

ERISA Preemption & State Single-Payer Health Care

OREGON LEGISLATIVE TASK FORCE ON UNIVERSAL HEALTH CARE

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Prof. Elizabeth Y. McCuskey & Prof. Erin C. Fuse Brown

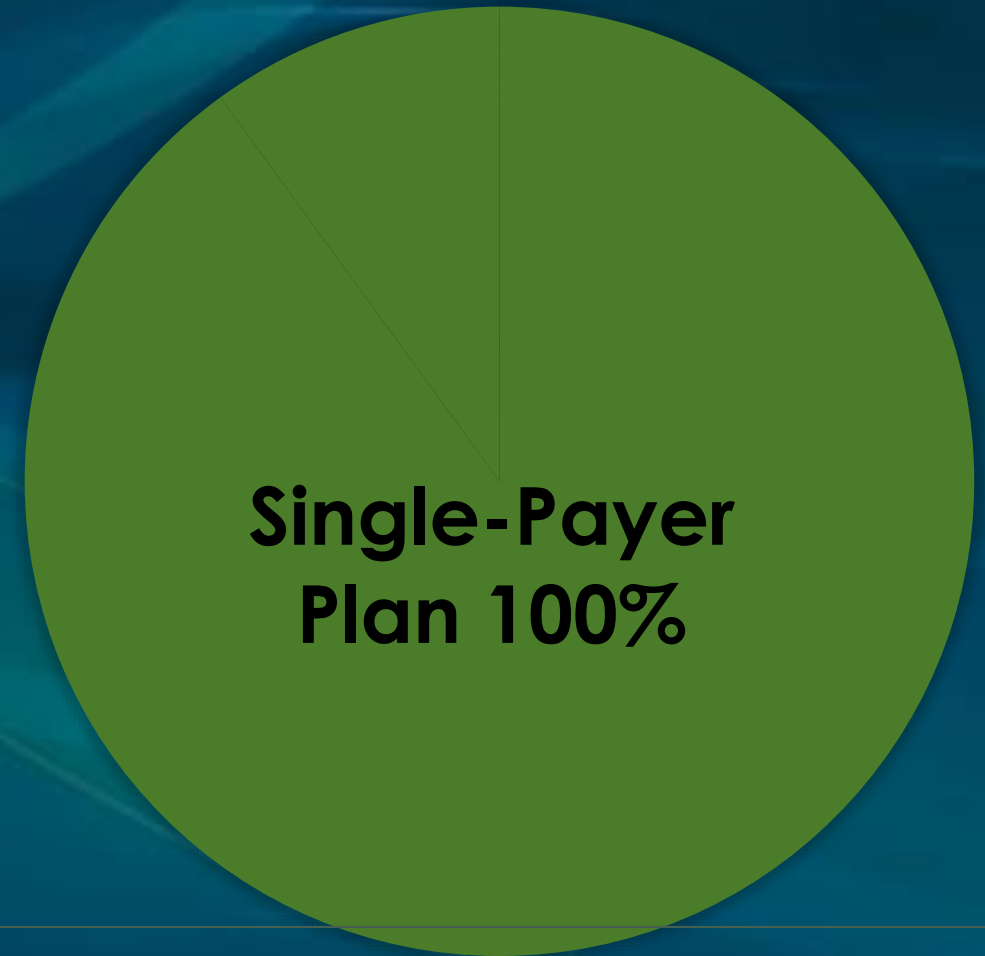
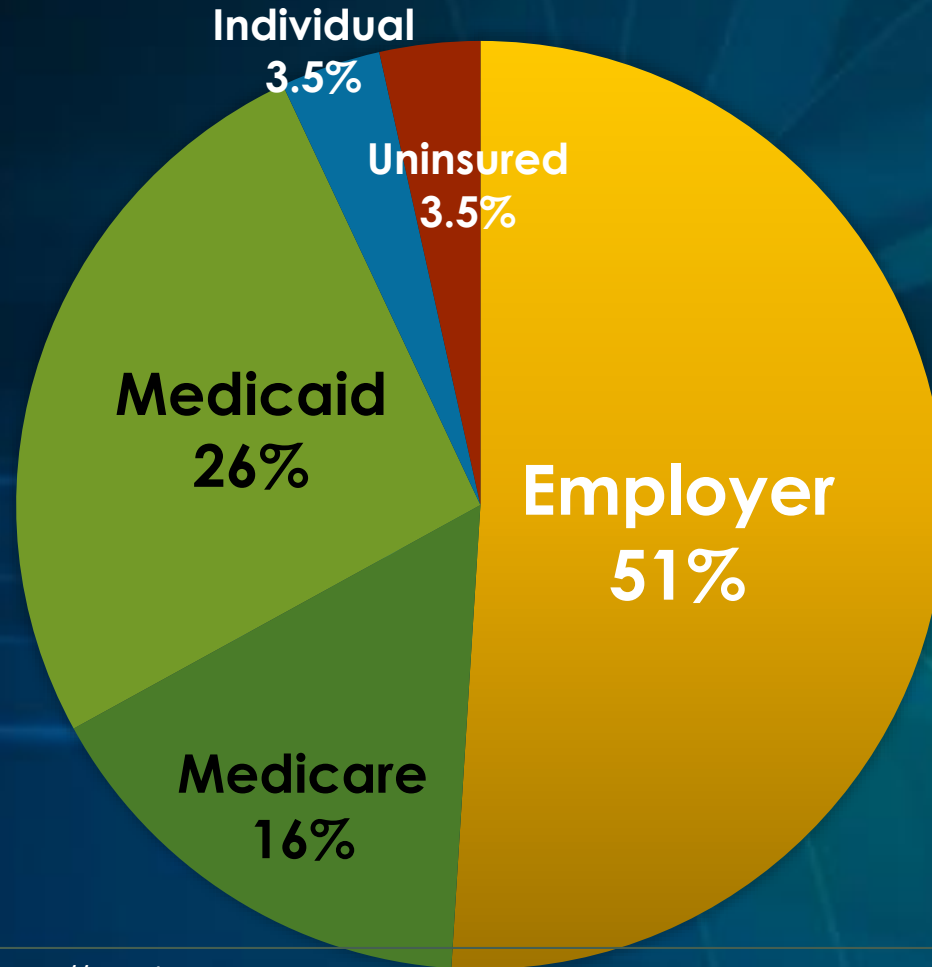


Discussion

1. Role of employer-sponsored insurance (ESI) in state single-payer plan design
2. ERISA preemption
3. Design options for surviving ERISA preemption
4. ERISA preemption in context – waivers & options

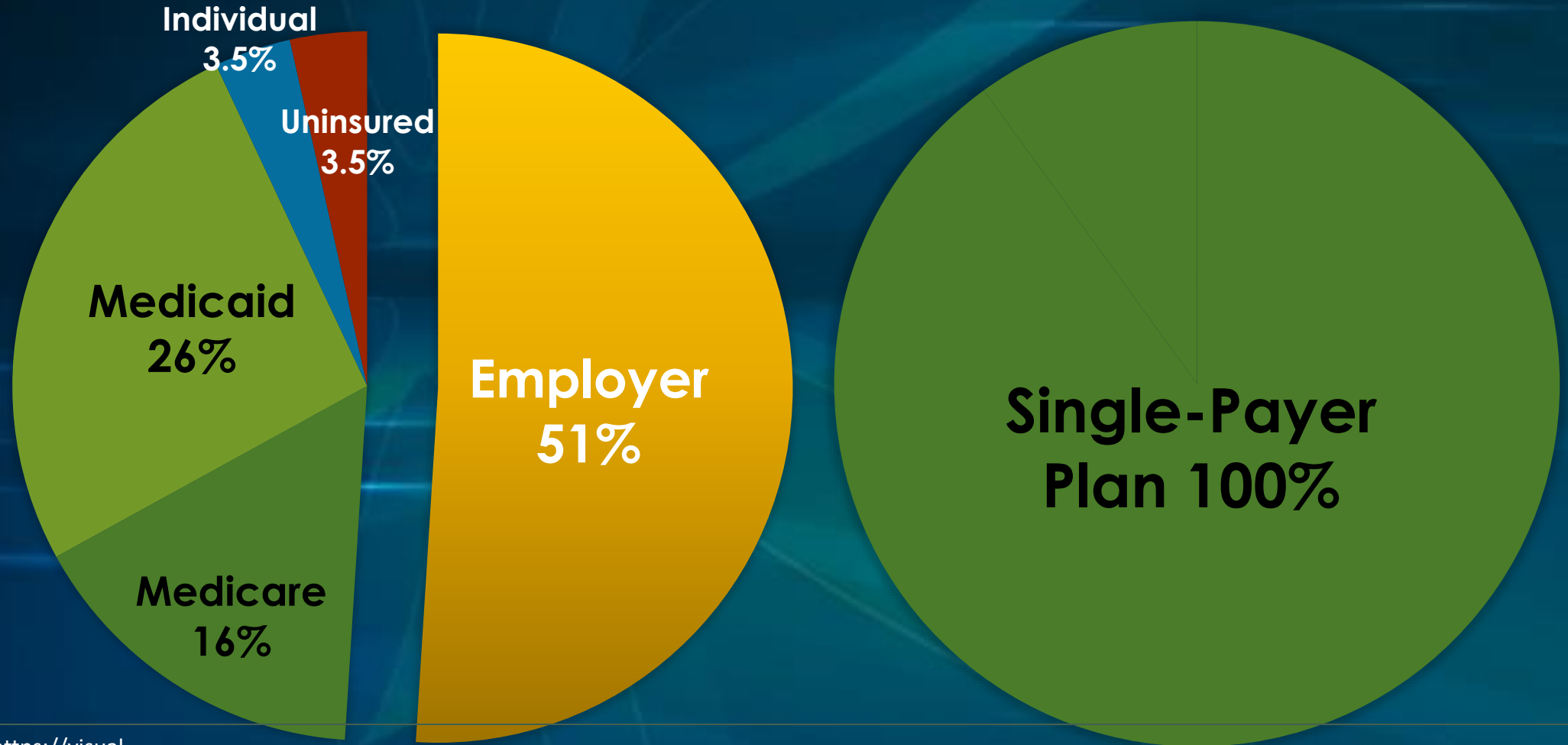
1. ESI in State Single-Payer Plans

FUNDING & PARTICIPATION



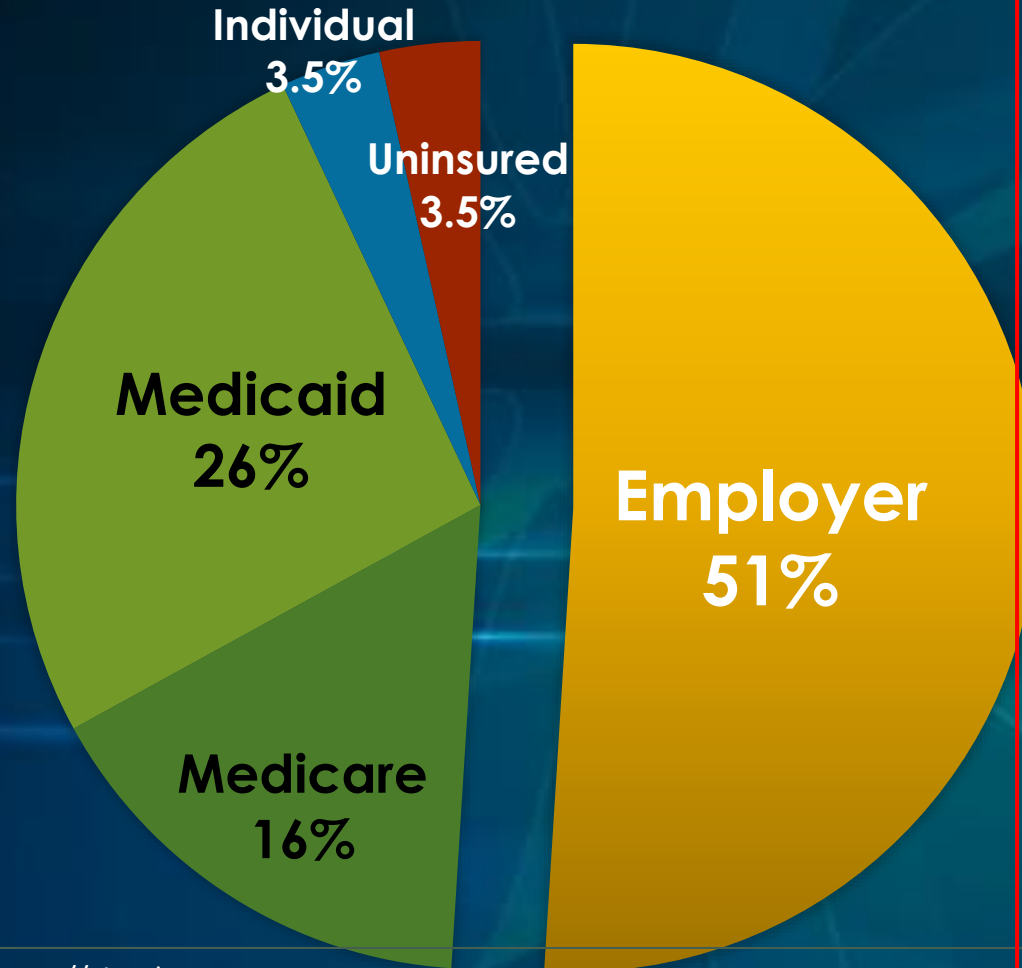
1. ESI in State Single-Payer Plans

FUNDING & PARTICIPATION



2. ERISA Preemption

FUNDING & PARTICIPATION



ERISA preempts **any and all** state laws that **relate to employee benefit plans**.

- States may regulate the insurance industry (*Savings Clause*).
- States may not regulate self-funded health plans as "insurance" (*Deemer Clause*).

2. ERISA Preemption

Rutledge v. PCMA

Protect Patients. Defend Family Pharmacies.



Fuse Brown & McCuskey, *The Implications Of Rutledge v. PCMA For State Health Care Cost Regulation*, HEALTH AFFAIRS BLOG (Dec. 17, 2020)

<https://www.healthaffairs.org/doi/10.1377/hblog20201216.909942/full/>

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3. Design Options for Surviving ERISA Preemption

~~Employer mandate~~

Type A – Funding Plan – Payroll tax on employers and/or income tax on individuals

✓ Income Tax

? Payroll Tax, *not too high?*

Type B – Provider Restriction – Require all provider payments come from single payer

? Probably not preempted

Type C – Assignment/Subrogation – Single payer plan pays and seeks reimbursement from other payers

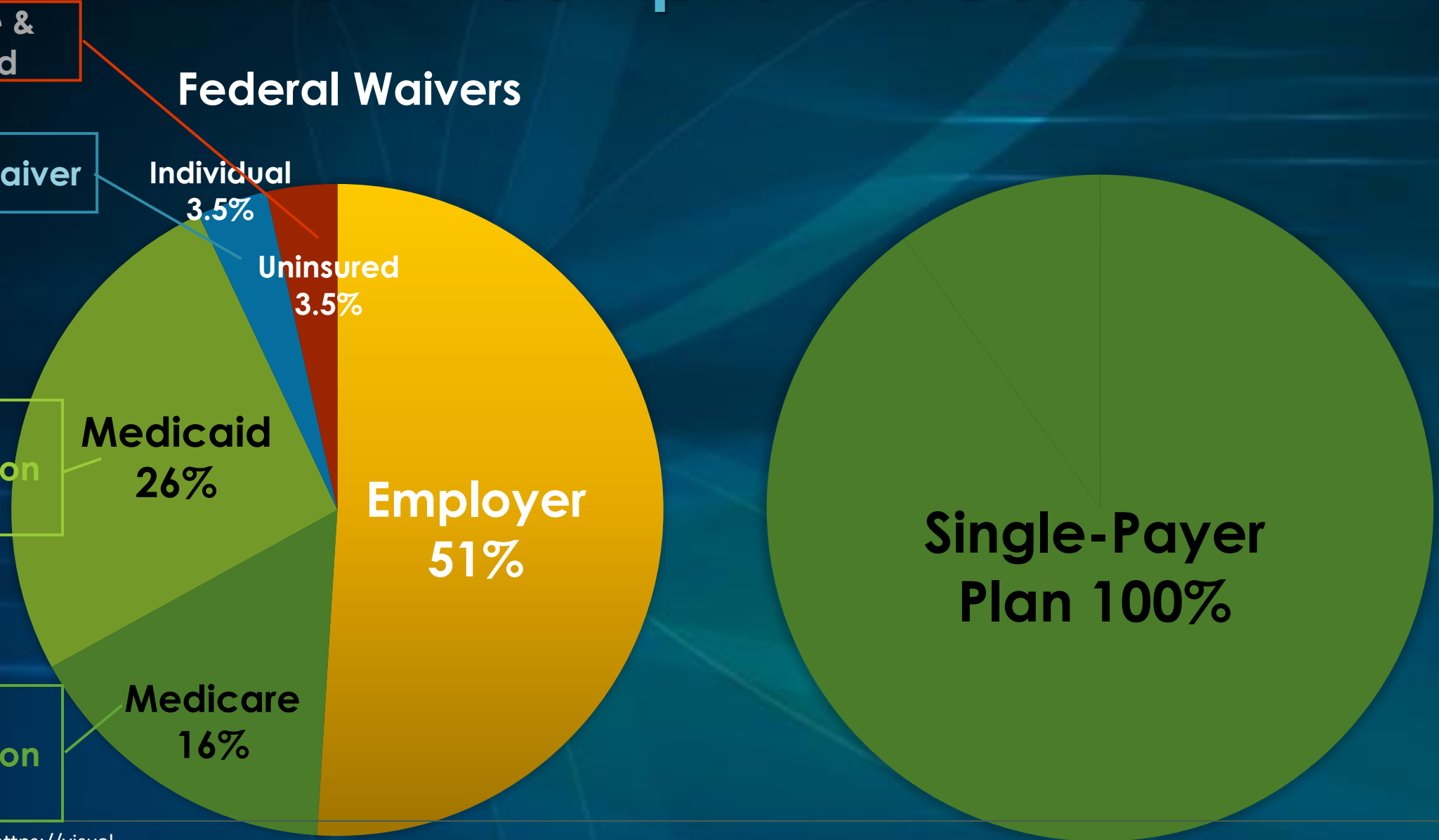
? Probably not preempted

✗ **Self-funded plans**

Combination


? Probably not preempted

4. ERISA Preemption in Context



Prof. Elizabeth Y. McCuskey

 **emccuskey@umassd.edu**

 **@Liz_McCuskey**



Prof. Erin C. Fuse Brown

 **efusebrown@gsu.edu**

 **@efusebrown**



References:

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Fuse Brown & McCuskey, [Could States Do Single Payer?](#), HEALTH AFFAIRS BLOG (JUL. 22, 2019)

Fuse Brown & McCuskey, [The Implications Of Rutledge v. PCMA For State Health Care Cost Regulation](#), HEALTH AFFAIRS BLOG (Dec. 17, 2020)

Wiley, [Medicaid for All? State-Level Single-Payer Health Care](#), 79 OHIO ST. L. J. 843 (2018).

King, Gudiksen, & Fuse Brown, [Are State Public Option Plans Worth It?](#) (draft)