.tx.us/news/noteworthy/17067/>.
- 32 Adam Liptak, “Supreme Court Upholds Health Care Law, 5-4, In Victory for Obama,” *New York Times*, June 29, 2012, <http://www.nytimes.com/2012/06/29/us/supreme-court-lets-health-law-largely-stand.html>.
- 33 “Statement by Governor Perry on Supreme Court Ruling Regarding Obamacare,” Office of the Governor of the State of Texas, Press Release, June 28, 2012, <http://governor.state.tx.us/news/press-release/17385>.
- 34 “HHSC Statement on Affordable Care Act Ruling,” Texas Health and Human Services Commission, News Release, June 28, 2012, <http://www.hhsc.state.tx.us/news/release/2012/062812-Affordable-Care.shtml>.
- 35 Rick Perry, letter to HHS Secretary Kathleen Sebelius, Office of the Governor of the State of Texas, July 9, 2012, <http://governor.state.tx.us/files/press-office/O-SebeliusKathleen201207090024.pdf>.
- 36 Ben Philpott, “Estimate of Texas Medicaid Expansion Drops by Billions,” *KUT News*, July 13, 2012, <http://kut.org/post/estimate-texas-medicaid-expansion-drops-billions>.
- 37 Kate Alexander, “Texas banking on \$5 billion in extra revenue for current budget,” *Austin American-Statesman*, July 18, 2012, <http://www.statesman.com/news/news/state-regional-govt-politics/texas-banking-on-5-billion-in-extra-revenue-for-cu/nRqFj/>.
- 38 Robert T. Garrett, “UPDATED: Perry picks Janek to head Texas social services,” *Dallas Morning News*, July 30, 2012, <http://trailblazersblog.dallasnews.com/2012/07/perry-picks-janek-to-head-texas-social-services.html>.
- 39 “Affordable Care Act: Health Insurance Exchange,” *Issue Brief*, Legislative Budget Board, April 2013, http://www.lbb.state.tx.us/Documents/Publications/Issue_Briefs/397_Insurance_ACA%20Insurance%20Exchange.pdf.
- 40 “Gov. Perry: Texas Will Not Implement State Insurance Exchange Under Obamacare,” Office of the Governor of the State of Texas, Press Release, November 15, 2012, <http://governor.state.tx.us/news/press-release/17882/>.
- 41 Aman Batheja, “Combs: Lawmakers Will Have \$101.4 Billion for Budget,” *Texas Tribune*, January 7, 2013, <http://www.texastribune.org/2013/01/07/combs-says-texas-will-have-1014-billion-session/>.

- 42 Erica Grieder, "Texas Has An Unexpected 8.8 Billion Surplus," *Texas Monthly*, January 8, 2013, <http://www.texasmonthly.com/story/texas-has-unexpected-88-billion-surplus>.
- 43 Aman Batheja, "Combs: Lawmakers Will Have \$101.4 Billion for Budget"
- 44 Erica Grieder, "Texas Has An Unexpected 8.8 Billion Surplus."
- 45 David Muto, "The Brief: Top Texas Headlines for Jan. 9, 2013," *Texas Tribune*, January 9, 2013, <http://www.texastribune.org/2013/01/09/brief-top-texas-headlines-jan-9-2013/>.
- 46 Ben Philpott, "Medicaid Expansion Sparks Debate Over Asset Tests," *Texas Tribune*, March 21, 2013, <http://www.texastribune.org/2013/03/21/expansion-debate-could-focus-on-asset-tests/>.
- 47 Becca Aaronson, "Report: TX Should Put Politics Aside, Expand Medicaid," *Texas Tribune*, January 28, 2013, <http://www.texastribune.org/2013/01/28/report-politics-aside-expanding-medicaid-smart-cho/>.
- 48 Ibid.
- 49 Becca Aaronson, "Business Association Endorses Zerwas' Medicaid Plan," *Texas Tribune*, April 26, 2013, <http://www.texastribune.org/2013/04/26/business-association-endorses-zerwas-medicaid-plan/>.
- 50 Ibid.
- 51 Melissa del Bosque, "Q&A with Rep. John Zerwas on Lege Failure to Pass Healthcare Expansion," *Texas Observer*, August 2, 2013, <http://www.texasobserver.org/qa-with-rep-john-zerwas-on-lege-failure-to-pass-healthcare-expansion/>.
- 52 Robert T. Garrett, "Rick Perry bars way to possible Texas deal with feds on Medicaid expansion," *Dallas Morning News*, March 4, 2013, <http://www.dallasnews.com/news/politics/headlines/20130304-rick-perry-bars-way-to-possible-texas-deal-with-feds-on-medicaid-expansion.ece>.
- 53 Emily Ramshaw and Becca Aaronson, "Budget Rider Could Lay out Terms for Medicaid Reform," *Texas Tribune*, May 13, 2013, <http://www.texastribune.org/2013/05/13/budget-rider-could-lay-out-terms-medicaid-expansio/>.
- 54 "Special Edition: A Summary of the 83rd Texas Legislature Regular Session," *Health Care Advocate*, Texas Hospital Association, May 31, 2013, <http://www.tha.org/HealthCareProviders/AboutTHA/Publications/HealthCareAdvocate/MayDBC0BD/index.asp>.
- 55 "Bill Summary SB7," Texas Legislature Online, n.d., <http://www.capitol.state.tx.us/BillLookup/BillSummary.aspx?LegSess=83R&Bill=SB7>.
- 56 "S.B. No. 7," Texas Legislature Online, n.d., <http://www.legis.state.tx.us/tlodocs/821/billtext/pdf/SB00007F.pdf>.
- 57 Eleanor Kitzman, "Commissioner's Bulletin #B-0008-13 to All Insurance Companies Licensed to Write Health Coverage in the State of Texas and all Health Maintenance Organizations," Texas Department of Insurance, March 15, 2013, <http://www.tdi.texas.gov/bulletins/2013/cc4.html>.
- 58 Gary Cohen, letter regarding "Effective rate review of rates for reasonableness under the Patient Protection and Affordable Care Act of 2010, the Health Care Education and Reconciliation Act of 2010 ("The Affordable Care Act") and section 2794 of the Public Health Service Act (PHS Act) and review of rates for market reform compliance for plans effective or renewing on or after January 1, 2014," Texas Department of Insurance, March 29, 2013.
- 59 Robert T. Garrett, "Why has wave of Obamacare insurance cancellations mostly missed Texas?" *Dallas Morning News*, November 29, 2013, <http://www.dallasnews.com/news/state/headlines/20131129-why-has-wave-of-obamacare-insurance-cancellations-mostly-missed-texas.ece>.
- 60 Becca Aaronson, "Watson Responds to Perry's Move to Regulate Insurance Navigators," *Texas Tribune*, September 19, 2013, <http://www.texastribune.org/2013/09/19/perry-directs-tdi-regulate-federal-navigator-progr/>.
- 61 Tim Eaton, "Rathgeber approved as insurance commissioner," *Austin American-Statesman*, June 14, 2013, <http://www.statesman.com/news/news/rathgeber-approved-as-insurance-commissioner/nYLM2/>.

- 62 Rick Perry, letter to TDI Commissioner Julia Rathgeber requesting the creation of new rules for navigators, Office of the Governor of the State of Texas, September 17, 2013, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/scanned/archive/2013/21962.pdf>.
- 63 Kirk Watson, letter to TDI Commissioner Julia Rathgeber, Office of the State Senator, September 19, 2013, <http://www.kirkwatson.com/assets/Letter-to-Commissioner-Rathgeber.pdf>.
- 64 Ibid.
- 65 Rick Perry, letter to HHSC Executive Commissioner Kyle Janek, directing HHSC to asset test Medicaid applicants, Office of the Governor of the State of Texas, September 16, 2013, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/scanned/archive/2013/21968.pdf>.
- 66 Ibid.
- 67 Becca Aaronson, "Sebelius: We're Open to 'Uniquely Texan' Approach," *Texas Tribune*, August 8, 2013, <http://www.texastribune.org/2013/08/08/feds-open-uniquely-texan-expansion-medicaid/>.
- 68 "Statement by Gov. Rick Perry on Secretary Sebelius' Visit to Texas," Office of the Governor of the State of Texas, Press Release, August 8, 2013, <http://governor.state.tx.us/news/press-release/18791/>.
- 69 del Bosque, "Q&A with Rep. John Zerwas on Lege Failure to Pass Healthcare Expansion."
- 70 Garrett, "Rick Perry bars way to possible Texas deal with feds on Medicaid expansion."
- 71 "HHSC Statement on Affordable Care Act Ruling," Texas Health and Human Services Commission, News Release, June 28, 2012, <http://www.hhsc.state.tx.us/news/release/2012/062812-Affordable-Care.shtml>.
- 72 Emily Ramshaw, "Feds, State Disagree on Cost of Health Reform," *Texas Tribune*, April 1, 2010, <http://www.texastribune.org/2010/04/01/feds-state-disagree-on-cost-of-health-reform/>.
- 73 Perry, letter to HHSC Executive Commissioner Kyle Janek, September 16, 2013.
- 74 Daniel, "2012 Federal Health Reform Summary."
- 75 Park, "TDI Won't Seek Federal Funds to Prolong Health Program."
- 76 Gary Cohen, letter to issuer representatives, RE: Compliance with the Market Reforms of the Patient Protection and Affordable Care Act, Texas Department of Insurance, March 15, 2013, <http://ftpcontent.worldnow.com/griffin/NEWS9/PDF/1212/Oklahoma%20Issuer.pdf>.
- 77 Shefali Luthra, "State to Feds: We Won't Enforce Insurance Reforms," *Texas Tribune*, August 7, 2013, <http://www.texastribune.org/2013/08/07/state-not-enforce-key-health-reforms/>.
- 78 "Ensuring Compliance with the Health Insurance Market Reforms," Centers for Medicare & Medicaid Services, Updated as of January 1, 2014, <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/compliance.html>.
- 79 Ryan Poppe, "Texas Still Battling Feds on ACA Navigator Rules," *Texas Public Radio*, October 2, 2013, <http://tpr.org/post/texas-still-battling-feds-aca-navigator-rules>.
- 80 Greg Abbott, letter to TDI Commissioner Julia Rathgeber, November 5, 2013, Office of the Attorney General of Texas, <https://www.oag.state.tx.us/newspubs/releases/2013/Com-Rathgeber-11-5-13.pdf>.
- 81 Will Weissert, "Ted Cruz Defeats David Dewhurst in Texas Senate Runoff," *Huffington Post*, July 21, 2012, http://www.huffingtonpost.com/2012/07/31/ted-cruz-texas-runoff_n_1726411.html.
- 82 Catalina Camia, "Ted Cruz says he won't delay vote on Senate deal," *USA Today*, October 16, 2013, <http://www.usatoday.com/story/news/politics/2013/10/16/ted-cruz-government-shutdown-deal-filibuster/2994271/>.
- 83 Stephanie Condon, "Obama takes Texas to task for not expanding Medicaid," *CBS News*, November 6, 2013, http://www.cbsnews.com/8301-250_162-57611213/obama-takes-texas-to-task-for-not-expanding-medicaid/.
- 84 Becca Aaronson, "Sebelius: We're Open to 'Uniquely Texan' Approach."
- 85 Mimi Garcia, "We're Going to Get Millions of Texans Insured...But How?" In-class presentation, LBJ School of Public Affairs, University of Texas at Austin, September 26, 2013.

- 86 Sarah Kliff, "Texas Consumer Health Assistance Program to close after losing federal funding," *Washington Post*, January 1, 2012, http://articles.washingtonpost.com/2012-01-01/national/35441947_1_health-reform-health-coverage-health-insurance.
- 87 Cover Texas Now website, n.d., <http://www.covertexasnow.org/>.
- 88 Texas Well and Healthy website, n.d., <http://texaswellandhealthy.org>.
- 89 Samantha Artiga, Sean Dryden, Michael Perry, and Jessica Stephens, "Getting into Gear for 2014: Insights from Three States Leading the Way in Preparing for Outreach and Enrollment in the Affordable Care Act," *Issue Brief*, Henry J. Kaiser Family Foundation, September 2013, accessed October 30, 2013, <http://kff.org/health-reform/issue-brief/getting-into-gear-for-2014-insights-from-three-states-leading-the-way-in-preparing-for-outreach-and-enrollment-in-the-affordable-care-act/>.
- 90 Jana Blasi, Texas Association of Community Health Centers, phone interview with the author, October 15, 2013.
- 91 "In-Person Assistance in the Health Insurance Marketplace," Centers for Medicare & Medicaid Services, n.d., <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/assistance.html>.
- 92 Becca Aaronson, "Some Fear Impact of State Rules on Health Navigators," *Texas Tribune*, September 30, 2013, <http://www.texastribune.org/2013/09/30/stakeholders-fear-impact-state-rules-health-naviga/>.
- 93 Jamie Walker, letter to Kirk Watson, October 31, 2013.
- 94 Alex Seitz-Wald, "The Fight of Obamacare's 'Navigators' Against Republican Hurdles," *National Journal*, October 30, 2013, <http://www.nationaljournal.com/health-care/the-fight-of-obamacare-s-navigators-against-republican-hurdles-20131030>.
- 95 "State Exchange Profiles: Tennessee," Henry J. Kaiser Family Foundation, Updated as of December 10, 2012, <http://kff.org/health-reform/state-profile/state-exchange-profiles-tennessee/>.
- 96 Brigitte Courtot and Teresa A. Coughlin, *Cross-Cutting Issues: Progress in Implementing Selected Medicaid Provisions of the Affordable Care Act: A 10-State Analysis*, The Urban Institute, November 2012, <http://www.urban.org/UploadedPDF/412697-Progress-in-Implementing-Selected-Medicaid-Provisions-of-the-Affordable-Care-Act.pdf>.
- 97 "Project Objective," Enroll UX 2014, n.d., <http://www.ux2014.org/about-ux-2014>.
- 98 Lewis Krauskopf and Sharon Begley, "Obamacare applications near 700,000, official says," *Reuters News Service*, October 24, 2013, <http://www.reuters.com/article/2013/10/24/us-usa-healthcare-applications-idUSBRE99N16U20131024>.
- 99 "State Marketplace Profiles: Kentucky," Henry J. Kaiser Family Foundation, Updated as of November 11, 2013, <http://kff.org/health-reform/state-profile/state-exchange-profiles-kentucky/>.
- 100 "A Healthier Kentucky: Health Insurance Coverage for Every Kentuckian," Office of Kentucky Governor Steve Beshear, Updated as of April 10, 2014, <http://governor.ky.gov/healthierky/Pages/default.aspx>.
- 101 "State Exchange Profiles: New Jersey," Henry J. Kaiser Family Foundation, Updated as of December 10, 2013, <http://kff.org/health-reform/state-profile/state-exchange-profiles-new-jersey/>.
- 102 Courtney Watson, Children's Defense Fund, phone interview with the author, October 26, 2013.
- 103 "Governor's Duties, Requirements & Powers," Office of the Governor of the State of Texas, n.d., <http://governor.state.tx.us/about/duties/>.
- 104 "Texas Politics - The Executive Branch: 5.1 The Veto," The University of Texas at Austin College of Liberal Arts Instructional Technology Services, n.d., http://texaspolitics.laits.utexas.edu/1_5_1.html.
- 105 Melissa del Bosque, "Q&A with Rep. John Zerwas on Lege Failure to Pass Healthcare Expansion."
- 106 Ibid.
- 107 "Texas Politics - The Executive Branch: 4.2 Budgetary Powers," The University of Texas at Austin College of Liberal Arts Instructional Technology Services, n.d., http://texaspolitics.laits.utexas.edu/1_4_2.html.
- 108 "Gov. Perry Appoints Rathgeber as Commissioner of Insurance," Office of the Governor of the State of Texas, Press Release, May 27, 2013, <http://governor.state.tx.us/news/appointment/18574/>.

- 109 “Gov. Perry: Texas Will Not Expand Medicaid or Implement Health Benefit Exchange.”
- 110 Conference call between the authors and Texas Health and Human Services Commission Information Technologies staff, October 23, 2013.
- 111 Gary Cohen, letter to issuer representatives regarding compliance, March 15, 2013.
- 112 Scott Conroy, “Rick Perry: Implementing Obamacare ‘a Criminal Act,’” *RealClearPolitics*, October 2, 2013, http://www.realclearpolitics.com/articles/2013/10/02/rick_perry_implementing_obamacare_a_criminal_act_120179.html.
- 113 “Bill: HB 3791,” Texas Legislature Online, May 1, 2013, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB3791>.
- 114 Becca Aaronson, “Zerwas Proposes Alternative to Medicaid Expansion,” *Texas Tribune*, April 16, 2013, <http://www.texastribune.org/2013/04/16/zerwas-proposes-alternative-medicaid-expansion/>.
- 115 Becca Aaronson, “Business Association Endorses Zerwas’ Medicaid Plan,” *Texas Tribune*, April 26, 2013, <http://www.texastribune.org/2013/04/26/business-association-endorses-zerwas-medicaid-plan/>.
- 116 Emily Ramshaw, “Zerwas: Texas Health Insurance Exchange May Be Dead,” *Texas Tribune*, March 29, 2011, <http://www.texastribune.org/2011/03/29/zerwas-texas-health-insurance-exchange-may-be-dead/>.
- 117 Perry, letter to the HHS Secretary Kathleen Sebelius, July 9, 2012.
- 118 Perry, letter to HHSC Executive Commissioner Kyle Janek, directing HHSC to request a Medicaid reform waiver, September 16, 2013, Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/scanned/archive/2013/21967.pdf>.
- 119 Perry, letter to HHSC Executive Commissioner Kyle Janek, directing HHSC to asset test Medicaid applicants, September 16, 2013.
- 120 Perry, letter to TDI Commissioner Julia Rathgeber requesting the creation of new rules for navigators, September 17, 2013
- 121 “History,” Legislative Budget Board, n.d., <http://www.lbb.state.tx.us/history.aspx>.
- 122 “Members,” Legislative Budget Board, n.d., <http://www.lbb.state.tx.us/CurrentBoardMembers.aspx>.
- 123 “Responsibilities,” Legislative Budget Board, n.d., <http://www.lbb.state.tx.us/responsibilities.aspx>.
- 124 Legislative Budget Board Staff, *Texas State Government Effectiveness and Efficiency Report 2012: Selected Issues and Recommendations*, Legislative Budget Board, January 2013, <http://www.lbb.state.tx.us/Documents/Publications/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf>.
- 125 “Texas Politics – Bureaucracy: 1.1 Reinventing HHS,” The University of Texas at Austin College of Liberal Arts Instructional Technology Services, n.d., http://texaspolitics.laits.utexas.edu/8_1_1.html.
- 126 *Self-Evaluation Report Submitted to the Sunset Commission*, Texas Health and Human Services Commission, September 2013, <http://www.hhsc.state.tx.us/sunset/Evaluation-Report.shtml>.
- 127 Ibid, Section VI. Organization, <http://www.hhsc.state.tx.us/sunset/docs/VI.pdf>.
- 128 Ibid.
- 129 “Briefs: Ghahremani Named to Top Medicaid Post,” Texas Health and Human Services Commission, October 9, 2012, <http://www.hhsc.state.tx.us/news/release/2012/080912-New-Medicaid-and-CHIP-Director.shtml>.
- 130 Kay Ghahremani, Presentation to the Healthcare Financial Management Association, August 17, 2012, http://www.hfmatxgc.org/files/file/Presentations/2012_08_Ghahremani_Kay_TexasMedicaidEffortsToPromoteQualityEfficiencyAndLocalControl.pdf.
- 131 Kay Ghahremani, Presentation to the Texas Association of Counties, 2012 Pre-Legislative Conference: Affordable Care Act, August 30, 2012, http://67.192.225.82/education/events/2012/PreLeg/documents/08-30-12_ACAPresentationtoTexasAssociationofCountieskg.pdf.
- 132 Kay Ghahremani, Presentation on the Affordable Care Act, February 19, 2013, Texas Health and Human Services Commission, <http://www.hhsc.state.tx.us/news/presentations/2013/021913-affordable-care-act.pdf>.

- 133 *Self-Evaluation Report Submitted to the Sunset Commission*, Section VII. Guide to Agency Programs – Continued Texas Health and Human Services Commission, September 2013, <https://www.hhsc.state.tx.us/sunset/docs/VII-b.pdf>.
- 134 “Suehs announces changes to HHSC executive team,” *Texas Government Insider* 9, 42 (October 21, 2011), <http://www.spartnerships.com/newsletter/tgi-10-21-11/tgi.html>.
- 135 Internal Audit: fiscal Year 2014 Annual Audit Plan,” Texas Department of Insurance, September 2013, <http://www.tdi.texas.gov/reports/documents/fy14auditplan.pdf>.
- 136 *Operating Budget for Fiscal Year 2012*, Texas Department of Insurance, December 1, 2011, <http://www.tdi.texas.gov/reports/documents/fy12opbdgt.pdf>.
- 137 “The Center for Consumer Information & Insurance Oversight (CCIIO), Texas Affordable Insurance Exchange Grants Awards List, Awarded September 30, 2010” CMS.gov, <http://www.cms.gov/ccio/Resources/Marketplace-Grants/tx.html>.
- 138 “Federal Health Care Reform Resource Page,” Texas Department of Insurance, last updated June 3, 2014, <http://www.tdi.texas.gov/consumer/cpmhealthcare.html>.
- 139 Aaronson, “Sebelius: We’re Open to ‘Uniquely Texan’ Approach.”
- 140 “TribuneFest: Audio From the Health Care Track,” *Texas Tribune*, October 7, 2013, <http://www.texastribune.org/2013/10/07/tribunefest-audio-health-care-track/>.
- 141 Texas HHSC staff, conference call between students of the LBJ School of Public Affairs and representatives of Texas Health and Human Services Commission and OSS, October 21, 2013.
- 142 *Self-Evaluation Report Submitted to the Sunset Commission*, September 2013, p. 105.
- 143 Texas HHSC staff, conference call, October 21, 2013.
- 144 Texas Department of Insurance Agency Strategic Plan for the Fiscal Years 2011–2015 Period,” July 2, 2010, <http://www.tdi.texas.gov/reports/documents/2011StratPlan.pdf>.
- 145 “SB 1795 - Texas 83rd Legislature (2013),” Open States, Signed into Law June 14, 2013, <http://openstates.org/tx/bills/83/SB1795/>.
- 146 Mimi Garcia, “Enroll America,” in-class presentation, LBJ School of Public Affairs, The University of Texas at Austin, September 26, 2013.
- 147 Ibid.
- 148 Jana Blasi, Texas Association of Community Health Centers, phone interview with the author, October 15, 2013.
- 149 Garcia, “Enroll America.”
- 150 Blasi, phone interview, October 15, 2013.
- 151 Juan Flores, Executive Director, La Fe Policy Center, phone interview with the author, October 9, 2013.
- 152 Sarah Kliff, “Why new health group Enroll America matters,” *Washington Post*, September 14, 2011, http://www.washingtonpost.com/blogs/wonkblog/post/why-new-health-group-enroll-america-matters/2011/09/14/gIQAAMGMSK_blog.html.
- 153 “Board of Directors,” Enroll America, n.d., http://www.enrollamerica.org/about-us/who-we-are/#Board_of_Directors.
- 154 “About Us,” Enroll America, n.d., <http://www.enrollamerica.org/about-us>.
- 155 Garcia, “Enroll America.”
- 156 Blasi, phone interview, October 15, 2013.
- 157 Elizabeth Colvin, Foundation Communities, e-mail to the author, October 3, 2013.
- 158 Courtney Watson, Children’s Defense Fund, phone interview with the author, October 26, 2013.
- 159 Henry J. Kaiser Family Foundation, n.d., <http://kff.org/>.
- 160 “About,” Be Covered Texas, n.d., <http://texas.becovered.org/about/>.
- 161 “Centro de Seguros Médicos,” Univision, n.d., <http://salud.univision.com/es/seguros-de-salud/ihic>.
- 162 “Cover Texas Now.”

- 163 "About Us," Texas Well and Healthy, n.d., <http://texaswellandhealthy.org/about-us/>.
- 164 Jana Blasi, phone interview.
- 165 Gulf Coast Health Insurance Marketplace Collaborative, n.d., <http://www.enrollgulfcoast.com/>.
- 166 Sally Bauer, "SAPL's Resource Guides: Health and Wellness Resources: Affordable Care Act," San Antonio Public Library, Last Updated July 18, 2014, <http://guides.mysapl.org/content.php?pid=12750&sid=4145556>.
- 167 Sarah Kliff, "Texas Consumer Health Assistance Program to Close after Losing Federal Funding," *Washington Post*, January 1, 2012, http://www.washingtonpost.com/national/health-science/texas-consumer-health-assistance-program-to-lose-after-losing-federal-funding/2011/12/20/gIQAPORnUP_story.html.
- 168 "CHAP Resources," Texas Department of Insurance, n.d., no longer available online; similar information is available at <http://www.tdi.texas.gov/pubs/consumer/cb105.html>.
- 169 "Health Insurance Marketplace, Affordable Care Act," HealthCare.gov, n.d., <https://www.healthcare.gov/>.
- 170 Centers for Medicare & Medicaid Services, n.d., <http://cms.gov/>.
- 171 U.S. House, 111th Congress, 2nd Session, H.R. 3590: The Patient Protection and Affordable Care Act, §1311 (i) (3), <https://www.govtrack.us/congress/bills/111/hr3590/text>.
- 172 "Navigator Grant Recipients," Centers for Medicare & Medicaid Services, October 18, 2013, <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/navigator-list-10-18-2013.pdf>.
- 173 Ibid.
- 174 U.S. House, 111th Congress, 2nd Session, H.R. 3590: The Patient Protection and Affordable Care Act.
- 175 Health and Human Services Department, "Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel," (II) (B) (2).
- 176 Aaronson, "Watson Responds to Perry's Move to Regulate Insurance Navigators."
- 177 Perry, letter to TDI Commissioner Julia Rathgeber, September 17, 2013.
- 178 Watson, letter to TDI Commissioner Julia Rathgeber, September 19, 2013.
- 179 Aaronson, "Some Fear Impact of State Rules on Health Navigators."
- 180 McKinney, phone interview by author, October 29, 2013.
- 181 Ibid.
- 182 Johnson, e-mail to Stacey Pogue, November 19, 2013.
- 183 Ibid.
- 184 Walker, letter to Kirk Watson, October 31, 2013.
- 185 Consumer Assistance Tools and Programs of an Exchange, 45 CFR §155.205, 210, 255.
- 186 Centers for Medicare & Medicaid Services, "Common Questions and Answers on Designation of Certified Application Counselor (CAC) Organizations in Federally-Facilitated Marketplaces," n.d., <http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf>.
- 187 Centers for Medicare & Medicaid Services, "Certified application counselor organization," n.d., <http://marketplace.cms.gov/help-us/cac.html>.
- 188 U.S. Department of Health and Human Services, "Texas: Health Center Outreach & Enrollment Assistance," n.d., <http://www.hrsa.gov/about/news/2013tables/outreachandenrollment/tx.html>.
- 189 "The Uninsured in Texas," Texas Medical Association, n.d., http://www.texmed.org/uninsured_in_texas/.
- 190 Texas Health and Human Services Commission, "Chapter 3: Federal Health Care Reform," n.d., http://www.hhsc.state.tx.us/medicaid/about/PB/4_PB_9th_ed_Chapter3.pdf.
- 191 Change Happens employee, phone interview by the author, October 25, 2013.
- 192 McKinney, phone interview.
- 193 Masters, phone interview by the author, October 29, 2013.

- 194 CMS, “Navigator Grant Recipients.”
- 195 “Texas: Health Center Outreach and Enrollment Assistance.”
- 196 “The Uninsured in Texas.”
- 197 U.S. House, 111th Congress, 2nd Session, H.R. 3590: The Patient Protection and Affordable Care Act.
- 198 Change Happens employee, phone interview.
- 199 Ibid.
- 200 Southern United Neighborhoods employee, e-mail to the author, October 16, 2013.
- 201 “United Way of Tarrant County Receives \$5.8 Million Navigator Grant,” United Way of Tarrant County, n.d., <http://www.unitedwaytarrant.org/news-events/united-way-tarrant-county-receives-58-million-navigator-grant>.
- 202 McKinney, phone interview.
- 203 “Calendar of Events,” Enroll El Paso, n.d., <http://www.enrollel Paso.org/en/calendar>.
- 204 McKinney, phone interview.
- 205 “RGV Navigator Assistance,” Migrant Health Promotion, accessed October 25, 2013, http://www.migranthealth.org/index.php?option=com_content&view=article&id=199&Itemid=103.
- 206 Masters, phone interview.
- 207 Eleanor Kitzman, “Request for Legislative Appropriations for Fiscal Years 2014 and 2015, Texas Department of Insurance,” August 30, 2012, <http://www.tdi.texas.gov/reports/documents/lar1415.pdf>.
- 208 Ramshaw, Emily, “Perry Rejects ‘Obamacare,’ but State Agency Pushes On,” *Texas Tribune*, June 10, 2011, <http://www.texastribune.org/2011/06/10/perry-rejects-obamacare-but-state-agency-pushes-on/>.
- 209 “Texas Affordable Insurance Exchange Grants Awards List - The Center for Consumer Information & Insurance Oversight,” Centers for Medicare & Medicaid Services,” awarded September 30, 2010, <http://www.cms.gov/CCIIO/Resources/Marketplace-Grants/tx.html>.
- 210 “State Exchange Profiles: Texas,” Henry J. Kaiser Family Foundation, Updated as of December 11, 2012, <http://kff.org/health-reform/state-profile/state-exchange-profiles-texas/>.
- 211 “Gov. Perry: Texas Will Not Expand Medicaid or Implement Health Benefit Exchange.
- 212 José Rodríguez, “Press Release: Rodríguez Questions TDI & HHSC Officials about Implementation of Affordable Care Act,” August 1, 2012, <http://www.rodriguez.senate.state.tx.us/pr12/p080112a.pdf>.
- 213 Ibid.
- 214 Aaronson, “Sebelius: We’re Open to ‘Uniquely Texan’ Approach.”
- 215 Texas HHSC staff, conference call, October 21, 2013.
- 216 Cover Texas Now, “Texas and the Affordable Care Act,” n.d., <http://www.covertexasnow.org/content/texas-and-affordable-care-act>.
- 217 Texas HHSC staff, conference call, October 21, 2013.
- 218 Becca Aaronson, “Federal Marketplace Launches With High Expectations, Hiccups,” *Texas Tribune*, October 1, 2013, <http://www.texastribune.org/2013/10/01/federal-marketplace-launches-high-expectations-hic/>.
- 219 “How to Get Help Applying for Benefits,” Texas Health and Human Services Commission, n.d., <http://www.hhsc.state.tx.us/Help/>.
- 220 Texas HHSC staff, conference call, October 21, 2013.
- 221 Ibid.
- 222 Texas HHSC Information Technologies Staff, conference call between students of the LBJ School of Public Affairs and Texas HHSC Information Technologies Staff, Various Dates.
- 223 Reuters with the Associated Press, “Obamacare contractor: Site will be fixed in time for deadline,” *CNBC.com*, October 24, 2013, <http://www.cnb.com/id/101138390>.
- 224 Texas HHSC Information Technologies Staff, conference call between students of the LBJ School of Public Affairs and Texas HHSC Information Technologies Staff, Various Dates.

- 225 “HHSC Medicaid Proposed Rule. Section 366.1109 Calculation of MAGI-Countable Income,” Texas Secretary of State, October 18, 2013, <http://www.sos.state.tx.us/texreg/pdf/backview/1018/1018prop.pdf>.
- 226 Becca Aaronson, “Feds Reject Texas’ Request to Delay Insurance Reform,” *Texas Tribune*, January 27, 2012, <http://www.texastribune.org/2012/01/27/feds-reject-texas-request-delay-health-reforms/>.
- 227 “Texas Medical Loss Ratio Fact Sheet,” Centers for Medicare & Medicaid Services, May 7, 2013, http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/mlr_fact_sheet_tx.html.
- 228 Park, “TDI Won’t Seek Federal Funds to Prolong Health Program.”
- 229 Millman, “Feds Will Need to Enforce ACA Reforms in 4 States,” *Politico*, March 19, 2013, <http://www.politico.com/story/2013/03/feds-must-enforce-aca-reforms-in-four-states-89041.html>.
- 230 Cohen, letter regarding effective rate review..., March 29, 2013.
- 231 Millman, “Feds Will Need to Enforce ACA Reforms in 4 States.”
- 232 Gary Cohen, letter regarding effective rate review..., March 29, 2013.”
- 233 “Operating Divisions of HHS,” U.S. Department of Health & Human Services, n.d., <http://www.hhs.gov/about/foa/opdivs/index.html>.
- 234 “CMS Regional Offices,” Centers for Medicare & Medicaid Services, Updated as of April 4, 2013, <http://www.cms.gov/About-CMS/Agency-Information/RegionalOffices/index.html?redirect=/regionaloffices/>.
- 235 Ibid.
- 236 “About CCIIO,” U.S. Department of Health and Human Services, n.d.
- 237 “Consumer Information & Insurance Oversight,” Centers for Medicare & Medicaid Services, September 30, 2013, <http://cms.gov/CCIIO/>.
- 238 “Qualified Health Plan,” HealthCare.gov, n.d., <https://www.healthcare.gov/glossary/qualified-health-plan/>.
- 239 “Essential Health Benefits,” HealthCare.gov, n.d., <https://www.healthcare.gov/glossary/essential-health-benefits/>.
- 240 “General Guidance on Federally-facilitated Exchanges,” Centers for Medicare & Medicaid Services, May 16, 2012, <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/ffe-guidance-05-16-2012.pdf>.
- 241 “Health Plan Categories,” HealthCare.gov, n.d., <https://www.healthcare.gov/glossary/health-plan-categories/>.
- 242 “Cost Sharing Reduction,” HealthCare.gov, n.d., <https://www.healthcare.gov/glossary/cost-sharing-reduction/>.
- 243 “Health Insurance Marketplace Premiums for 2014 Databook,” Department of Health and Human Services, September 25, 2013, http://aspe.hhs.gov/health/reports/2013/MarketplacePremiums/datasheet_home.cfm.
- 244 “Health Insurance Market Premiums for 2014,” Issue Brief, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, September 25, 2013, http://www.whitehouse.gov/sites/default/files/docs/marketplace_premiums_ib_final.pdf.
- 245 “Health Insurance Marketplace Premiums for 2014 Databook.”
- 246 “Top 40 List of Insurers,” Texas Department of Insurance, Last Updated December 17, 2013, <http://www.tdi.texas.gov/company/top40.html>.
- 247 The Patient Protection and Affordable Care Act Detailed Summary, Democratic Policy Committee of the United States Senate, n.d, <http://www.dpc.senate.gov/healthreformbill/healthbill52.pdf>.
- 248 “Health Insurance Marketplace Premiums for 2014 Databook.”
- 249 Gary Cohen, “Sub-Regulatory Guidance Regarding Age Curves, Geographical Rating Areas and State Reporting,” Centers for Medicare & Medicaid Services, February 25, 2013, <http://www.cms.gov/CCIIO/Resources/Files/Downloads/market-reforms-guidance-2-25-2013.pdf>.

- 250 "Health Insurance Market Reforms: Rate Restrictions," *Focus on Health Reform*, Henry J. Kaiser Family Foundation, June 2012, <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8328.pdf>.
- 251 "Early Results: Competition, Choice, and Affordable Coverage in the Health Insurance Marketplace in 2014," Office of the President of the United States, May 30, 2013, http://www.whitehouse.gov/sites/default/files/docs/competition_memo_5-30-13.pdf.
- 252 "How the Healthcare Law is Making a Difference for the People of Texas," HealthCare.gov, Updated as of June 2, 2014, <http://www.hhs.gov/healthcare/facts/bystate/tx.html>.
- 253 "Relating to abolishing the Texas Health Insurance Pool," SB 1367, 83d Leg., 1st Reg. Sess. (Tex. 2013), n.d., <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=SB1367>.
- 254 "About the Pool," Texas Health Insurance Pool, n.d., <http://www.txhealthpool.org/who.html>.
- 255 David Maly, "Dewhurst Wants Closure of High-Risk Pool Postponed," *Texas Tribune*, November 18, 2013, <http://www.texastribune.org/2013/11/18/dewhurst-calls-postpone-high-risk-insurance-pool-c/>.
- 256 Genevieve M. Kenney, Lisa Dubay, Stephen Zuckerman, and Michael Huntress, *Opting Out of the Medicaid Expansion under the ACA: How Many Uninsured Adults Would not Be Eligible for Medicaid*, Urban Institute, July 5, 2012, <http://www.urban.org/UploadedPDF/412630-opting-in-medicaid.pdf>.
- 257 Centers for Medicare & Medicaid Services, "Medicaid and CHIP Eligibility Levels," Medicaid.gov, n.d., <http://medicaid.gov/AffordableCareAct/Medicaid-Moving-Forward-2014/Medicaid-and-CHIP-Eligibility-Levels/medicaid-chip-eligibility-levels.html>.
- 258 HHSC, phone interview with the author, October 21, 2013.
- 259 Genevieve M. Kenny et al., *Opting into the Medicaid Expansion under the ACA: Who are the Uninsured Adults Who Could Gain Health Insurance Coverage?* Urban Institute, August 2012, <http://www.urban.org/UploadedPDF/412630-opting-in-medicaid.pdf>.
- 260 "Medicaid Disproportionate Share Hospital (DSH) Payments," Medicaid.gov, n.d., <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Medicaid-Disproportionate-Share-Hospital-DSH-Payments.html>.
- 261 Suehs, "Presentation to the House Committee on County Affairs: Upper Payment Limit (UPL) & Disproportionate Share Hospital (DSH) Programs."
- 262 Ibid.
- 263 "Waiver Overview and Background Resources," Texas Health and Human Services Commission.
- 264 "Overview of Transformation Waiver Terminology," Texas Health and Human Services Commission, Updated August 11, 2014, hyperlinked on <http://www.hhsc.state.tx.us/1115-Waiver-Overview.shtml>.
- 265 "Fact sheets: Medicaid State Disproportionate Share Hospital Allotment Reductions Final Rule," CMS.gov, September 13, 2013, <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-Sheets/2013-Fact-Sheets-Items/2013-09-13.html>.
- 266 "Texas Medicaid Disproportionate Share Talking Points," Texas Hospital Association, February 19, 2013, <http://www.tha.org/HealthCareProviders/AboutTHA/Publications/CapitolUpdate/Maximize%20DSH%20Talking%20Points.pdf>.
- 267 John Holahan, Matthew Buettgens, and Stan Dorn, *The Cost of Not Expanding Medicaid*, Henry J. Kaiser Family Foundation, July 2013, <http://kaiserfamilyfoundation.files.wordpress.com/2013/07/8457-the-cost-of-not-expanding-medicaid4.pdf>.
- 268 Billy Hamilton Consulting, *Expanding Medicaid in Texas: Smart, Affordable and Fair*, January 2013, http://www.mhm.org/images/stories/advocacy_and_public_policy/Smart_Affordable_and_Fair_FNL_FULL.pdf.
- 269 Dan Stultz, "THA Responds to Medicaid Expansion Bill Filed by Rep. Zerwas Friday," Texas Hospital Association, News Release, March 9, 2013, <http://www.tha.org/HealthCareProviders/AboutTHA/PressRoom/THARespondstoMedica0957.asp>.
- 270 "TMA: Expand Coverage and Reform Medicaid," Texas Medical Associations, February 15, 2013, <http://www.texmed.org/Template.aspx?id=26362>.

- 271 Texans Care for Children, personal interview with the author, October 17, 2013.
- 272 Engage Texas phone interview with the author, October 23, 2013.
- 273 Marilyn Tavenner, letter to Andy Allison, September 27, 2013, Centers for Medicare & Medicaid Services, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/ar-private-option-ca.pdf>.
- 274 State of Arkansas Office of the Governor, Arkansas 1115 Waiver Application, (Ark. 2013), Office of Arkansas Governor Mike Beebe, August 2, 2013, <http://humanservices.arkansas.gov/dms/Documents/Final%201115%20Waiver%20Materials%20for%20Submission.pdf>.
- 275 The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 11th Cong., 2nd Sess., § 2703, 3001(b)(1), 3004, 3005, 3006, 3401(f).
- 276 Ibid at § 4302.
- 277 Mike Geeslin, "Commissioner's Bulletin #B-0008-13 to All Insurance Companies Licensed to Write Health Coverage in the State of Texas and All Health Maintenance Organizations," Texas Department of Insurance, March 15, 2013, <http://www.tdi.texas.gov/bulletins/2013/cc4.html>.
- 278 TDI Representative, phone interview with the author, October 10, 2013.
- 279 Representatives from Health and Human Services Commission (HHSC) and Office of Social Services (OSS), conference call with the authors, October 21, 2013.
- 280 Ibid.
- 281 Elizabeth Colvin, e-mail message on Foundation Communities activities, October 3, 2013.
- 282 Garcia, "We're Going to Get Millions of Texans Insured...But How?"
- 283 Ibid.
- 284 Courtney Watson, phone interview with the author, October 26, 2013.
- 285 Juan Flores, phone interview with the author, October 9, 2013.
- 286 Anne Dunkelberg, "Your County and the ACA," Center for Public Policy Priorities, September 27, 2012, <http://library.cppp.org/research.php?aid=1234&cid=3&scid=4>.
- 287 "New Report by Former Deputy Comptroller of Texas Billy Hamilton Shines Light on Need for Medicaid Expansion in State," Methodist Healthcare Ministries, n.d., <http://www.mhm.org/press-releases/240-new-report-by-former-deputy-comptroller-of-texas-billy-hamilton-shines-light-on-need-for-medicaid-expansion-in-state>.
- 288 "State Exchange Profiles: Texas."
- 289 Lewis Krauskopf and Sharon Begley, "Obamacare applications near 700,000, official says," *Reuters*, October 24, 2013, <http://www.reuters.com/article/2013/10/24/us-usa-healthcare-applications-idUSBRE99N16U20131024>.
- 290 Kennedy Elliott and Sarah Kliff, "ACA Enrollment Numbers, By State," *Washington Post*, October 16, 2013, Updated May 1, 2014 as "Who has been able to select health care coverage so far," <http://www.washingtonpost.com/wp-srv/special/politics/aca-enrollment/>.
- 291 "Key Facts About the Small Business Health Options Program (SHOP) Marketplace," Centers for Medicare & Medicaid Services, n.d., <http://marketplace.cms.gov/getofficialresources/publications-and-articles/key-facts-about-shop.pdf>.
- 292 Ibid.
- 293 "Insurance & Healthcare," National Federation of Independent Business, n.d., <http://www.nfib.com/business-resources/insurance-healthcare>.
- 294 Texas Small Business Association, n.d., <http://www.texassba.org/>.
- 295 "What you need to know about the Affordable Care Act," Texas Association of Business, Event Held on November 13, 2013, <https://texasassociationtxassoc.wliinc27.com/events/What-You-Need-to-Know-About-the-Affordable-Care-Act-312/details>.

- 296 Kenney, Dubai, Zuckerman, and Huntress, "Opting Out of the Medicaid Expansion under the ACA: How Many Uninsured Adults Would Not Be Eligible for Medicaid?"
- 297 Aaronson, "Report: TX Should Put Politics Aside, Expand Medicaid."
- 298 Ibid.
- 299 Billy Hamilton Consulting, *Expanding Medicaid in Texas: Smart, Affordable and Fair*.
- 300 Ross Ramsey, "A Quick Romp Through the Latest UT/TT Poll," *Texas Tribune*, November 15, 2013, <http://www.texastribune.org/2013/11/15/quick-romp-through-latest-utt-poll/>.
- 301 Ross Ramsey, "(Re)Introducing the Governor of Texas," *Texas Tribune*, November 18, 2013, <http://www.texastribune.org/2013/11/18/and-now-reintroducing-governor-texas/>.
- 302 Luthra, "State to Feds: We Won't Enforce Insurance Reforms."
- 303 Becca Aaronson, "Abbott Renews Call for Oversight of Federal Navigators," *Texas Tribune*, November 6, 2013, <http://www.texastribune.org/2013/11/06/abbott-renews-call-oversight-federal-navigators/>.
- 304 "Subchapter W. Regulation of Navigators for Health Benefit Exchanges 28 TAC §19.4001 - 19.4018," Texas Department of Insurance, November 26, 2013, <http://www.tdi.texas.gov/rules/2013/documents/navproposal.pdf>.
- 305 Aaronson, "Abbott Renews Call for Oversight."
- 306 Billy Hamilton Consulting, *Expanding Medicaid in Texas: Smart, Affordable and Fair*.
- 307 Ibid.
- 308 Robert F. Deuell, "Response to Billy Hamilton," March 1, 2013, <http://www.deuell.senate.state.tx.us/pr13/p030113c.pdf>.
- 309 Ibid.
- 310 Ibid.
- 311 Robert T. Garrett, "Medicaid expansion's benefits debated – and detailed," *Dallas Morning News*, February 18, 2013, <http://trailblazersblog.dallasnews.com/2013/02/medicaid-expansions-benefits-debated-and-detailed.html/>.
- 312 Brian Haile, "The Supreme Court's ACA Decision and Its Hidden Surprise for Employers," Jackson Hewitt Tax Services, March 13, 2012, http://images.go.jacksonhewitt.com/Web/JacksonHewittTechnologyServicesLLC/%7B6effb4ab-9091-4659-a8a4-df5a759135%7D_Employer_Penalties_and_Medicaid_Expansion_%28Mar_2013%29_3-11-2013.pdf.
- 313 Cathy Hope, "New Study Finds Failure to Expand Medicaid Could be Costly for Employers," Say Ahhh!: A Children's Health Policy Blog, March 15, 2013, <http://ccf.georgetown.edu/all/new-study-finds-failure-to-expand-medicaid-would-hurt-employers/>.
- 314 Billy Hamilton Consulting, *Expanding Medicaid in Texas: Smart, Affordable and Fair*.
- 315 "Health Agents Offer Answers to Mounting Misinformation and Confusion about Affordable Care Act," Texas Association of Health Underwriters, Press Release, November 5, 2013, https://s3.amazonaws.com/emma-assets/ln3ab/4620d7e8629088d87825b5ab37cbe0fc/Health_Agents_Officer_Answers_FINAL.pdf.
- 316 Ibid.
- 317 Robert T. Garrett, "Dewhurst urges state to delay shutting down high risk pool," *Dallas Morning News*, November 18, 2013, <http://trailblazersblog.dallasnews.com/2013/11/dewhurst-urges-state-to-delay-shutting-down-high-risk-pool.html/>.
- 318 Ibid.
- 319 Texas Health Insurance Pool Website, n.d., <http://www.txhealthpool.org>.
- 320 Perry, letter to HHS Secretary Kathleen Sebelius, July 9, 2012.
- 321 Perry, letter to HHSC Executive Commissioner Kyle Janek, directing HHSC to asset test Medicaid applicants, September 16, 2013.

- 322 Perry, letter to HHSC Executive Commissioner Kyle Janek, directing HHSC to request a Medicaid reform waiver, September 16, 2013.
- 323 Perry, letter to TDI Commissioner Julia Rathgeber requesting the creation of new rules for navigators, September 17, 2013.
- 324 Self-Evaluation Report Submitted to the Sunset Commission, September 2013.
- 325 "HHSC Organizational Chart," n.d.,
http://www.hhsc.state.tx.us/about_hhsc/OrgChart/HHS/HHSC_OrgChart.html.
- 326 "Texans' Choices of Marketplace Insurers," Texas Medical Association, October 1, 2013,
<http://www.texmed.org/Template.aspx?id=29412>.
- 327 "Health Insurance Marketplace Premiums for 2014 Databook," September 25, 2013.