

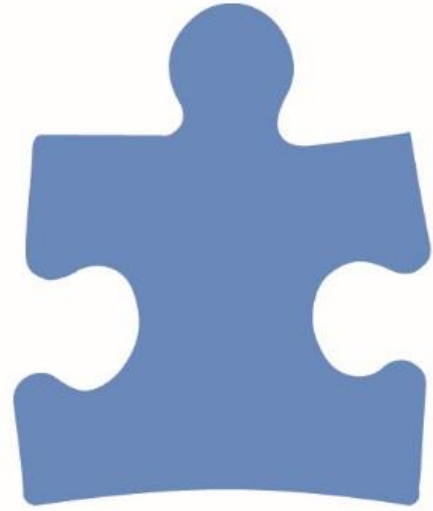


# Autism and Health Insurance in Your State

**Lorri Unumb, Esq.**

**Vice President, State Government Affairs, Autism Speaks**

**NAIC Consumer Representative**



**AUTISM  
SPEAKS®**



AUTISM  
ACADEMY  
OF SOUTH CAROLINA



THE GEORGE  
WASHINGTON  
UNIVERSITY  
WASHINGTON, DC



# Autism and the Law

Cases, Statutes, and Materials

by Lorri Shealy Unumb  
& Daniel R. Unumb



# Ryan, diagnosed at 22 months



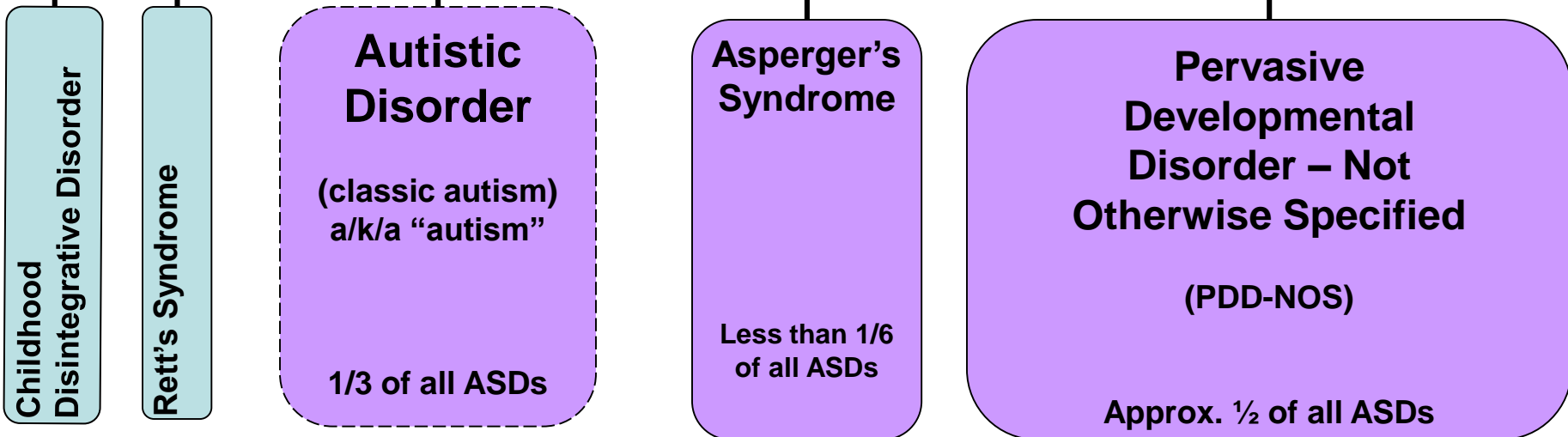
- A medical condition, brought on through no apparent fault of family
- Diagnosed by doctor or psychologist; often a developmental pediatrician
- Four times more common in boys than girls

# Pervasive Developmental Disorders

(the umbrella category in the DSM-IV)

There are 5 Pervasive Developmental Disorders (PDDs).

Within the 5 PDDs, there are 3 **Autism Spectrum Disorders** (ASDs), shown in purple below.



Severity is judged by amount of support one needs due to **social communication impairments** and **restricted, repetitive patterns of behavior**

## Autism Spectrum Disorder

(The umbrella disorder in the DSM-V)

### Level 3

Requiring very substantial support

Severe impairments in functioning as a result of severe deficits.

### Level 2

Requiring substantial support

Marked deficits in functioning even with support in place

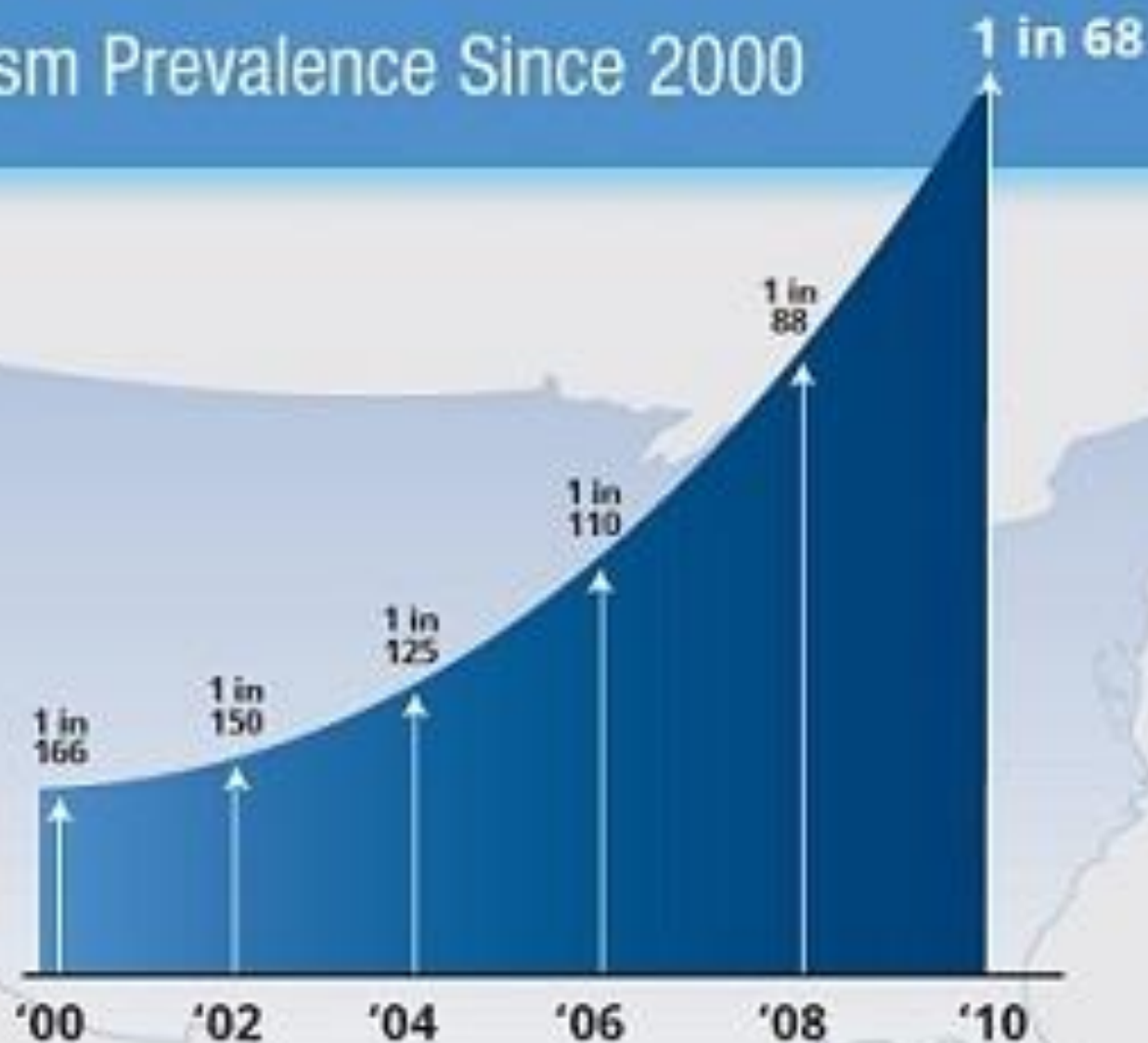
### Level 1

Requiring support

Noticeable impairments in functioning



# Autism Prevalence Since 2000



CDC Prevalence Statistics for ASD



Johns Hopkins University's Kennedy Krieger Institute  
Children's National Medical Center  
Georgetown University Hospital



- One-on-one intervention
- Up to 40 hours/week
- Uses behavioral stimuli & consequences to produce significant improvement in human behavior
- Breaks down into discrete components the skills that neuro-typical children acquire naturally
- Trains child to acquire skills through repetition, prompting, and positive reinforcement

# Applied Behavior Analysis (ABA)



BEFORE AND AFTER

# Applied Behavior Analysis: Cost of a Sample Therapy Program

- Board Certified Behavior Analyst (BCBA)
  - 3-6 hours per month
  - \$100-\$150/hour
  - 6 hours x \$150 = \$900/month
  - \$900 x 12 months = **\$10,800**
- Mid-level supervisor (BCaCA)
  - 6 hours per week
  - \$30-\$60/hour
  - 6 hours x \$60 = \$360/week
  - \$360/week x 52 weeks = **\$18,720**
- Behavior Technician
  - 40 hours per week
  - \$20 - \$30/hour
  - 40 hours x \$20 = \$800/week
  - \$800/week x 52 weeks = **\$41,600**
- $\$10,800 + \$18,720 + \$41,600 = \mathbf{\$71,120}$
- **THANK GOODNESS FOR HEALTH INSURANCE!**



# No Coverage for ABA

- Experimental
- Unlicensed providers
- Educational



# The Lucky Ones



# South Carolina Bill (2005)

- A health insurance plan as defined in this section must provide coverage for the treatment of autism spectrum disorder. Coverage provided under this section is limited to treatment that is prescribed by the insured's treating medical doctor in accordance with a treatment plan. With regards to a health insurance plan as defined in this section an insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew or refuse to reissue or otherwise terminate or restrict coverage on an individual solely because the individual is diagnosed with autism spectrum disorder.

The coverage required pursuant to subsection (B) must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the health insurance plan



# Ryan's Law Journey



# Our First Committee Hearing



**2005, 2006**



# **“Ryan’s Law” becomes Government-Funded Program**

- Pervasive Developmental Disorder Medicaid Program
- \$50,000 year for ABA therapy
- Children 3-11
- Limited to 3 years of treatment
- Lottery
- Funded by \$7 million state funding
- 70% federal match
- Operated by South Carolina Department of Disabilities and Special Needs

**2006, 2007**



**May 25, 2007**



# June 7, 2007 - “Ryan’s Law”

## Autism/ABA Mandate

- ▶ Effective July 2008
- ▶ Covers treatment prescribed by treating physician
- ▶ Diagnosed by age 8
- ▶ Coverage through age 16
- ▶ \$50,000/year cap on behavioral therapy
- ▶ S.C. Code 38-71-280



**June 8, 2007**





# Autism Speaks Government Affairs



Autism Speaks  
Headquartered in  
New York

Autism Speaks  
Government  
Affairs

Headquartered in  
D.C.



Autism Speaks  
State  
Government  
Affairs

Headquartered in  
Lexington, SC







REPRESENTATIVE  
**Bobby Scott**  
Virginia

*Welcome, Please Com*





**Kentucky**





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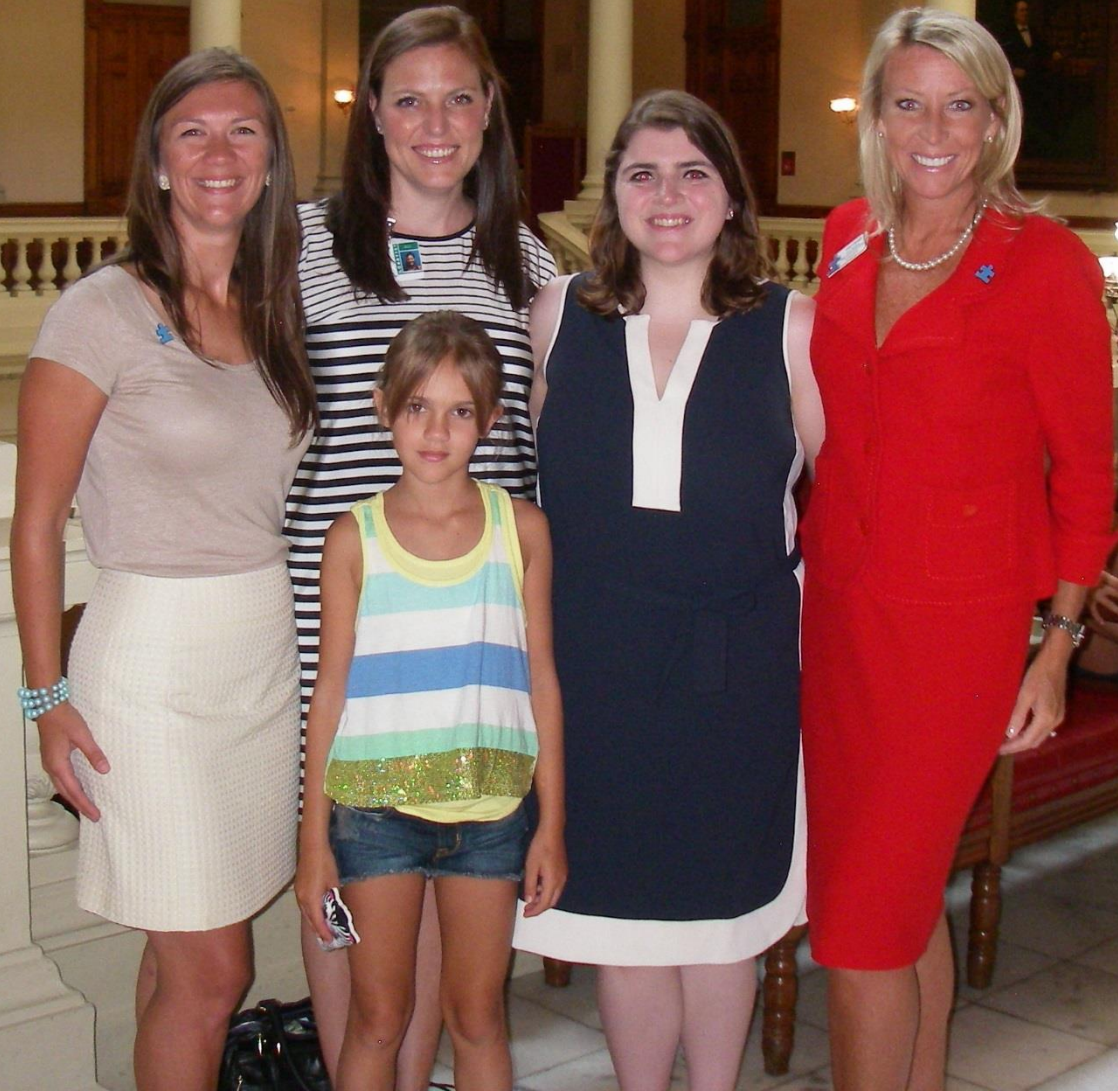
**California**



# Arizona



# Georgia





**Hawaii**



**Kansas**

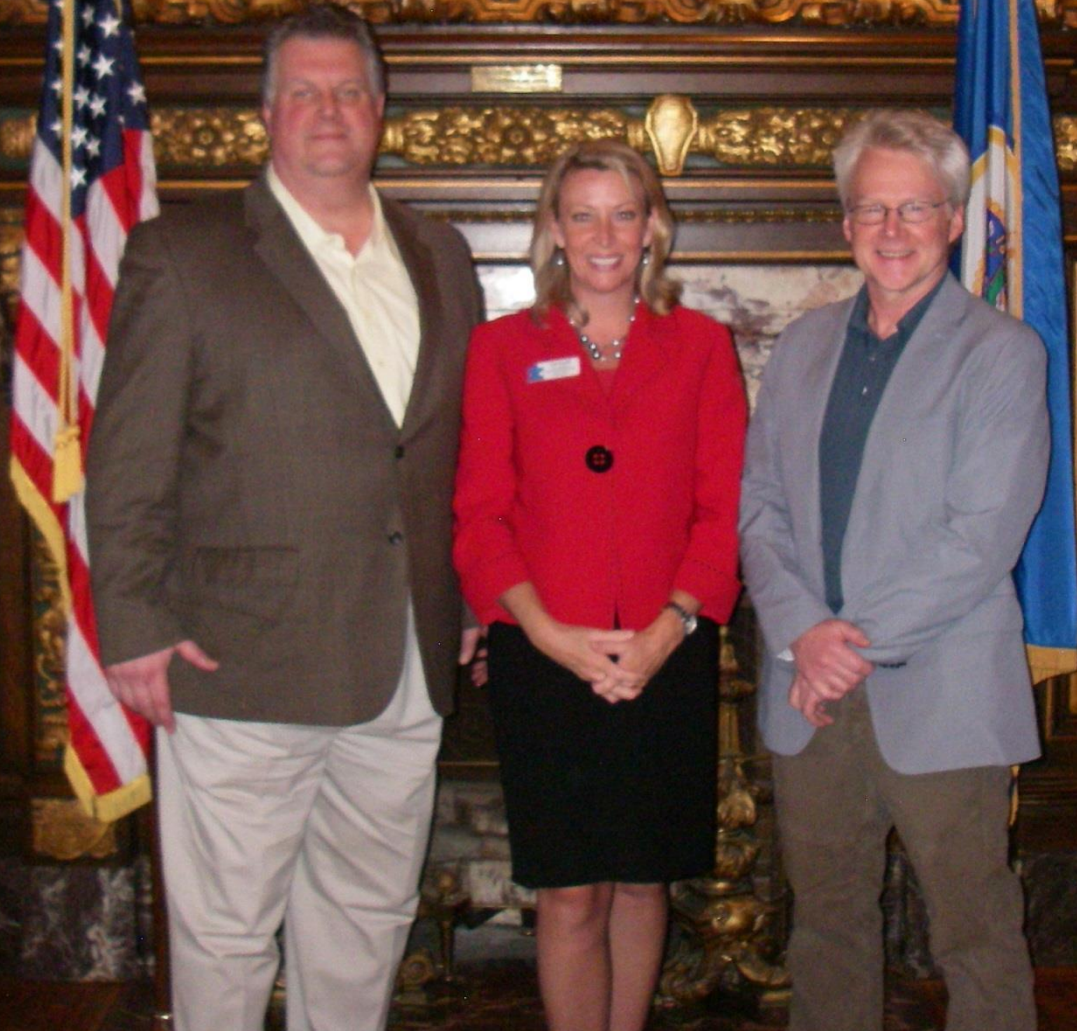
# Massachusetts





**Michigan**

# Minnesota





# Mississippi



# Montana



# Missouri



# Nevada



# North Carolina





NORTH DAKOTA  
CAPITOL

# Ohio



... WILL IT REFLECT THEIR VICIES BUT  
IF THEY BE LOVERS OF RIGHTEOUSNESS  
CONFIDENT IN THEIR LIBERTIES SO WILL  
IT BE CLEAN IN JUSTICE BOLD IN FREEDOM

# Oregon

INFORMATION





# Rhode Island





**Utah**

# Vermont





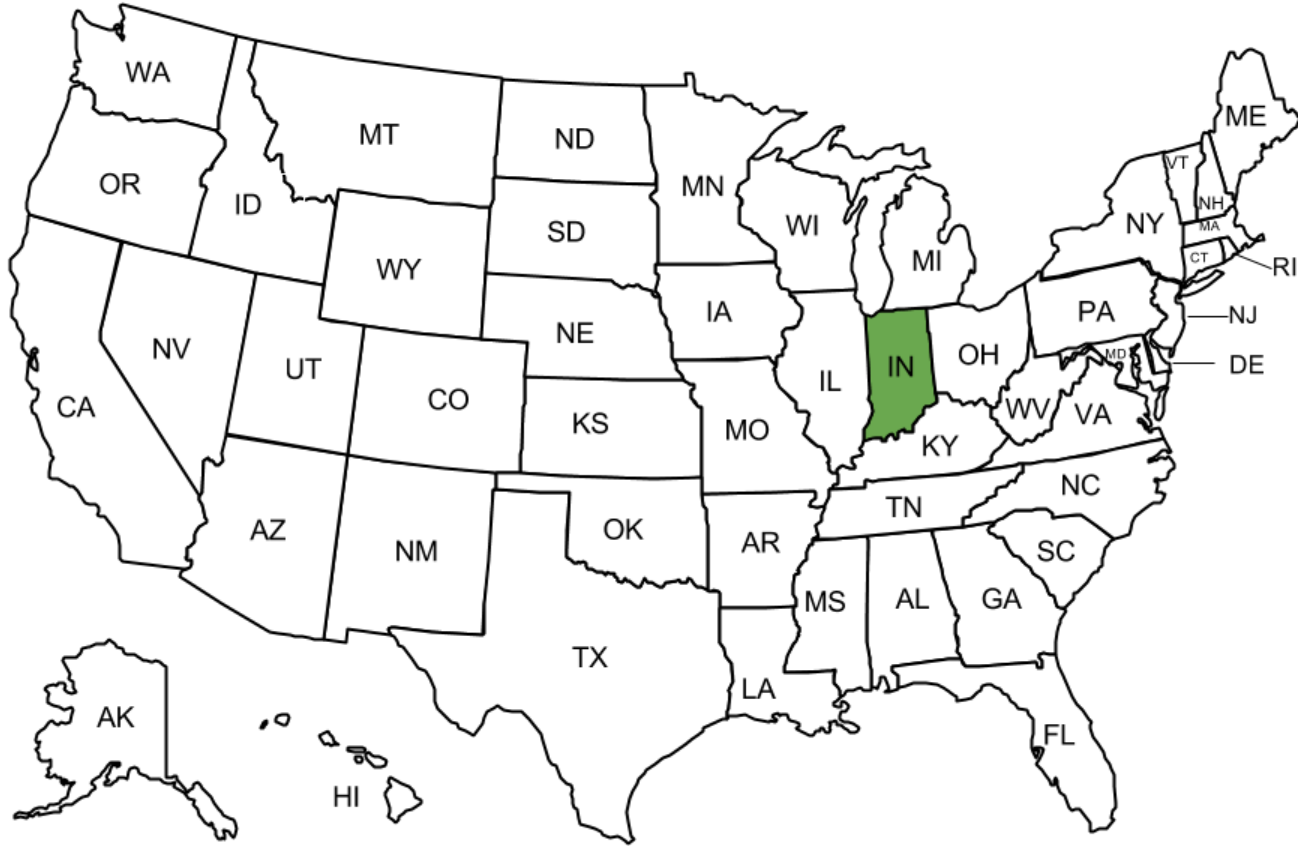
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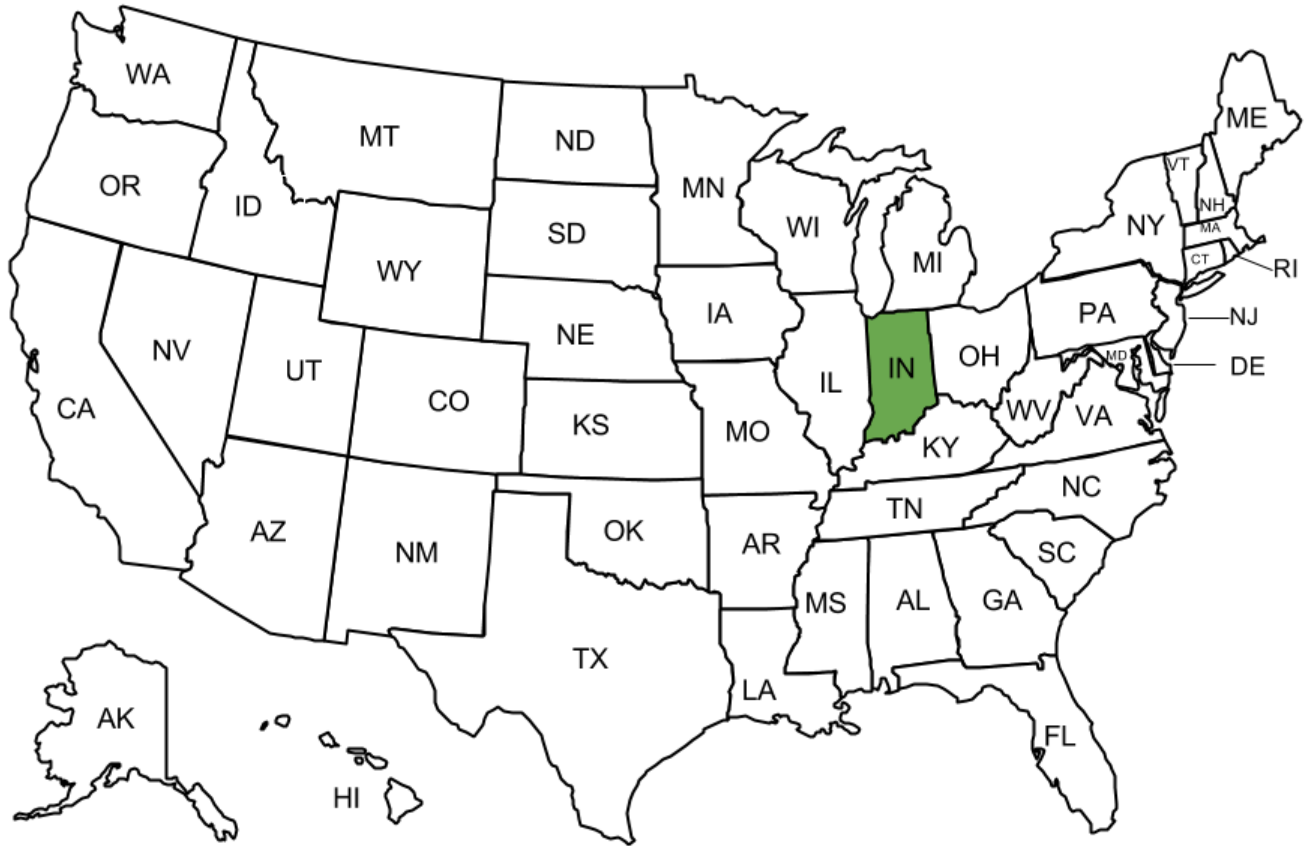




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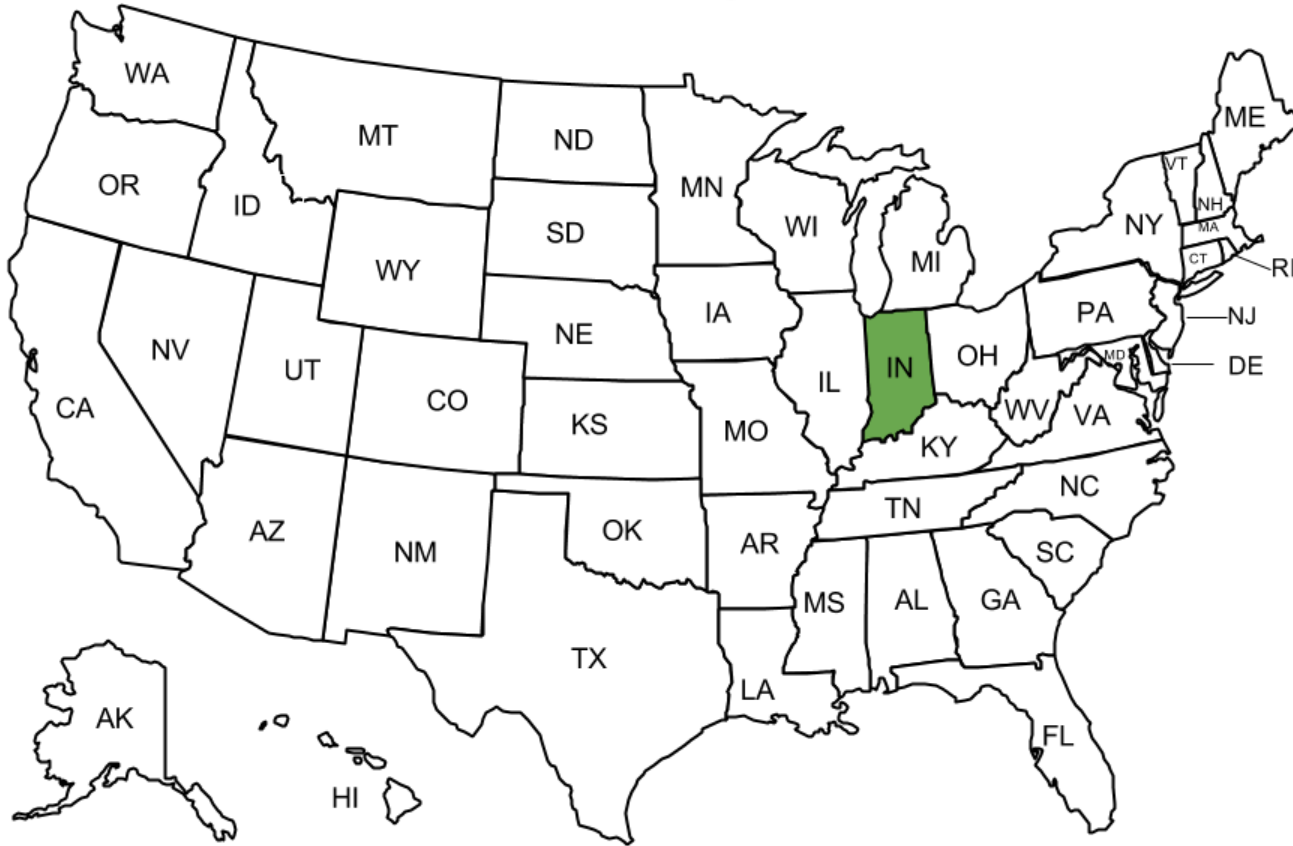


# 2002 Snapshot

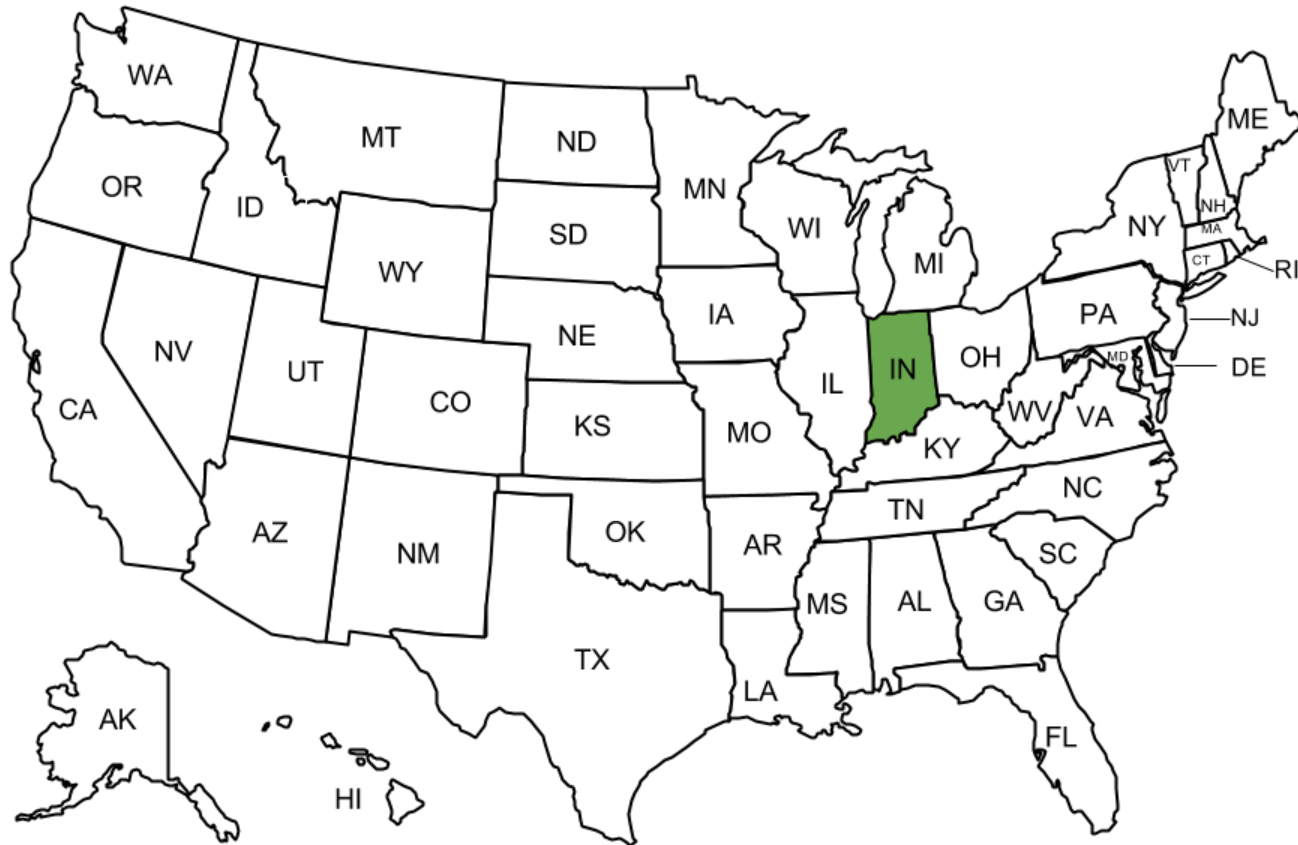




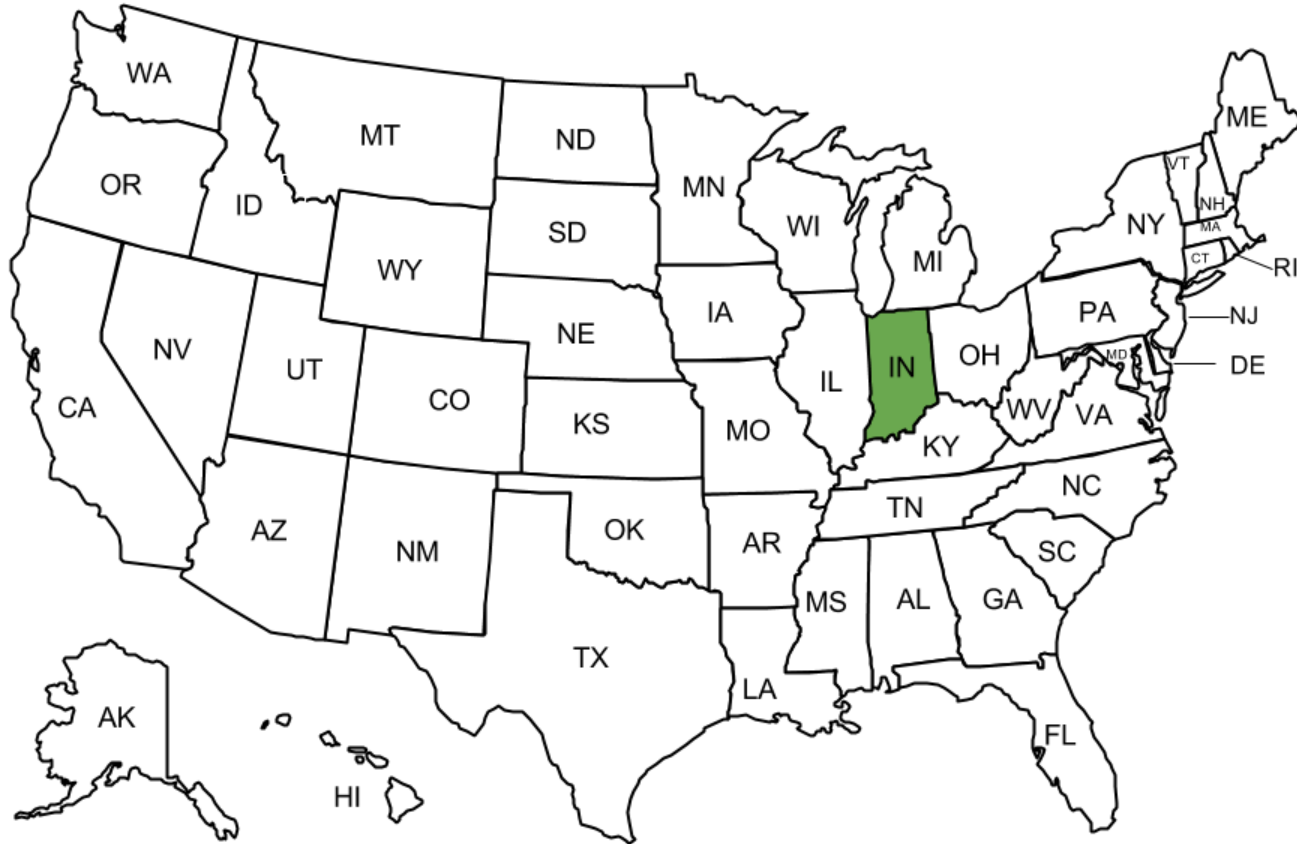
# 2003 Snapshot



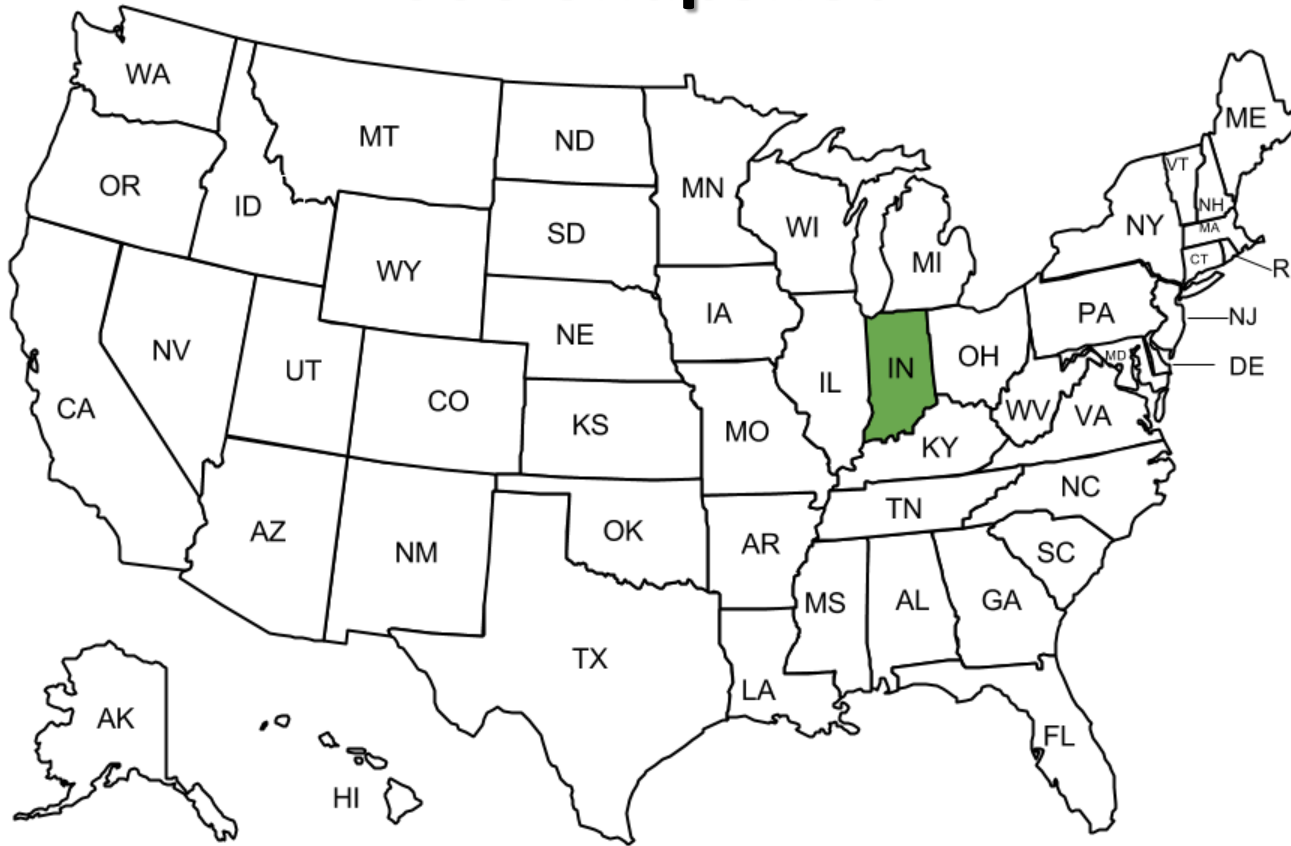
# 2004 Snapshot



# 2005 Snapshot

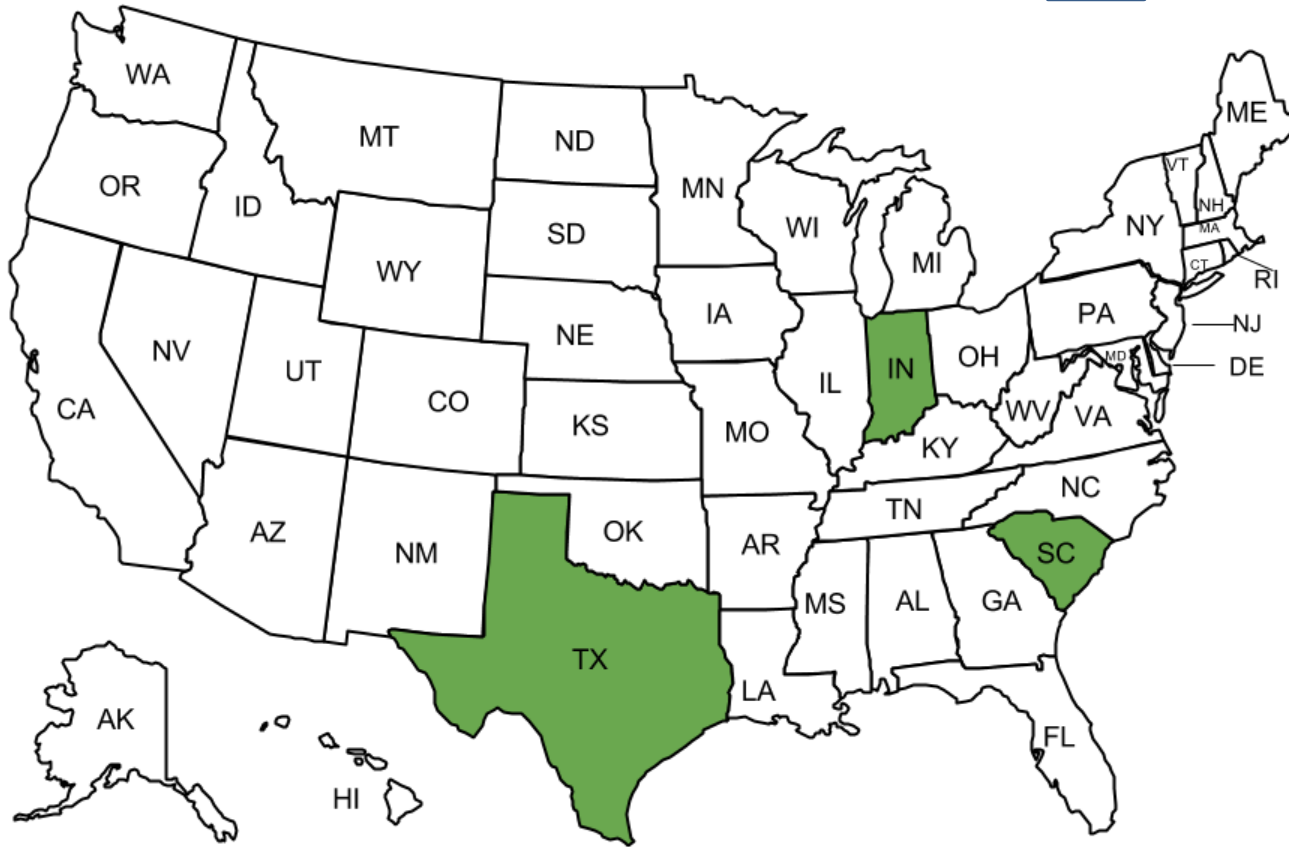


# 2006 Snapshot



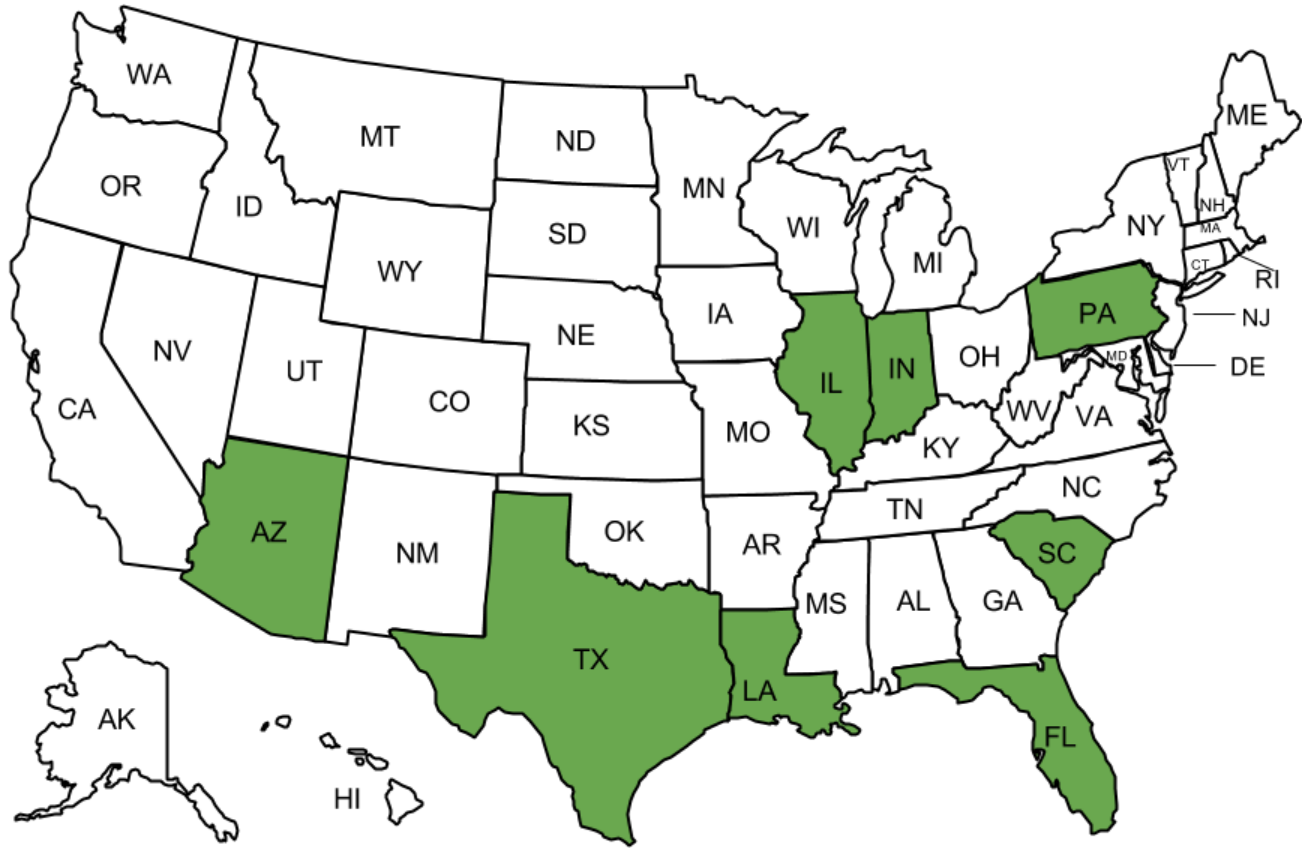
# 2007 Snapshot

3



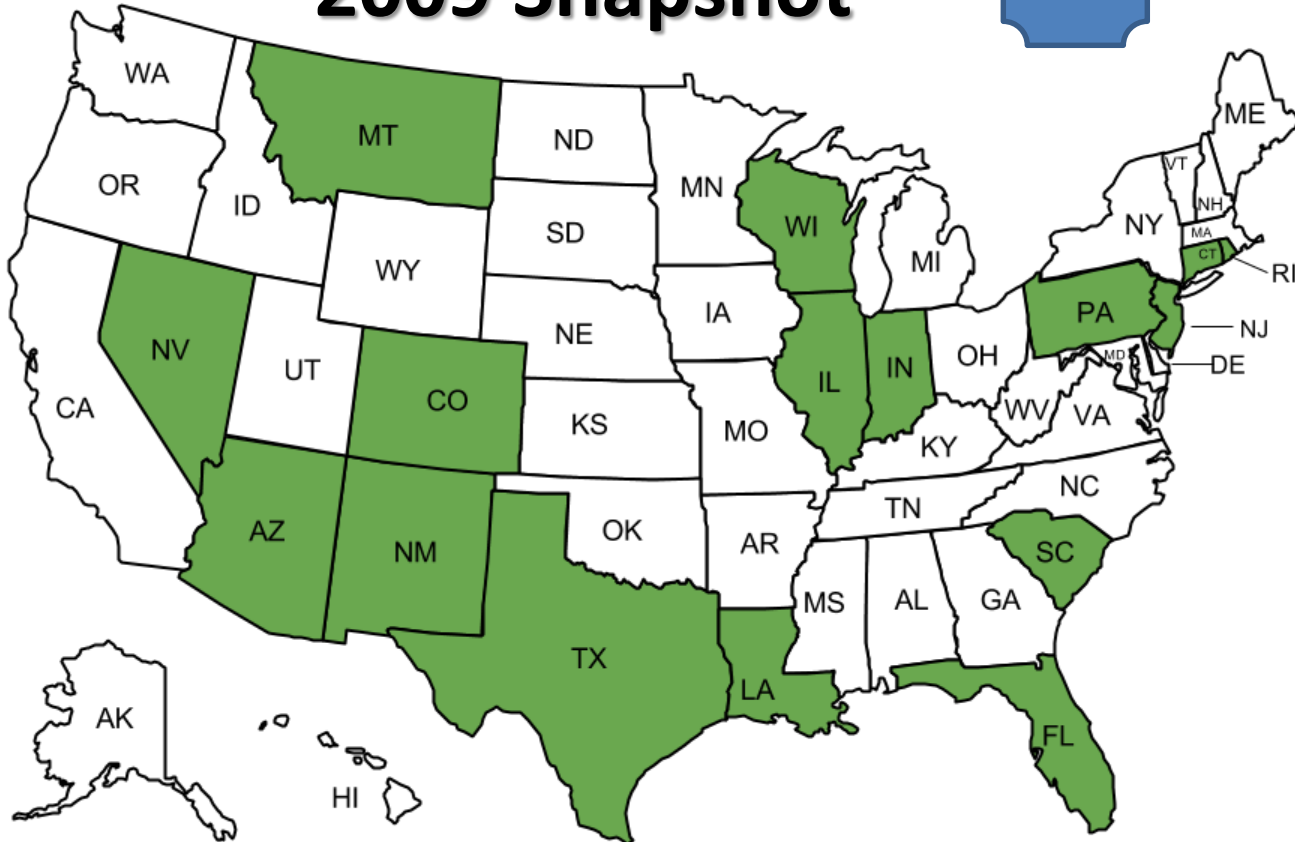
# 2008 Snapshot

8



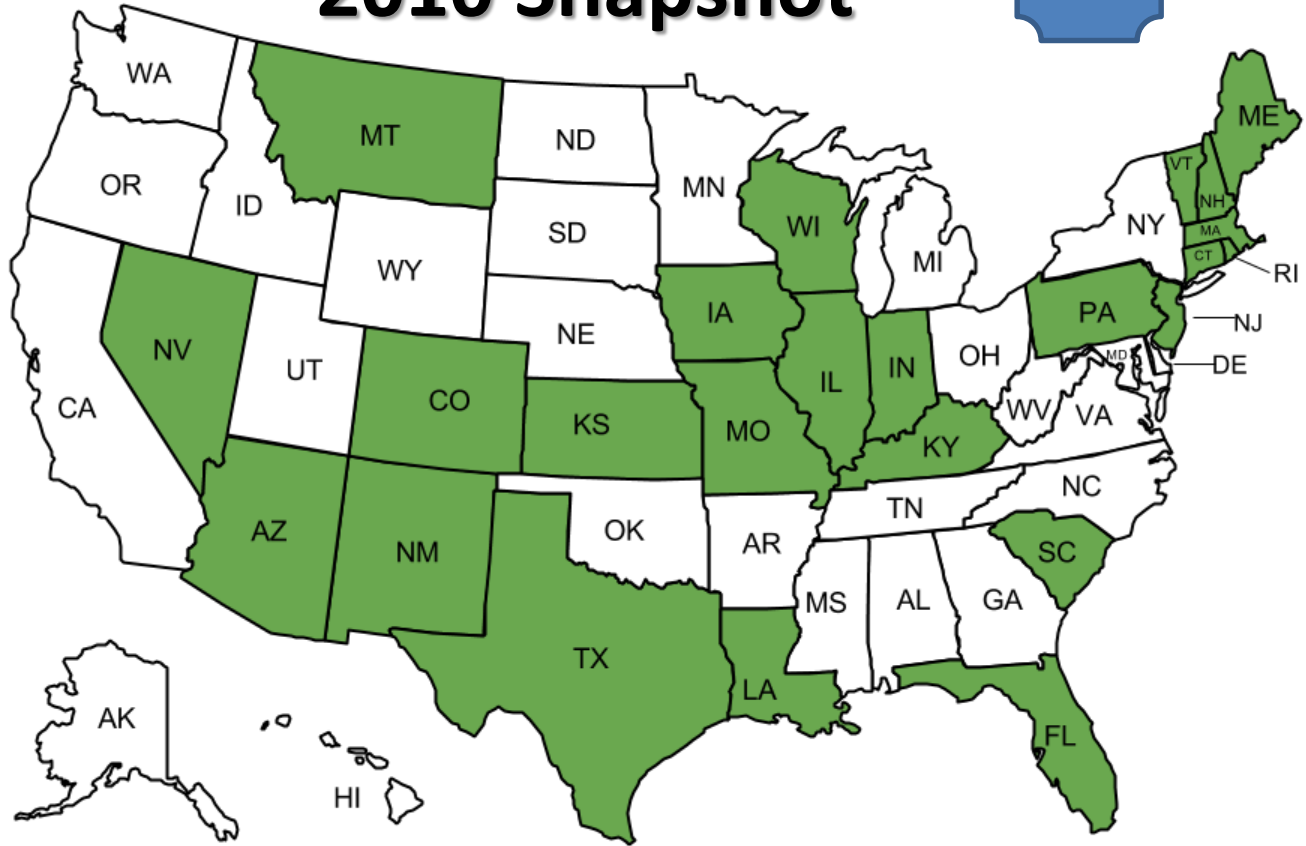
# 2009 Snapshot

15



# 2010 Snapshot

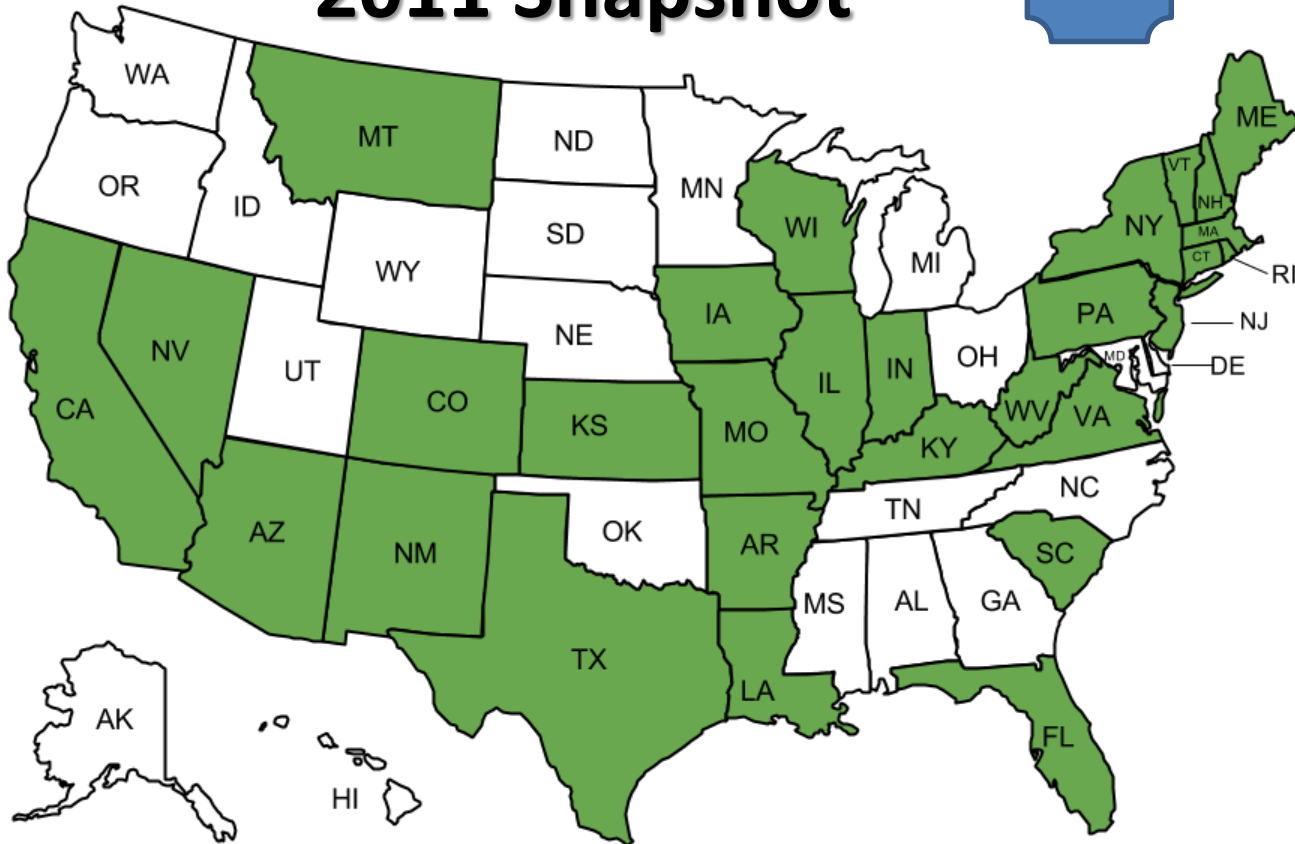
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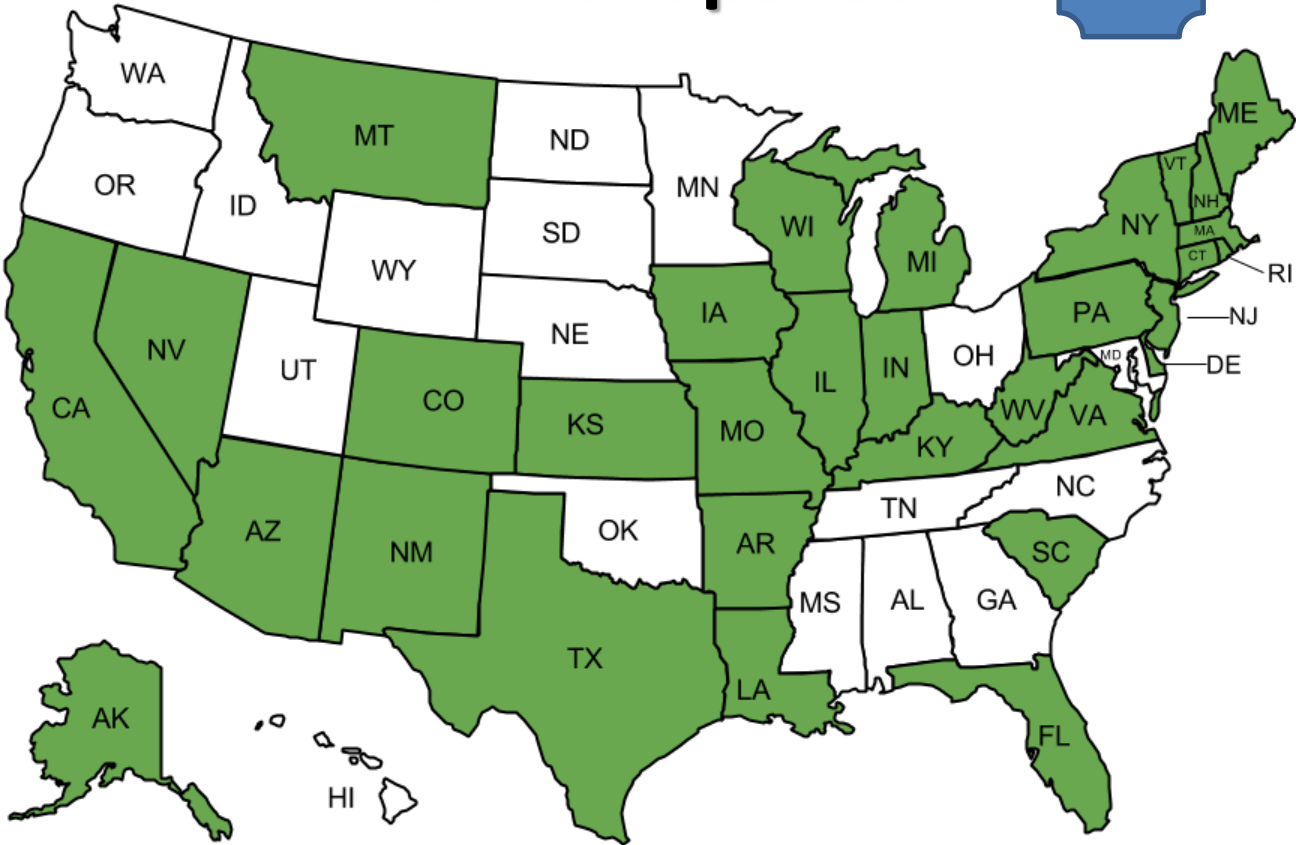
# 2011 Snapshot

29



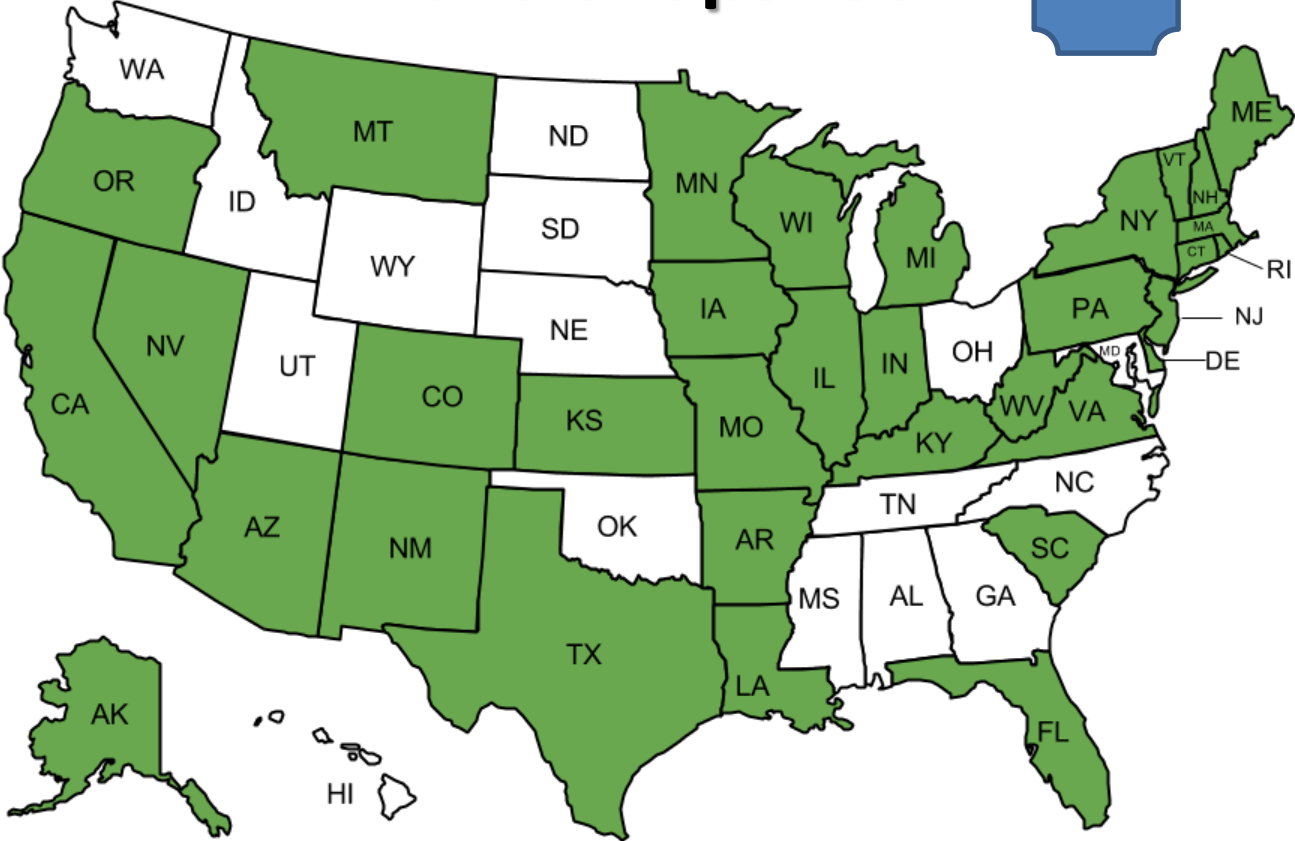
# 2012 Snapshot

32



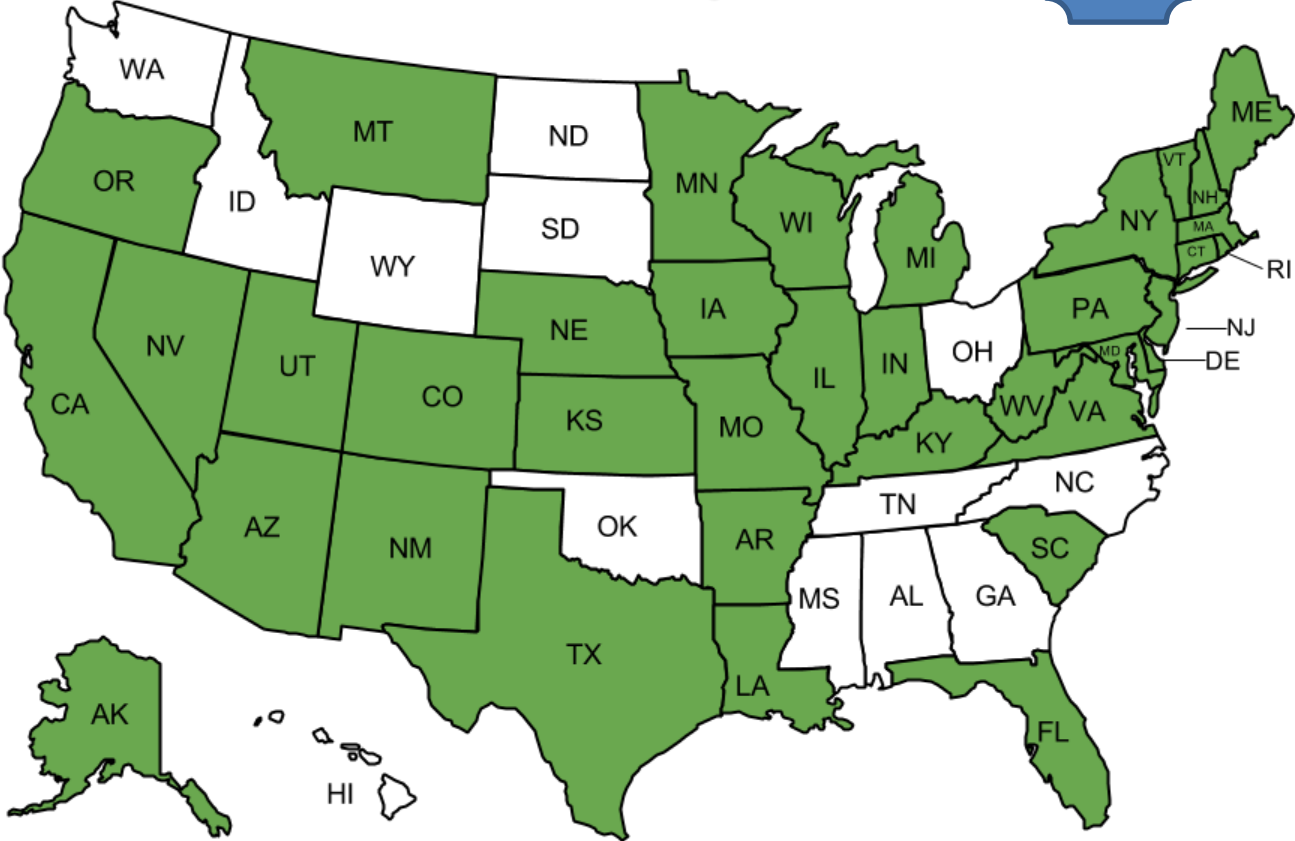
# 2013 Snapshot

34

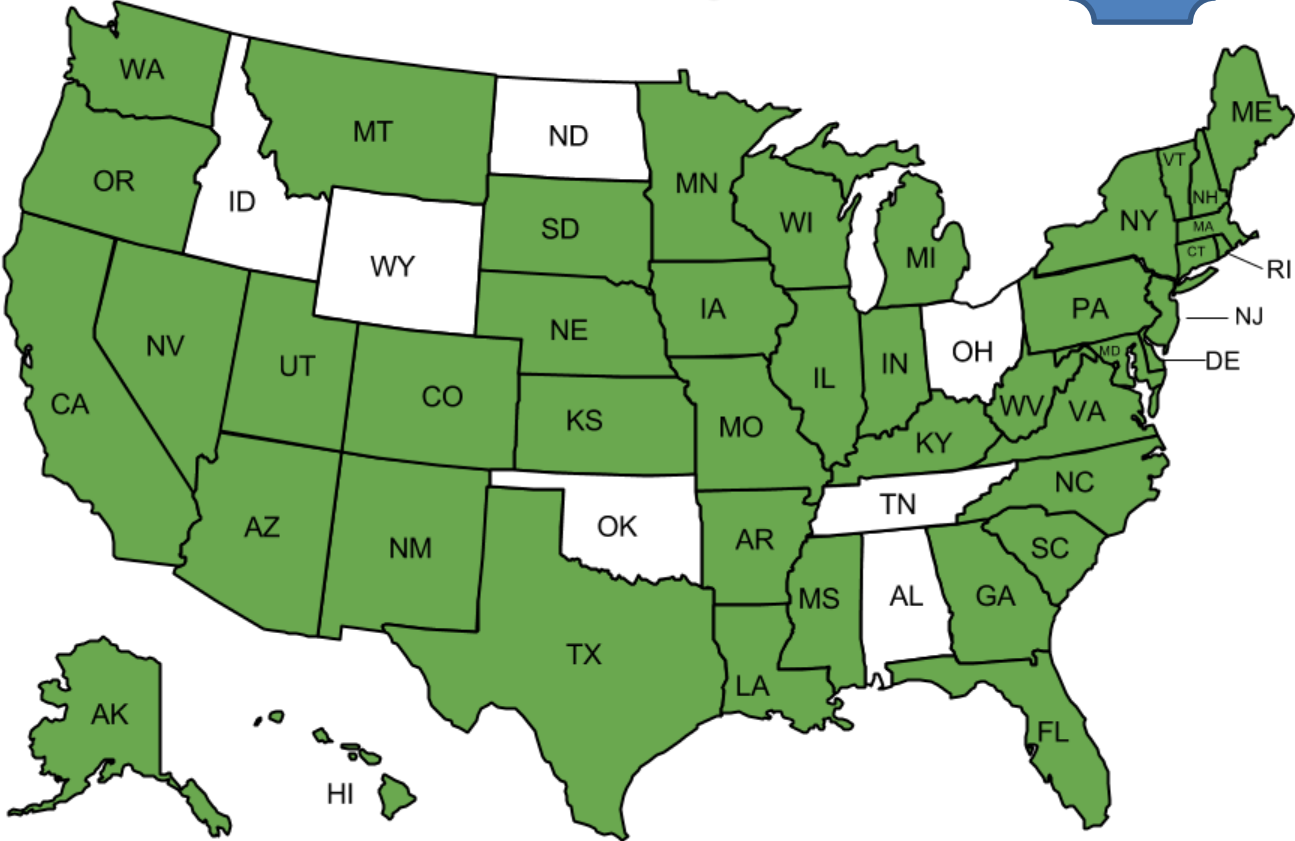


# 2014 Snapshot

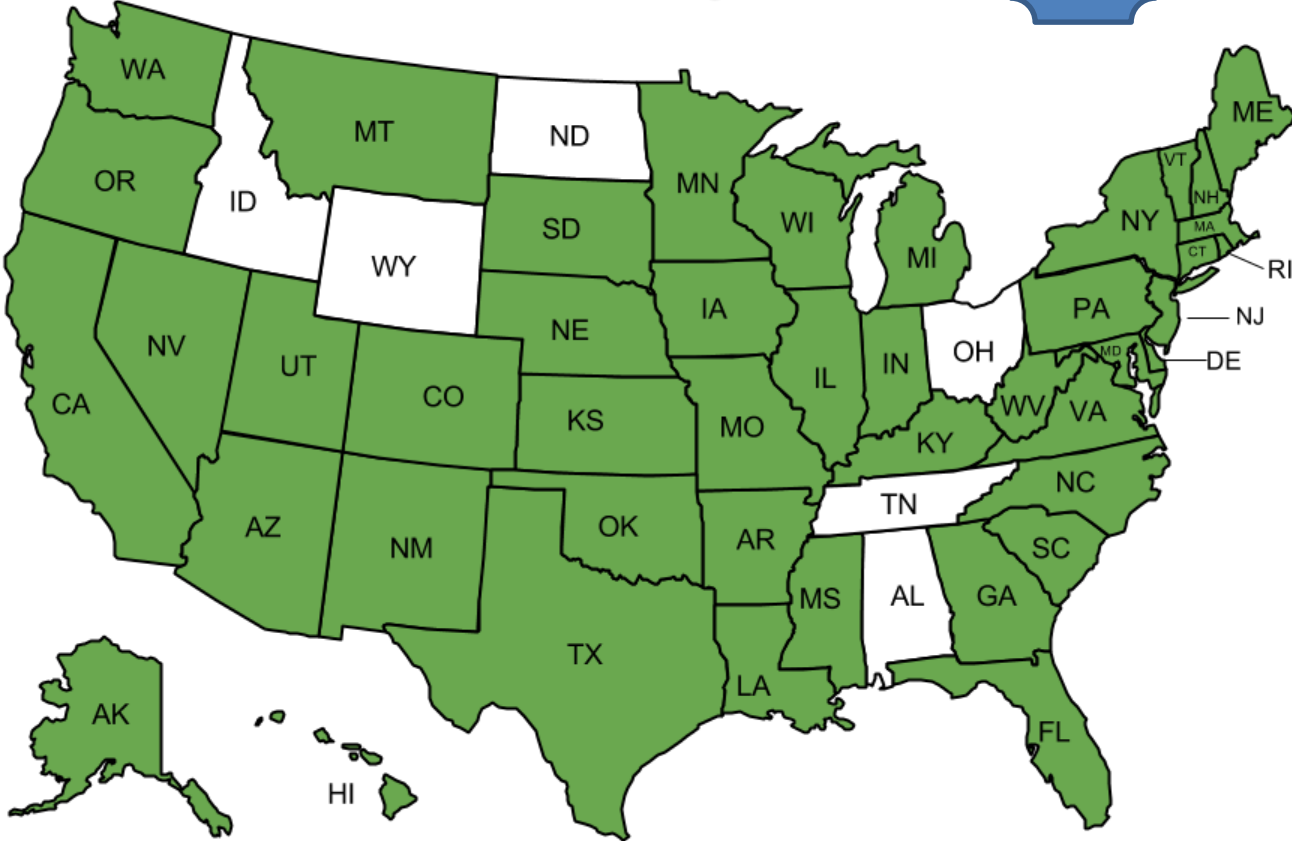
38



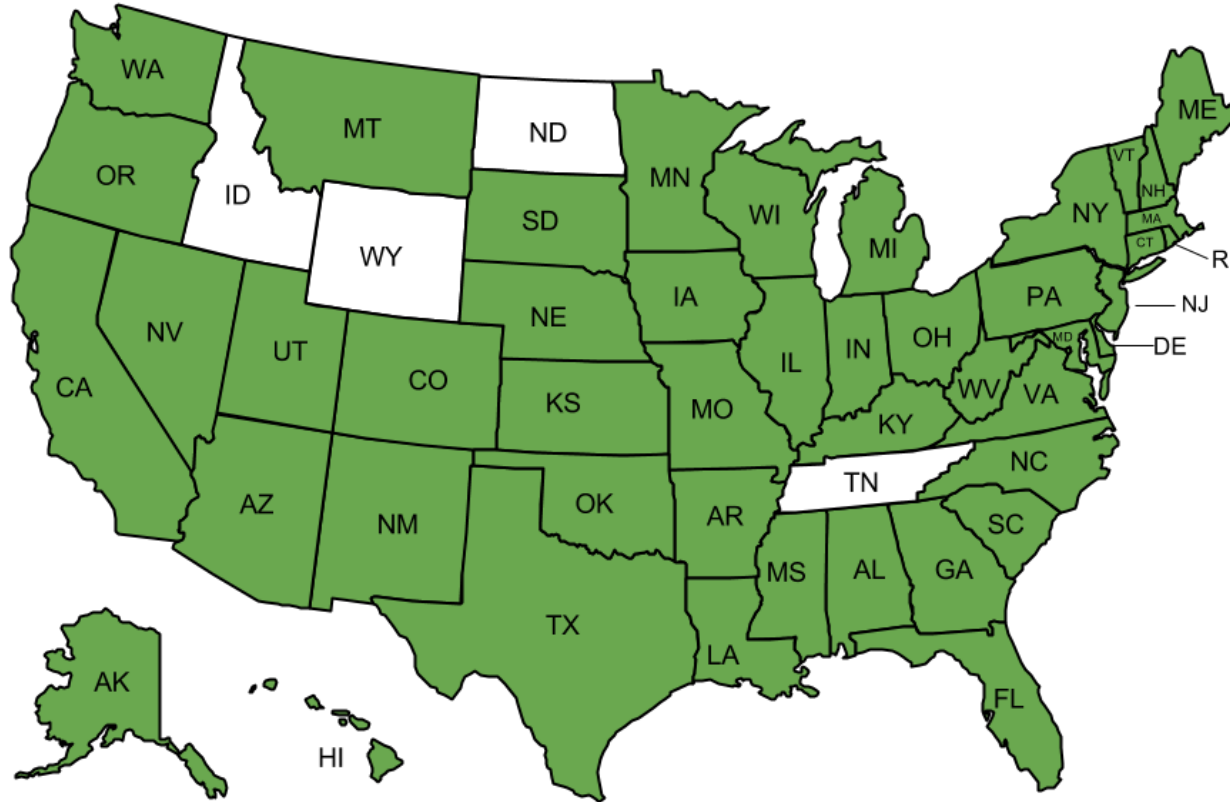
# 2015 Snapshot



# 2016 Snapshot

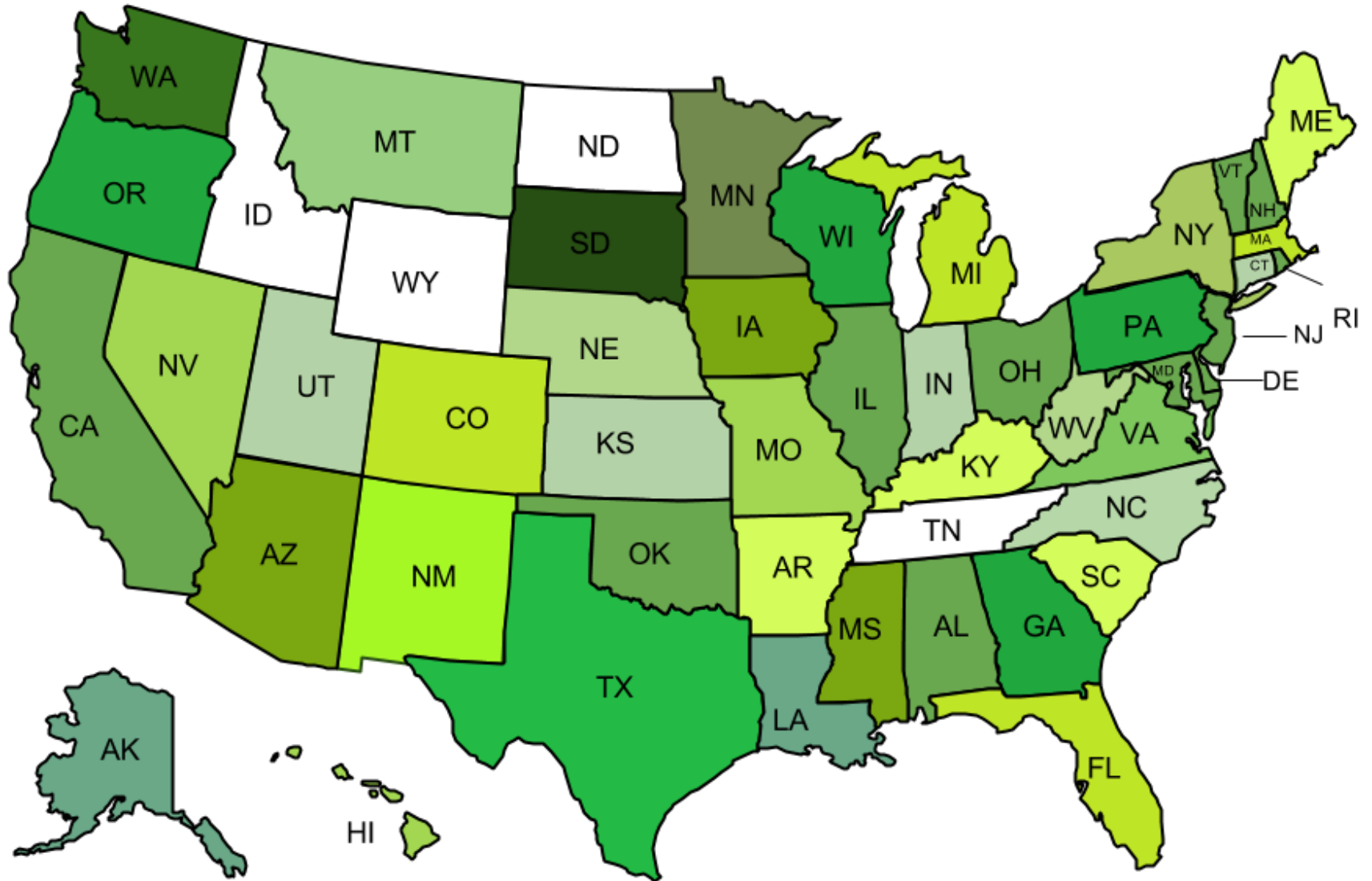


# States with Autism Insurance Reform



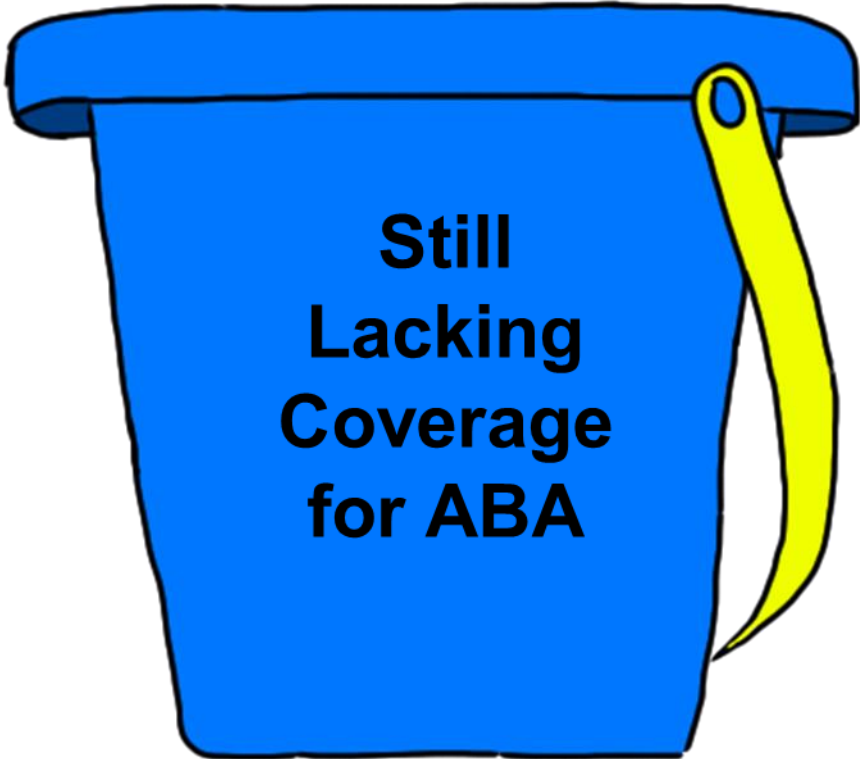
2001 Indiana	2008 Arizona	2009 Colorado	2010 Maine	2011 Arkansas	2012 Michigan	2014 Maryland	2015 South Dakota	2016 Oklahoma
	2008 Florida	2009 Nevada	2010 Kentucky	2011 West Virginia	2012 Alaska	2014 Nebraska	2015 Mississippi	
2007 South Carolina	2008 Louisiana	2009 Connecticut	2010 Kansas	2011 Virginia	2012 Delaware	2014 Utah	2015 Georgia	2017 Ohio
2007 Texas	2008 Pennsylvania	2009 Wisconsin	2010 Iowa	2011 Rhode Island		2014 Washington	2015 Hawaii	2017 Alabama
	2008 Illinois	2009 Montana	2010 Vermont	2011 California	2013 Minnesota		2015 North Carolina	
		2009 New Jersey	2010 Missouri	2011 New York	2013 Oregon			
		2009 New Mexico	2010 New Hampshire					
			2010 Massachusetts					

# 50 Shades of Green



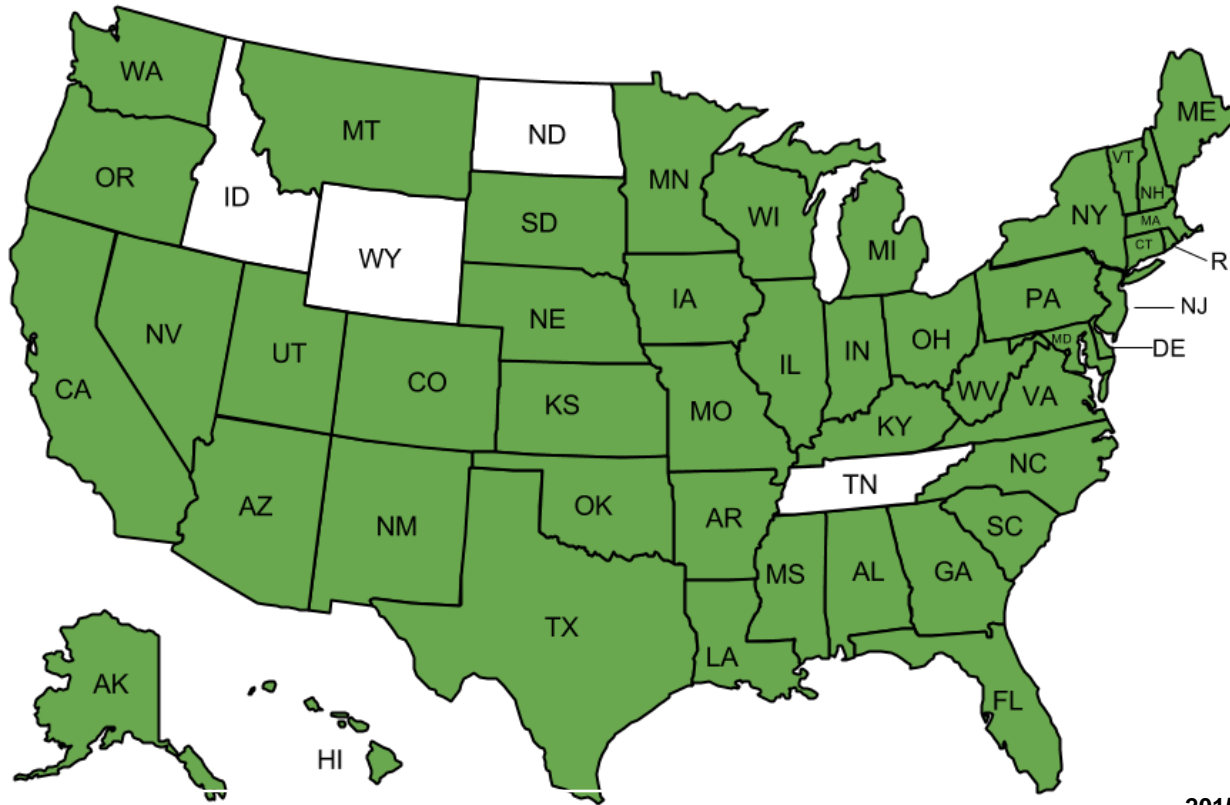






**Still  
Lacking  
Coverage  
for ABA**

# States with Autism Insurance Mandates



2001 Indiana	2008 Arizona	2009 Colorado	2010 Maine	2011 Arkansas	2012 Michigan	2014 Maryland	2015 South Dakota	2016 Oklahoma
	2008 Florida	2009 Nevada	2010 Kentucky	2011 West Virginia	2012 Alaska	2014 Nebraska	2015 Mississippi	
2007 South Carolina	2008 Louisiana	2009 Connecticut	2010 Kansas	2011 Virginia	2012 Delaware	2014 Utah	2015 Georgia	2017 Ohio
2007 Texas	2008 Pennsylvania	2009 Wisconsin	2010 Iowa	2011 Rhode Island		2014 Washington	2015 Hawaii	2017 Alabama
	2008 Illinois	2009 Montana	2010 Vermont	2011 California	2013 Minnesota		2015 North Carolina	
		2009 New Jersey	2010 Missouri	2011 New York	2013 Oregon			
		2009 New Mexico	2010 New Hampshire					
			2010 Massachusetts					

# Essential Health Benefits

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- **Mental health and substance use disorder services, including behavioral health treatment**
- Prescription drugs
- **Rehabilitative and habilitative services and devices**
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including oral and vision care





JOHN R. KASICH  
GOVERNOR  
STATE OF MICHIGAN

December 18, 2013

Director Gary Cohen  
Centers for Medicare and Medicaid Services Center for Consumer Information and Insurance Oversight  
200 Independence Avenue, SW, Suite 319H  
Washington, D.C. 20202  
Electronically submitted via [www.michigan.gov](http://www.michigan.gov)

Dear Director Cohen,

This letter is to provide you with comments on the Proposed Rule 45 CSR Part 150 -- Health Insurance Issuer Standards Under the Affordable Care Act, including Standards Related to Exchanges.

As a preliminary matter, please note that Appendix A of this rule incorrectly describes the proposed benchmark plan for the state of Ohio as providing habilitative services. A review of the plan contract documents for the benchmark plan you selected for Ohio indicates that the plan does not provide for habilitative services and, as such, the Appendix A should indicate "No" in the "habilitative services" column. This information was previously communicated to your office on December 12, 2013.

Since the benchmark plan you selected for Ohio does not provide for habilitative services, the State of Ohio intends to exercise the authority provided by 45 CSR 5106.1106 to determine habilitative services as the following:

"Habilitative services benefit shall not be limited to, but not limited to, the following:

- (1) Out-Patient Physical Therapy
- (2) Speech Therapy
- (3) Clinical Neuropsychological Assessment

- (4) Intensive/Behavioral Health Outpatient Services performed by a licensed Psychologist, Psychiatrist, or Psychiatric nurse consultant, assessment, development and oversight of treatment plans, 20 visits per year total."

Sincerely,  
  
John R. Kasich  
Governor

77 SOUTH HIGH STREET • 30TH FLOOR • COLUMBUS, OHIO 43215-8117 • 614.466.0

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Essential Health Benefits: Habilitative Services

Order No. 13-010-01

Issued and entered  
this 17<sup>th</sup> day of January 2014  
by S. Kevin C. Eaton  
Commissioner

Order Expanding Coverage for Habilitative Services

The Patient Protection and Affordable Care Act (ACA) requires all non-grandfathered individual and small group health insurance plans, offered on and off the Exchanges, to provide coverage in two categories of essential health benefits (EHBs), including the category of "habilitative and rehabilitative services." Habilitative services are defined as "health care services that help a person keep, learn or improve skills and functioning for daily living. Examples include therapy for a child who isn't talking or walking at the expected age. Their services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings." Beginning January 1, 2014, any individual or small group or individual plan must offer, at a minimum, the services listed in the state's EHB benchmark plan. Michigan's benchmark plan, which was a flat rate plan, did not include habilitative services. The Department of Licensing and Regulatory Affairs (LARA) has determined that Michigan's plan "does not" include habilitative services and has issued this order to expand the plan's EHB to include the following:

ABA services, which are defined as applied behavioral analysis (ABA) for the treatment of autism spectrum disorders. ABA is defined by Michigan law as "the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant or permanent in human behavior, including the use of direct observation.

<sup>1</sup> This definition is taken from the statute, given that it may tend to be made available with every insurance plan offered on January 1, 2014, and it is otherwise directly derived to the definition used in Michigan law. The Commission also has determined because it is more likely to be followed by health insurance carriers and issued.



**Coverage is  
Impermissibly  
Restricted**

# Mental Health Parity & Addiction Equity Act

- **MHPAEA**

- **Goal – to eliminate certain forms of discrimination in insurance coverage of mental health**



# What Does MHPAEA Do?

The federal parity law prohibits health insurers offering MH benefits from applying

**financial requirements**

or

**treatment limitations**

to MH benefits that are more restrictive than the predominant financial requirements or treatment limitations applied to substantially all medical/surgical benefits.





# Mental Health Parity Law Prohibits Disparate:

*Examples:*

FINANCIAL  
REQUIREMENTS

- Co-pays
- Deductible

TREATMENT  
LIMITATIONS

QUANTITATIVE

- Annual Dollar Limits

NON-  
QUANTITATIVE

- Network Requirements
- Medically Necessary Standards
- Preauthorizations



# NQTL

## Non-Quantitative Treatment Limitations (NQTLs):

- Medical management standards, including medical necessity criteria and utilization review
- Fail-first policies/step therapy protocols
- Standards for provider admission to participate in a network
- Provider rates (must examine type, geographic market, demand for services, supply of providers, provider practice size, Medicare rates, training, experience, and provider licensure)
- Treatment limitations based on:
  - Geography
  - Facility type
  - Provider specialty
  - Criteria limiting the scope or duration of benefits or services
- Requirement for comparison of NQTL imposed on specific MH benefit with NQTL imposed on corresponding category of medical or surgical benefit



# Mental Health Parity Law Prohibits Disparate:

*Examples:*

FINANCIAL  
REQUIREMENTS

- Co-pays
- Deductible

TREATMENT  
LIMITATIONS

QUANTITATIVE

- Annual Dollar Limits

NON-  
QUANTITATIVE

- Network Requirements
- Medically Necessary Standards
- Preauthorizations



# What Can You Do?

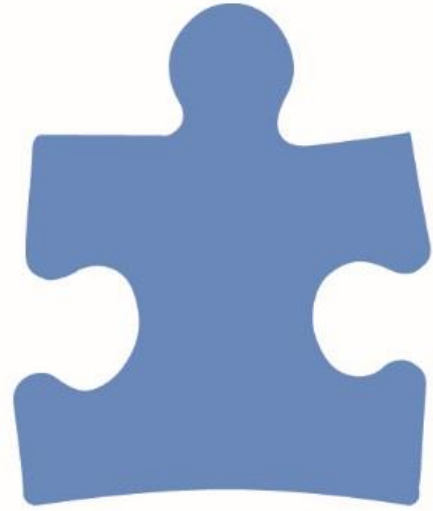
- Exercise state flexibility - Issue a bulletin defining “habilitative services” to include ABA treatment for autism.
- Pass law requiring ABA coverage in QHPs and state that legislature’s intent is to comply with federal law (MHPAEA and Section 1557 of ACA), thus avoiding defrayal trigger
- Exercise enforcement authority - Ask carriers to respond in writing whether they are enforcing dollar and age caps on ABA coverage. If they are, ask whether equally restrictive dollar and age caps are applied to substantially all medical/surgical outpatient benefits.



# Expand and Improve Ryan's Law

- SC Bill passed House in 2017; pending in Senate
- Removes age cap, dollar cap, “diagnosed by”
- Applies law to individual and small group plans





**AUTISM  
SPEAKS®**

# GREEN STATE GRID



Insurance Markets		AL	AK	AR	AZ	CA	CO	CT	DE	DC	FL	GA	HI	IA	ID	IL	IN	KS	KY	LA	MA	MD	ME	MI	MN	MO	MS	
Fully Funded	Large Group																											<100
	Small Group																											MO
	Individual	BCBS															MO										MO	
State Health Plan																												?
QHPs under ACA		COM									NSG	COM		NSG	NM			COM							XO	NSG		COM
EPSDT	Medicaid																											

Insurance Markets		MT	NC	ND	NE	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VA	VT	WA	WI	WV	WY	
Fully Funded	Large Group																										
	Small Group																									<25	
	Individual									MO																	
State Health Plan																											
QHPs under ACA			COM	NM	COM							XO	COM		NSG	NSG	NSG	COM	NM		Not SHOP	NSG					NM
EPSDT	Medicaid																										

**Row 2 & 3, Small Group & Individual Plans:** Includes only grandfathered plans

**Row 4, State Health Plans:** SHPs are technically self-funded plans, but are subject to regulation by the state

**Row 5, QHPs under ACA:** Under the Affordable Care Act, Qualified Health Plans must include Essential Health Benefits (EHB), whether the plan is sold on or off a Marketplace.

**EFFECT OF ACA REPEAL**

- ACA repeal could be helpful because the mandate applies to I/SG plans other than ACA plans (QHPs).
- ACA repeal could be helpful because the state could mandate benefits in I/SG without incurring cost.
- ACA repeal will be detrimental because people who currently have ABA benefits in I/SG policies will lose them.

**Table of Abbreviations**

**MO = Mandated Offering** (mandate requires only an offer of coverage)

**COM = Carved Out of Mandate** (QHPs were carved out of the state's autism insurance mandate)

**NSG = No Small Group** (the state autism insurance mandate does not apply in the small group market, and the state chose or defaulted to a small group plan as its benchmark for QHP benefits)

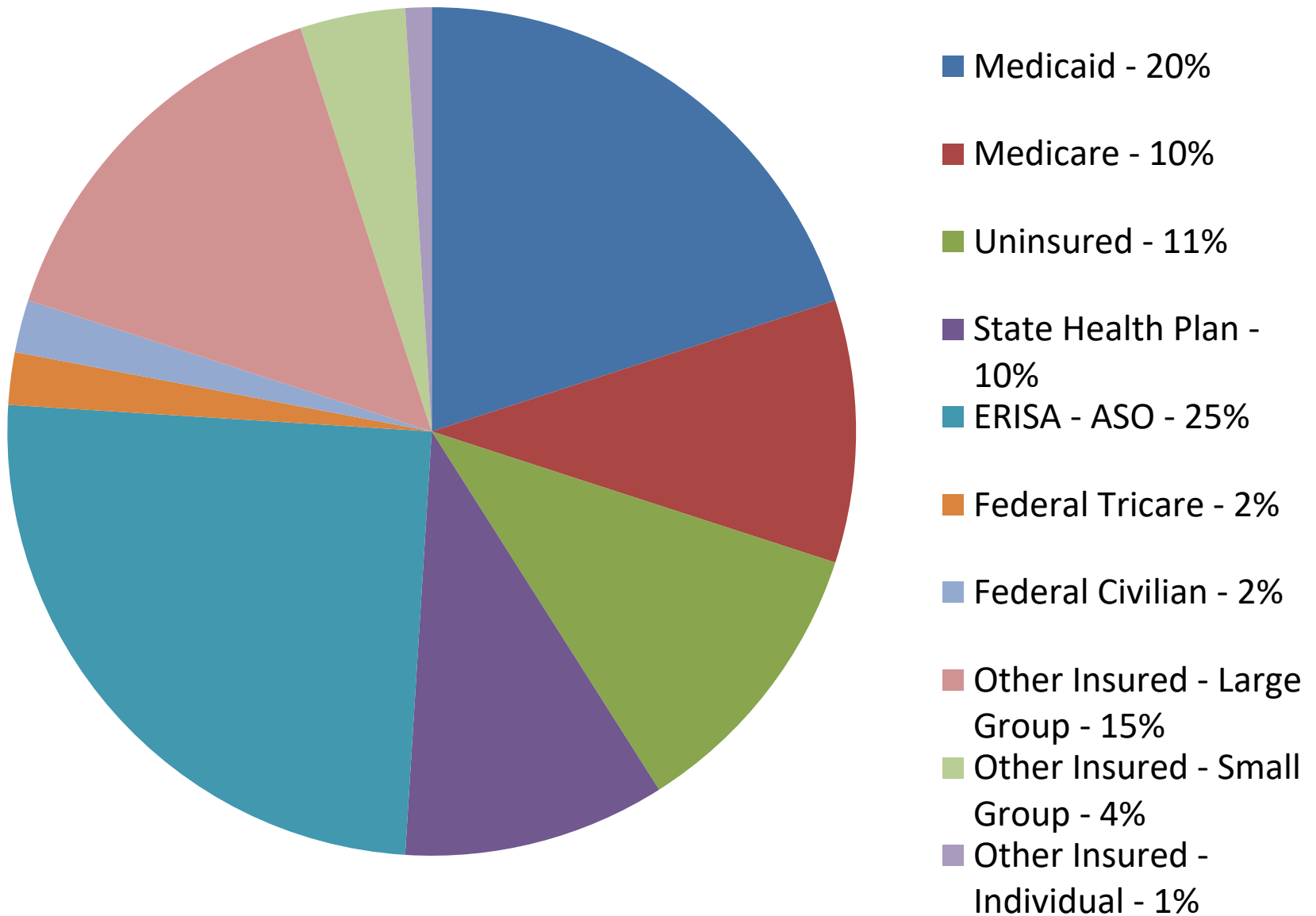
**XO = Executive Order** (the executive ordered ABA to be considered a "habilitative service" and thus included in EHB)

**NM = No Mandate**





# Sources of Health Care Coverage



# US State Regulation of Behavior Analysts

