

# Primerus

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ATTORNEYS AND COUNSELORS  
DALLAS & AUSTIN



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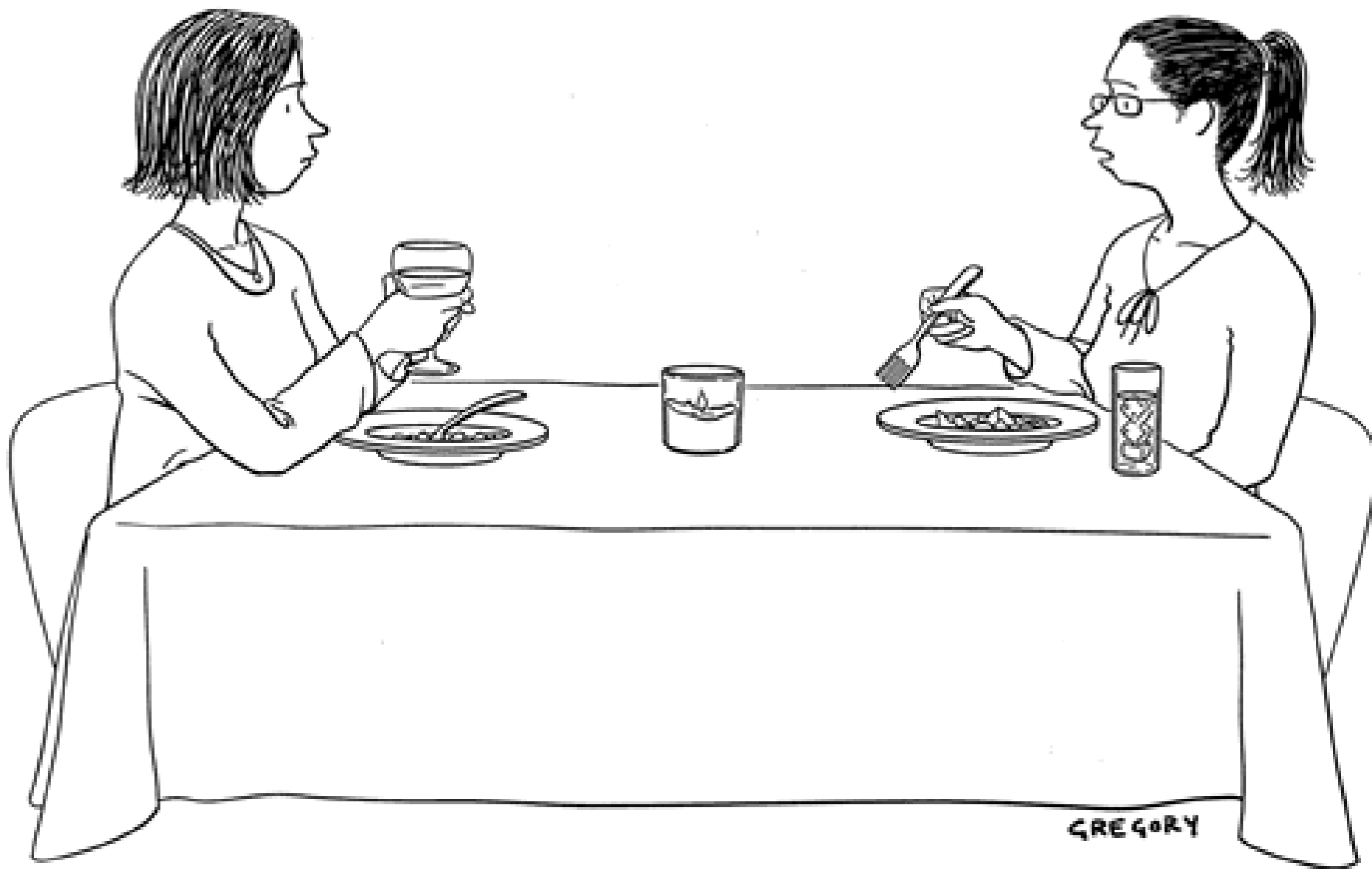
# Obesity



“Nothing will benefit human health and increase the chances for survival of life on Earth as much as the evolution to a vegetarian diet.”

Albert Einstein





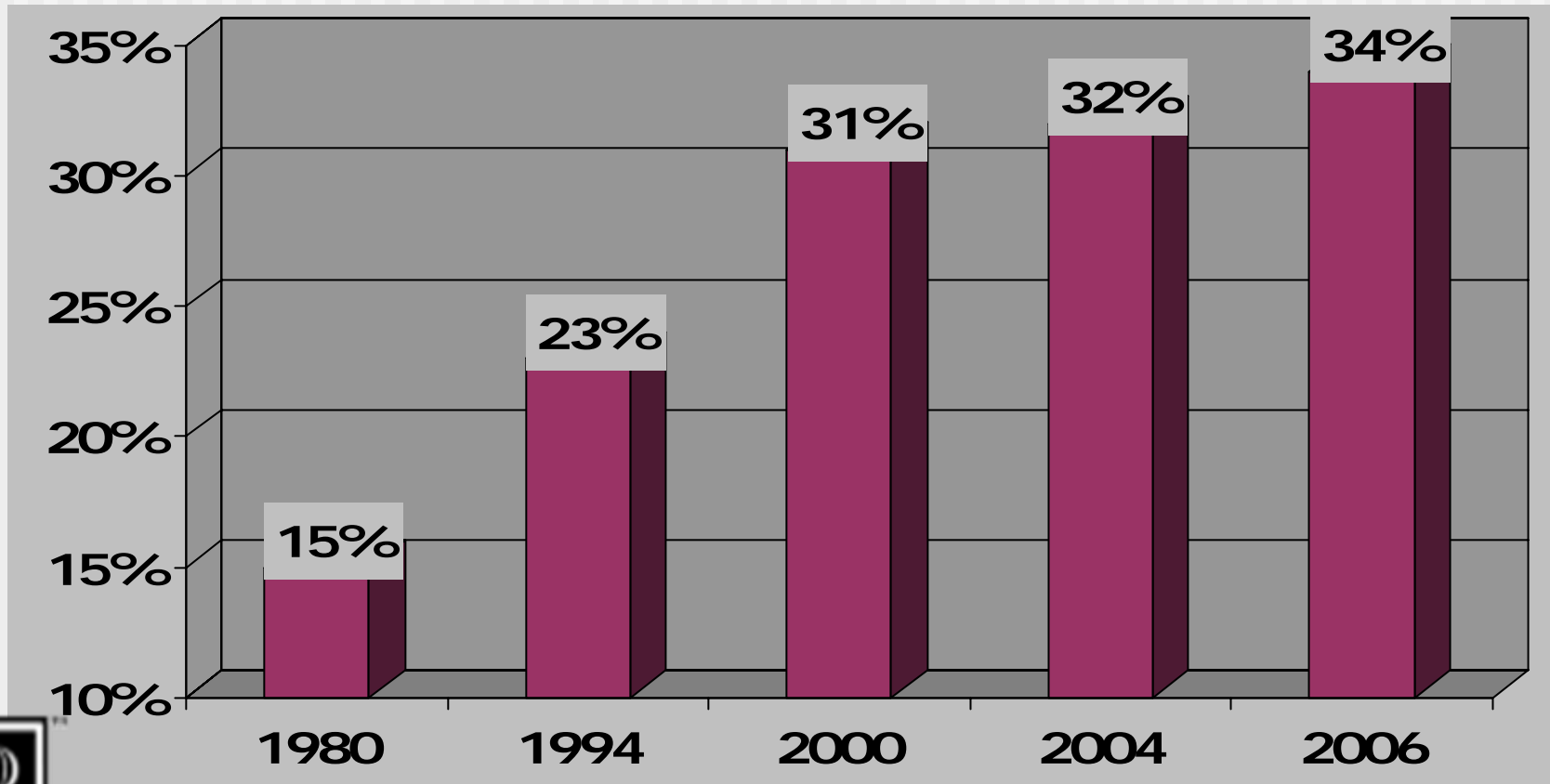
*"I started my vegetarianism for health reasons, then it became a moral choice, and now it's just to annoy people."*

# American Obesity

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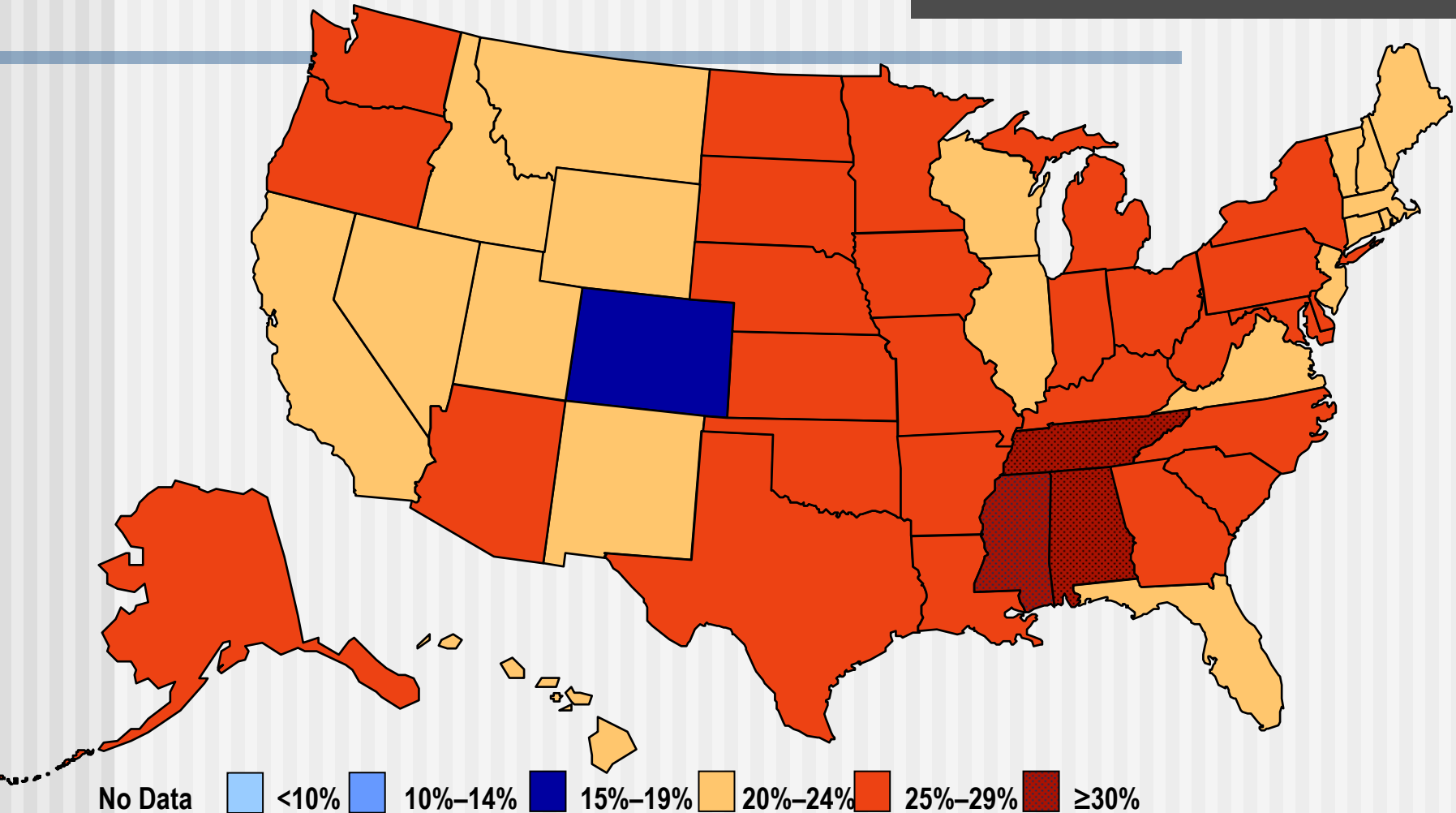


# Adult American Obesity by State 2007

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© CDC, BRFSS, 2007

VIACOM



Childhood obesity.  
Don't take it lightly.



Food Stamps can help. Call 1-888-328-3483 to see if you qualify.

4151

VIACOM



I'm lovin' it



my kinda  
shoppin'  
spree



Dollar  Menu

1152

# Obesity:

~~**“Epidemic”**~~

~~**“Problem”**~~

~~**“Threat”**~~

~~**“Issue”**~~

**“Hype”**

Americans have been force-fed a steady diet of obesity myths by the “food police,” trial lawyers, and even our own government.

Learn the truth about obesity at:

**ConsumerFreedom.com**

The Center for Consumer Freedom is a nonprofit organization dedicated to protecting consumer choice and promoting voluntary reform.

© Center for  
Consumer Freedom<sup>8</sup>



# Can We Resolve The Fight?

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"There are no problems  
we cannot solve  
together, and very  
few that we can solve  
by ourselves."

Lyndon B. Johnson  
(1908-1973), 36th U.S.  
president



# Measuring Obesity

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## Body Mass Index (BMI)

- Normal: under 25 BMI
- Overweight: between 25 – 29.9
- Grade I Obese: between 30 – 34.9
- Grade II Obese: between 35 – 39.9
- Grade III Obese: over 40



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# Who is Obese?

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- 34% of Americans are obese
- 68% of Americans are overweight
- 17.1% of children are obese



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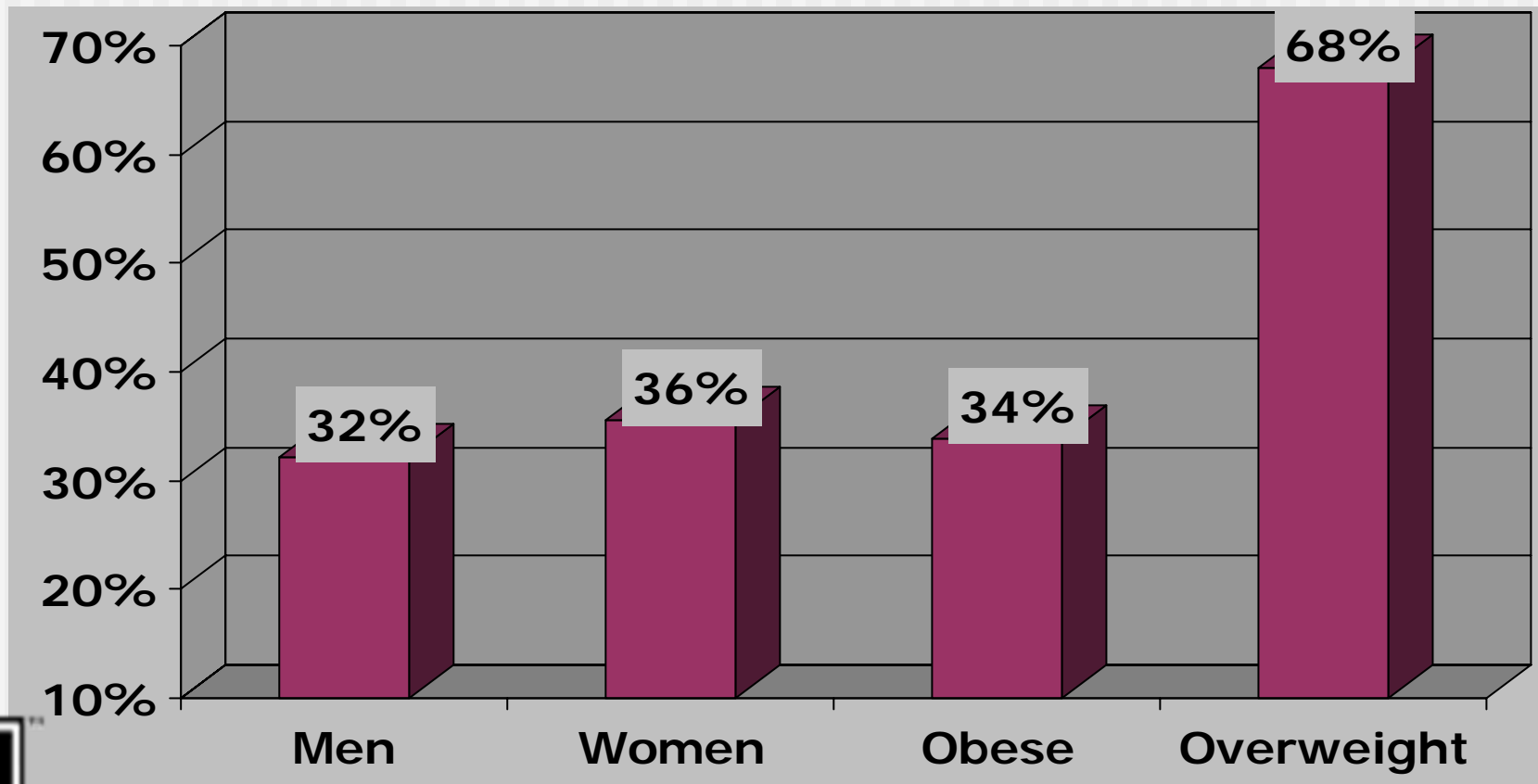


# American Obesity: 2008

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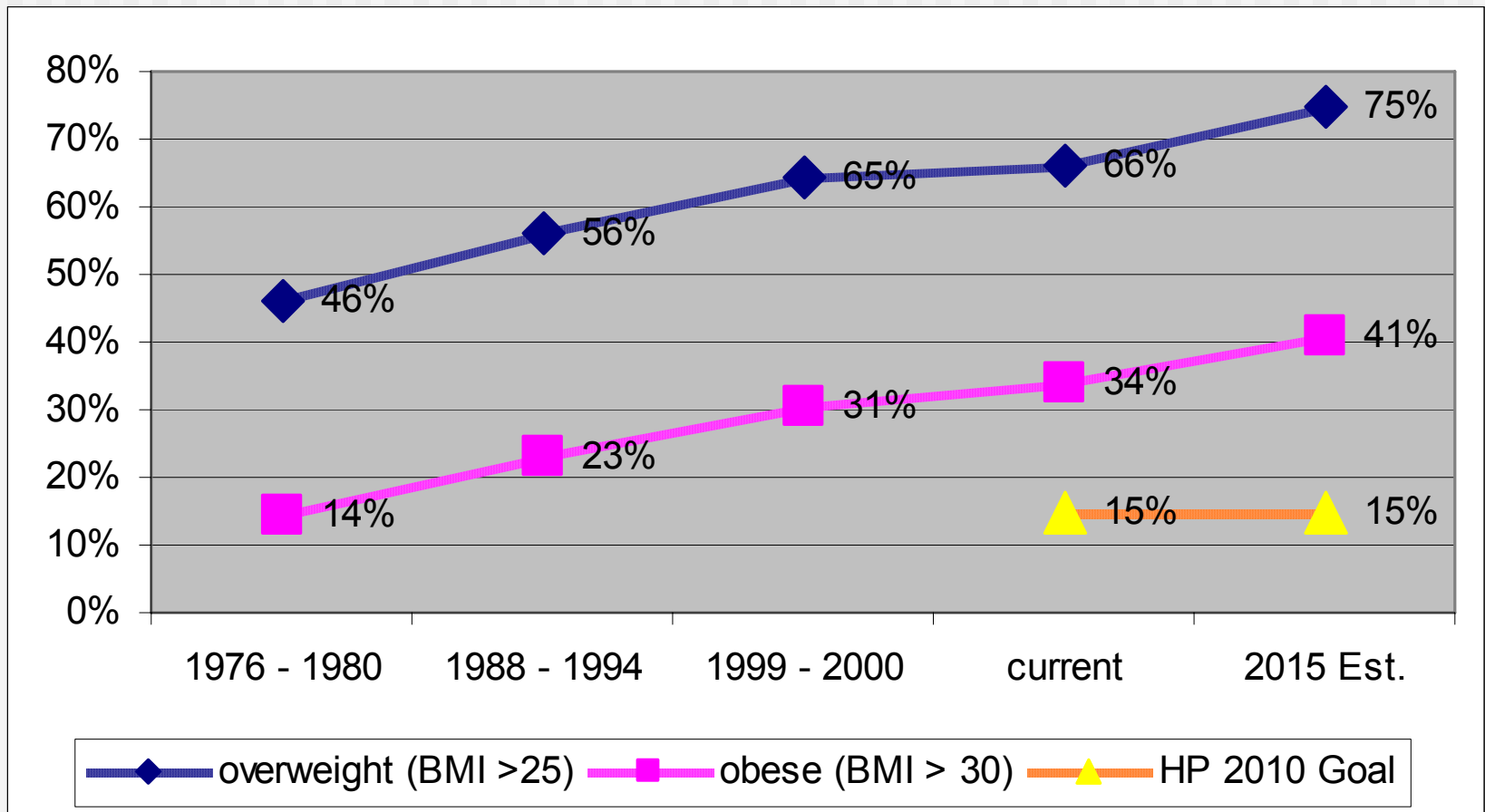


# Obesity Prevalence in The U.S.

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Sources: Flegal et al. JAMA 2002; Wang et al, Epidemiologic Reviews 2007<sup>13</sup>

# Life Expectancy

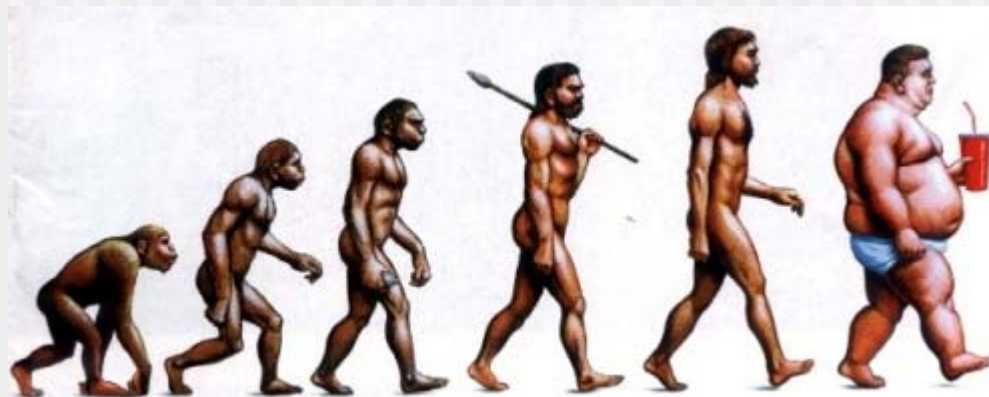
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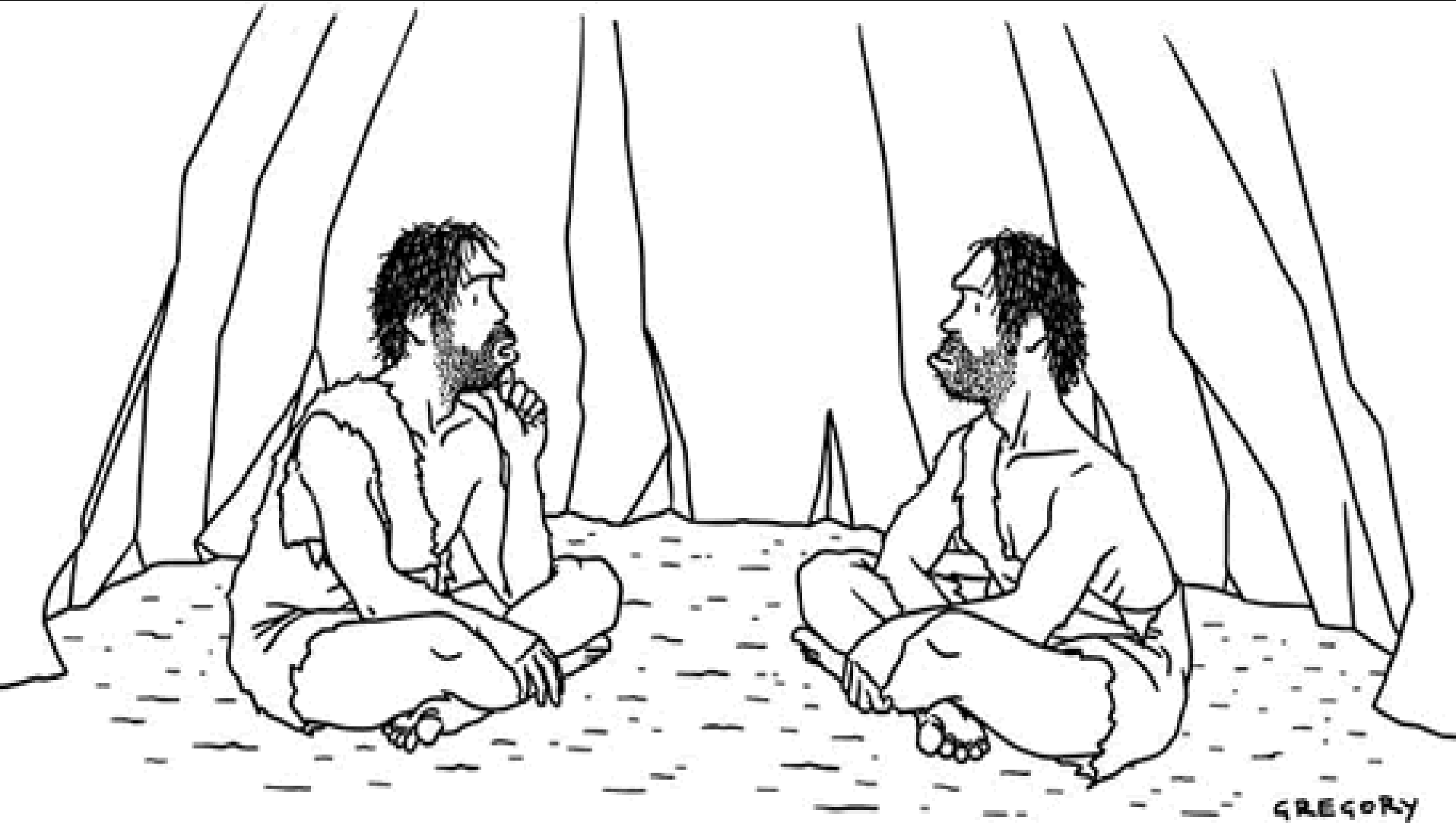
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“The steady rise in life expectancy during the past two centuries may soon come to an end.”

Olshansky et al., NEJM, 352(11): 1138-1145 (2005)





*"Something's just not right—our air is clean, our water is pure, we all get plenty of exercise, everything we eat is organic and free-range, and yet nobody lives past thirty."*

# Health Risks Associated with Obesity

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## Obesity is Associated with an Increased Risk of:

- Premature death
- Type 2 diabetes
- Heart disease
- High blood cholesterol
- Stroke
- Hypertension
- Gallbladder disease
- Osteoarthritis (degeneration of cartilage and bone in joints)
- Sleep apnea
- Asthma
- Breathing problems
- Increased surgical risk
- Cancer (endometrial, colon, kidney, gallbladder, and post-menopausal breast cancer)
- Complications of pregnancy
- Menstrual irregularities
- Hirsutism (presence of excess body and facial hair)
- Stress incontinence (urine leakage caused by weak pelvic-floor muscles)
- Psychological disorders such as depression
- Psychological difficulties due to social stigmatization

(Adapted from  
<http://win.niddk.nih.gov/statistics/index.htm>)



“On average, Americans  
now consume 200 to  
300 more calories  
each day than they  
did 30 years ago.”



# The Last Supper

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- 69% increase in size of main course
- 66% increase in plate size
- 23% increase in bread size



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# Practical Concerns:

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- Movie seats expanded 19 in to 23 in
- (Are you listening airlines???)
- Revolving doors expanded 6 to 8 feet
- Supermarket aisles expand 5 to 7 feet







# Direct Costs of Obesity

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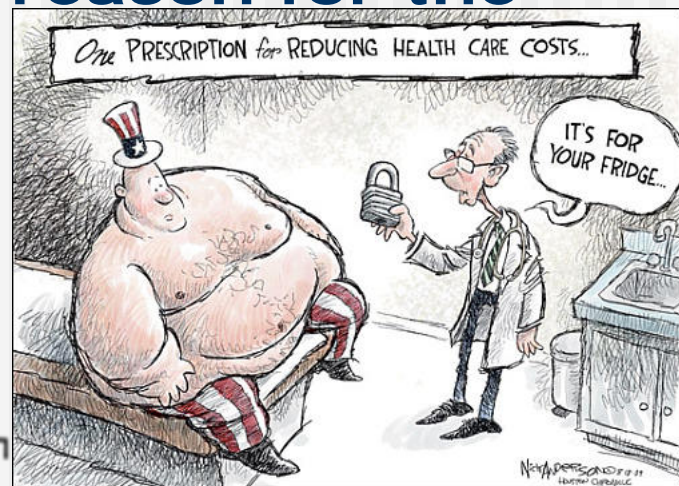
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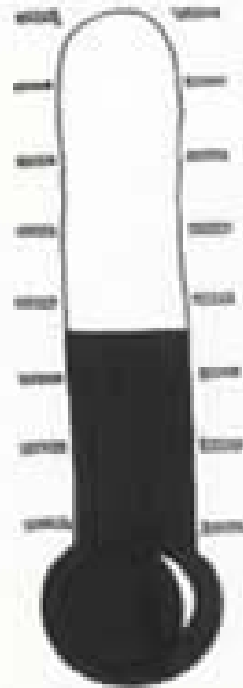
- 9.1% of all medical spending in 2008 (some reports claim over 10%)
- 20% of medical spending estimated by year 2020
- 147 billion medical costs in 2008 (Other reports claim the costs are over 200 billion)
- **“Obesity is the single biggest reason for the increase in health care costs”**



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**\$117 BILLION FOR  
OBESITY COSTS**



**BIG  
PHARMA**

**BIG  
PHARMA**

YOU KNOW, WE  
COULD GET TO  
THE \$117 BILLION  
IF WE COUNTED  
SOME OF THIS  
STUFF TWICE.

*Duke*  
2005  
CENTER FOR  
CONSUMER  
FREEDOM

# Indirect Costs of Obesity

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- Contributes up to 60% of the cost of diabetes
- Increases health insurance by 27% (1987 – 2001)
- \$175 = what the average taxpayer pays a year for American obesity
- 350 million extra gallons jet fuel last 10 years
- 400,000 deaths per year in U.S. (Controversial)



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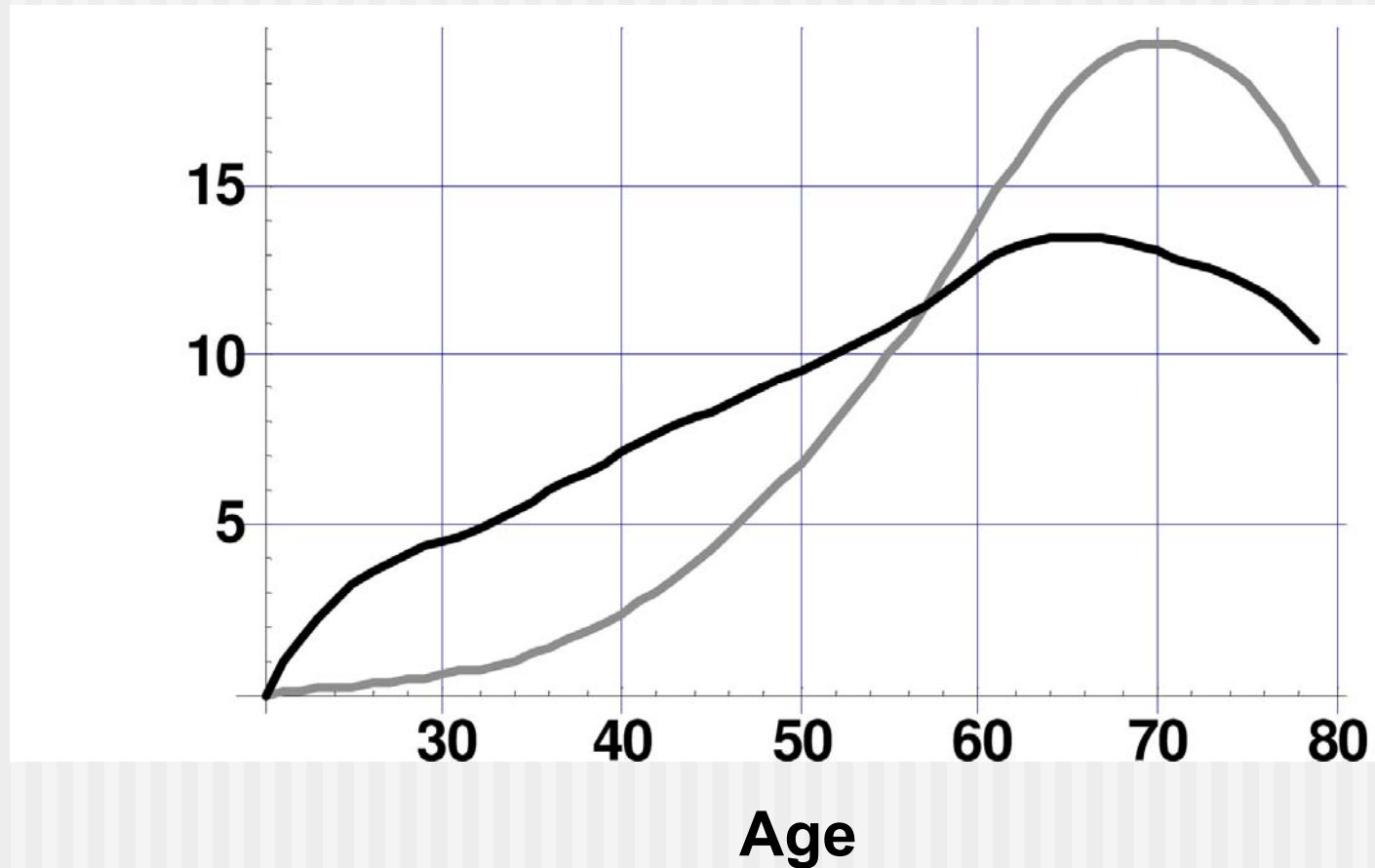


# Smoking v. Obesity

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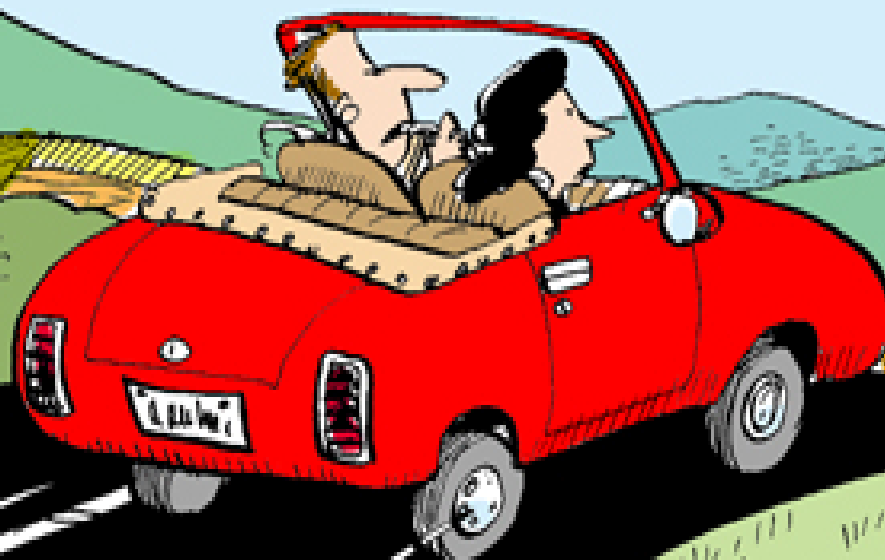
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Smoking — Obesity —





# Other Costs in the Workplace

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- 2 to 3 times greater use of sick days & other measures of absenteeism
- Up to 3 times likelihood of disability
- Decreased productivity (presenteeism)
- Increased group life & disability premiums
- Decreased morale & cooperation
- Major Workers' Compensation implications



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ANNUAL EMPLOYER  
HEALTH CARE COSTS  
ATTRIBUTED TO OBESITY  
ALONE ARE ESTIMATED  
AT \$12 BILLION

# Obesity and Work

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- 39 million days of lost work
- 239 million days of restricted duty
- 90 million bed days
- 63 million visits to the physician
- 77% increase in medications

(Source: 3/16/10 compnewsnetwork)



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How much does obesity cost your company?



[www.cdc.gov/leanworks](http://www.cdc.gov/leanworks)

RIDZELL 8-7-08



What  
Obesity  
Epidemic?

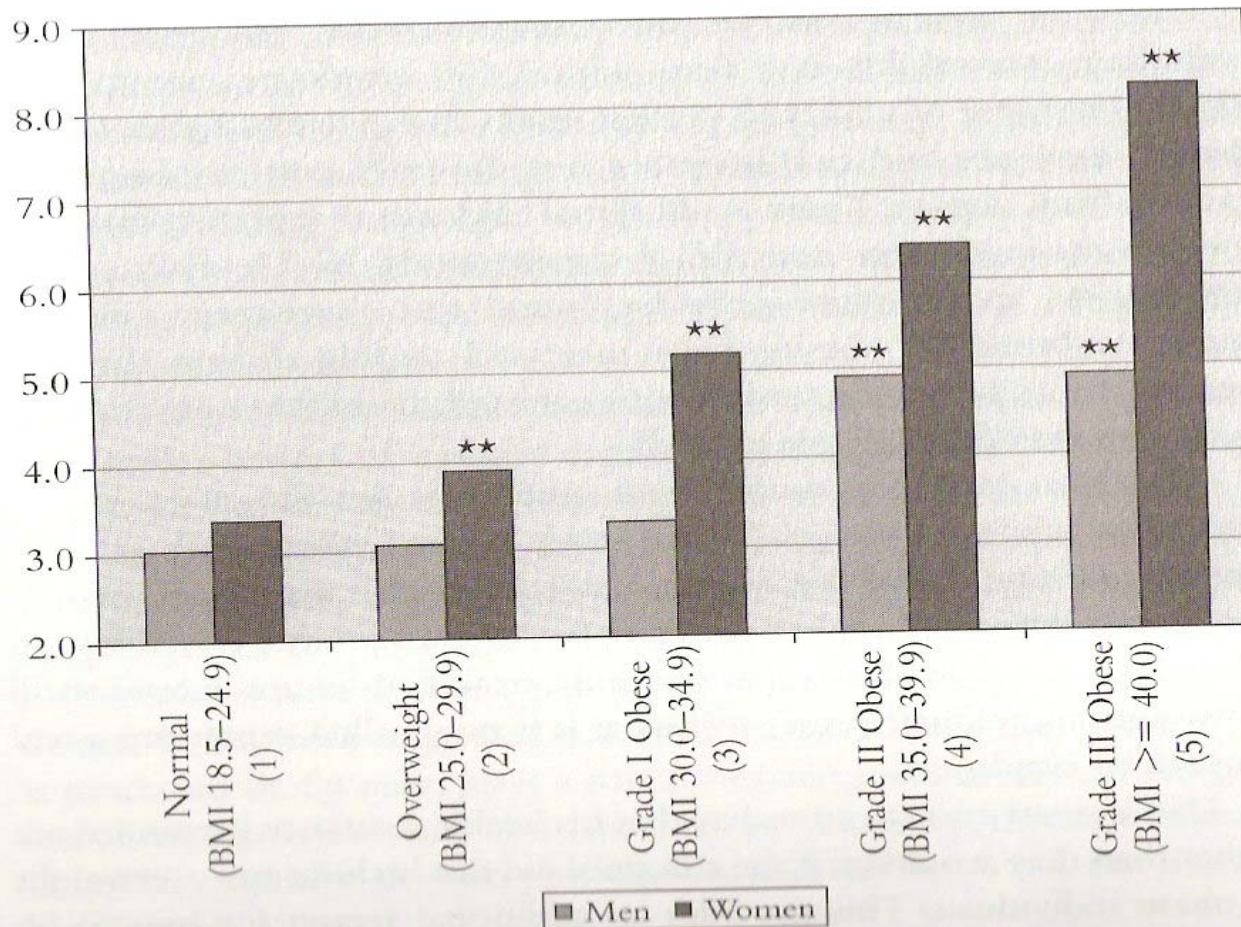


# Missed Work Days by BMI

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Source: Am. J Health Prom. 20(1): 45-51 (2005)<sup>29</sup>

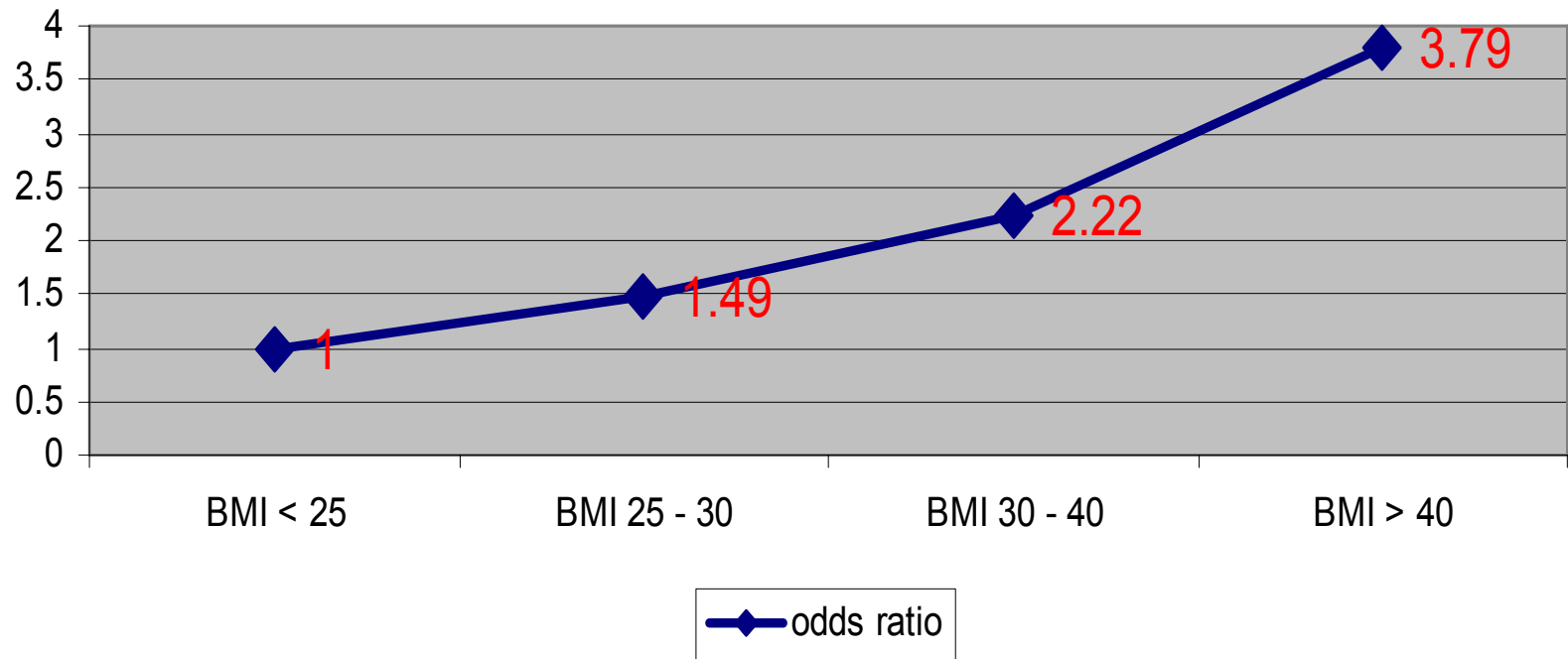
# Analysis of Alcoa Claims

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## Odds of Incurring an Acute Sprain or Strain



Source: Pollack et al. A J Epi 166(2) 2007 30

# Grade III Obesity

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- 45% more w/c claims
- 8 times the number of lost work days
- 8 times the indemnity costs
- 5.4 times the medical costs
- Equal to 20 years of aging

(Source: Duke Study 2007)



# Most Obese

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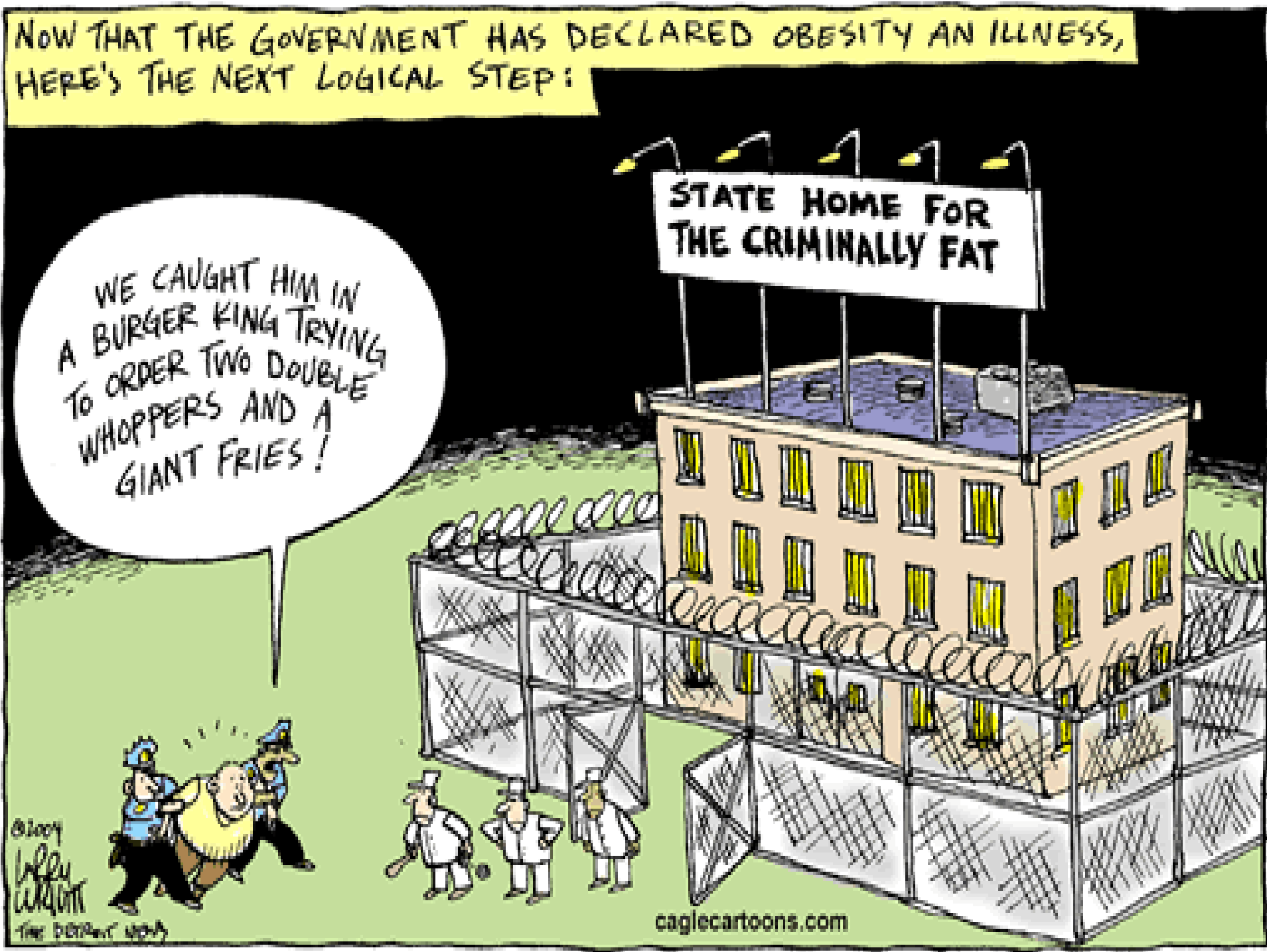
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- Difficulty recovering from injuries
- Doctors often recommend weight reduction before knee/back surgery
- What if they can't lose weight?







NOW THAT THE GOVERNMENT HAS DECLARED OBESITY AN ILLNESS,  
HERE'S THE NEXT LOGICAL STEP:

WE CAUGHT HIM IN  
A BURGER KING TRYING  
TO ORDER TWO DOUBLE  
WHOPPERS AND A  
GIANT FRIES!

STATE HOME FOR  
THE CRIMINALLY FAT

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THE DETROIT NEWS

caglecartoons.com

# Bill Gates Warning

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"We always  
overestimate  
the change that  
will occur in the  
next two years  
and  
underestimate  
the change that  
will occur in the  
next ten."



# The Future of Obesity: 2018

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- 103 Million American adults
- 344 Billion in healthcare costs (79.5 billion in 2009)
- 21% of healthcare spending
- \$1,425 per person (\$361 in 2009)
- 42.8% of the population



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"A business absolutely devoted to service will have only one worry about profits. They will be embarrassingly large. "

Henry Ford  
(1863–1947); inventor  
and businessman



# Employers

- Wellness programs
- Remove/alter vending machines
- Preventive care
- Financial incentives/consequences

**TABLE 2**

**THE BAGEL SWITCH**

Environmental Action:	Switch from medium bagels (292 calories) to mini bagels (71 calories) at the office snack counter
Energy Deficit in a Year:	344,760 calories (10 workers eat a mini bagel instead of a large bagel three days per week)
Group Weight Gain Prevented:	98 pounds among 10 people (9.8 pounds each)

**THE LUNCH STROLL**

Environmental Action:	Co-workers walk 30 minutes at lunch 3 days per week (3 mph)
Energy Deficit in a Year:	157,950 calories (10 workers walk 3 days per week)
Group Weight Gain Prevented:	45 pounds among 10 people (4.5 pounds each)

**A BIG DRINK OF WATER**

Environmental Action:	Install a water cooler instead of a soda machine
Energy Deficit in a Year:	403,000 calories (10 workers drink water instead of a 12-ounce soft drink every day for a year)
Group Weight Gain Prevented:	115 pounds among 10 people (11.5 pounds each)



# Employers

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- Web based
- Cost Calculators
- Ideas

- <http://www.cdc.gov/leanworks/>



LEAN *Works!*

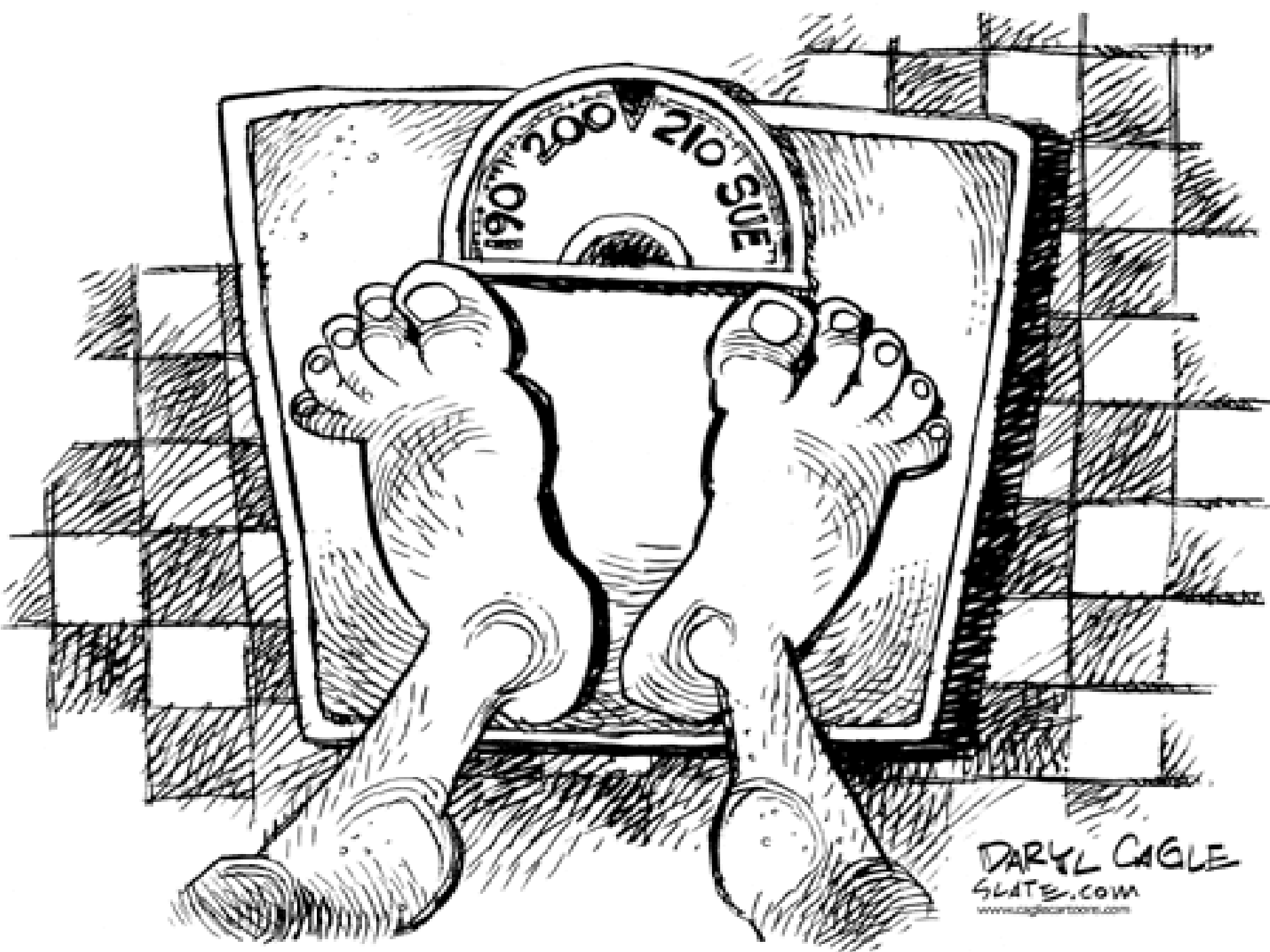
LEADING EMPLOYEES TO ACTIVITY AND NUTRITION



"It always seems  
impossible until its  
done."

—Nelson Mandela  
(1918-); former  
President of South  
Africa





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# Oregon

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- Plaintiff sustained a left knee injury and underwent surgery
- IN 1976
- Received a 10% scheduled rating
- Weighted 225 pounds



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# Oregon

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- 1996: weighed 320 pounds
- 1998: left knee became symptomatic again
- 1999: claimed second injury to knee



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- Working for a bakery
- Weighed 350 pounds
- Doctors recommended a gastric bypass surgery so the knee surgery would have a better chance for success



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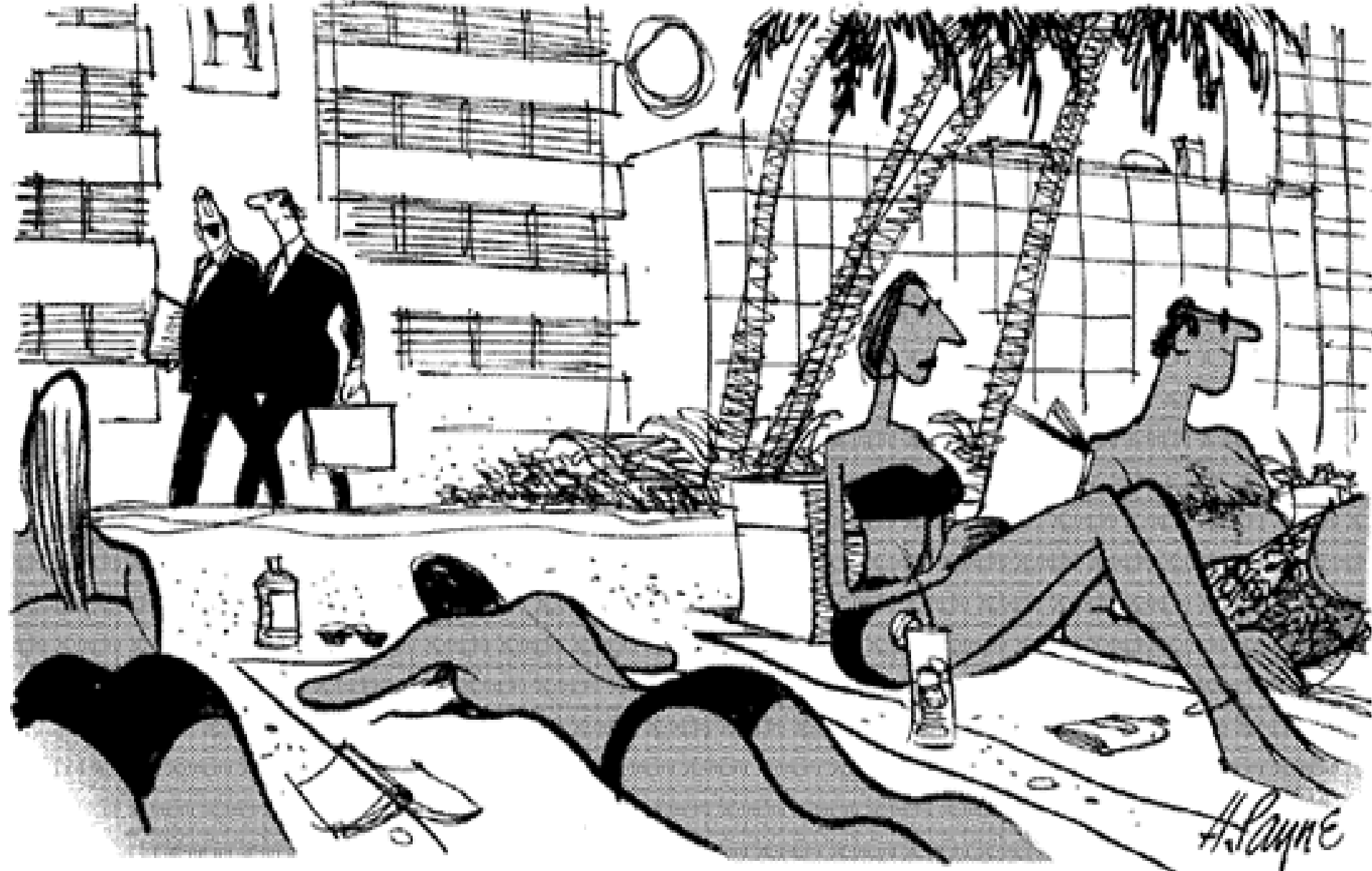
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- Supreme Court
- Gastric bypass was a medical service directed to the medical condition of an arthritic knee
- 1976 carrier owed the surgery
- SAIF. Sprague (published 8/27/9)



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unitedmedia.com EMAIL: hpayne@detnews.com 03

"I MADE MY FIRST MILLION SUING FAST FOOD FOR OBESITY. NOW  
I'M SUING BATHING SUIT MAKERS FOR CAUSING SKIN CANCER!"

# Indiana

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- Plaintiff weighed 340 pounds
- Was a cook
- At a gourmet pizza shop
- Back injury when freezer door hit him



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# Indiana

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- Gained an additional 40 pounds
- Evidence he could not exercise leading to the weight gain
- Doctor recommended gastric bypass to increase success of spinal fusion surgery



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# Indiana

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- WC Board found for the plaintiff
- Employer appealed
- Appellate Court held the plaintiff was entitled to weight reduction surgery
- AND temporary disability while off work
- PS2 LLC, v. Childers (published 8/6/9)



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... I AM THANKFUL  
EVERYONE HERE  
HAS SIGNED THEIR  
LIABILITY WAIVER.



# New York

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- 2002 injury to back, neck, and knee
- Sedentary lifestyle
- Treating orthopedic recommends weight loss
- Carrier IME agreed with weight loss recommendation



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# New York

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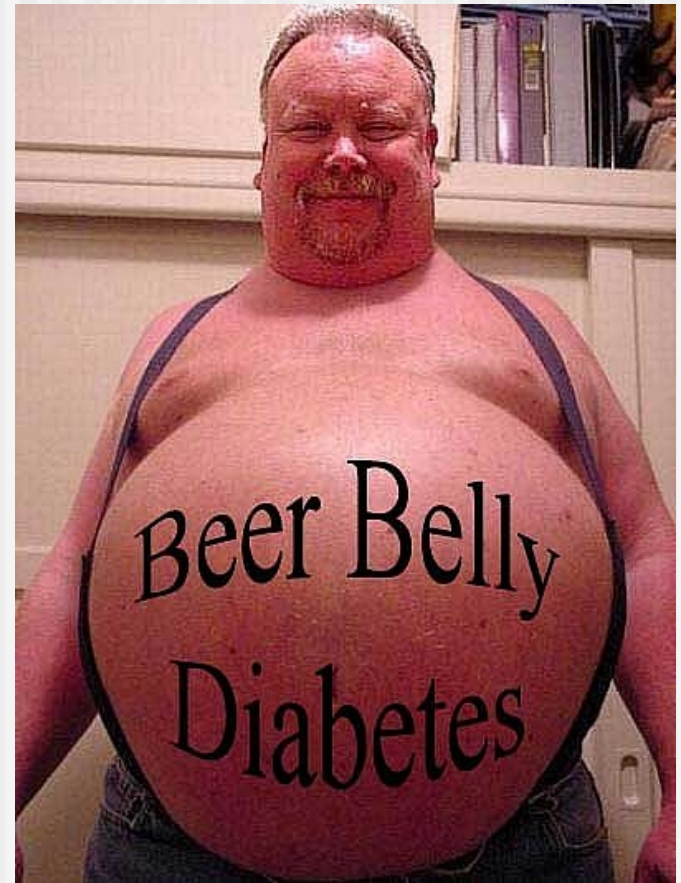
- Injury caused weight gain
- Weight gain exacerbated injuries
- Gastric bypass would help “assist in recovery”
- Laezzo v NY State Thruway Authority (2010)



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# Diabetes



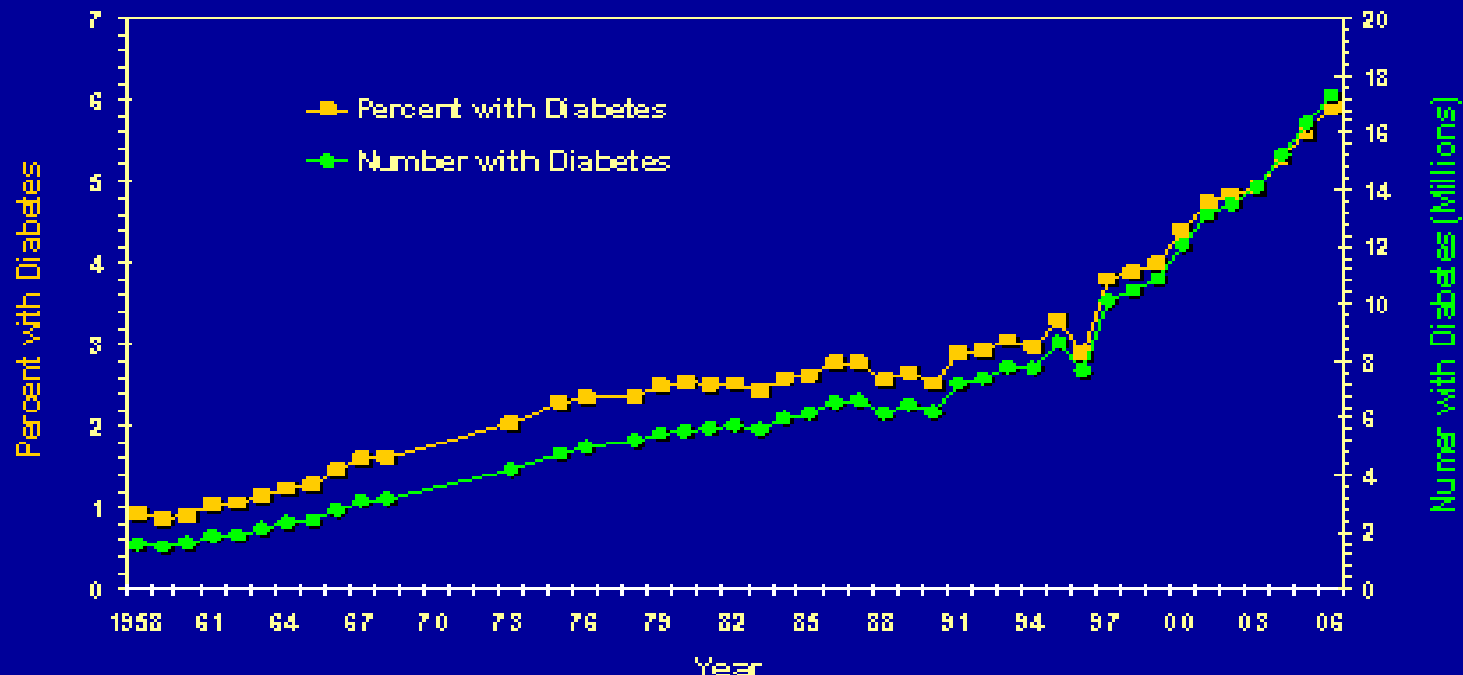
# Number and Percentage of U.S. Population with Diagnosed Diabetes

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## Number and Percentage of U.S. Population with Diagnosed Diabetes



CDC's Division of Diabetes Translation. National Diabetes Surveillance System available at <http://www.cdc.gov/diabetes/statistics>



# Growing Diabetes

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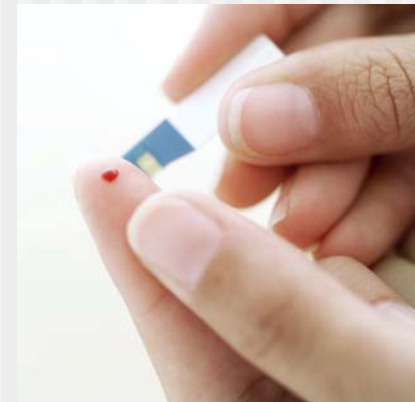
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- 1 million more diagnoses of diabetes per year
- 1/3 of all Americans will develop in diabetes in their lifetime

(Source: American Diabetes Association Statement 2008)



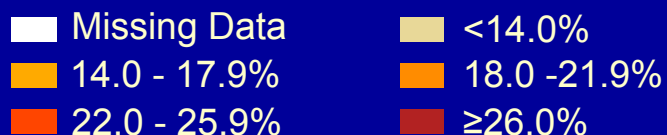
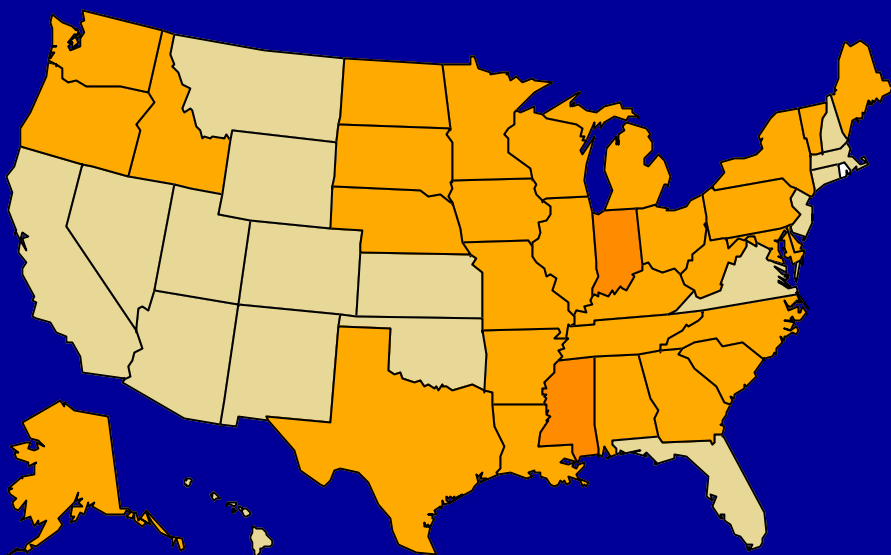
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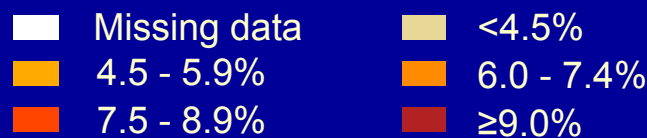
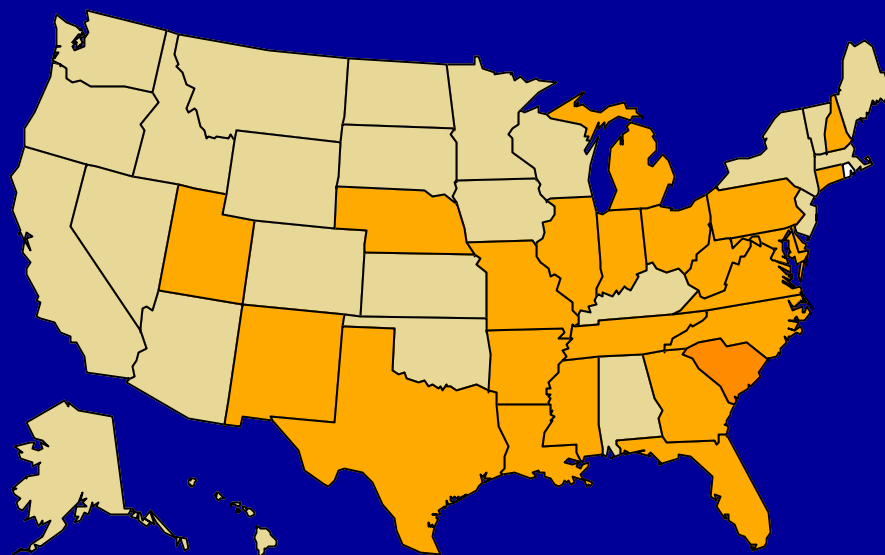
# Age-adjusted Percentage of U.S. Adults Who Were Obese or Who Had Diagnosed Diabetes

1994

## Obesity (BMI $\geq$ 30 kg/m<sup>2</sup>)



## Diabetes



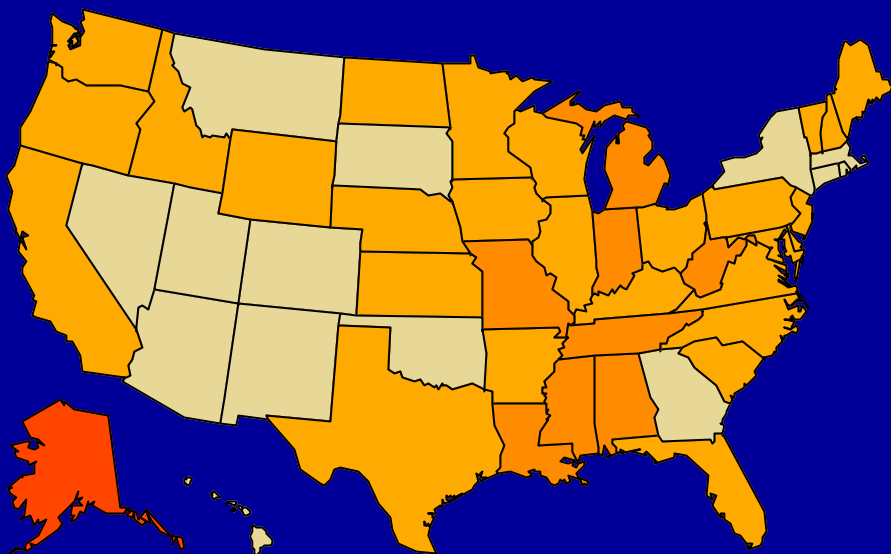
CDC's Division of Diabetes Translation. National Diabetes Surveillance System  
available at <http://www.cdc.gov/diabetes/statistics>



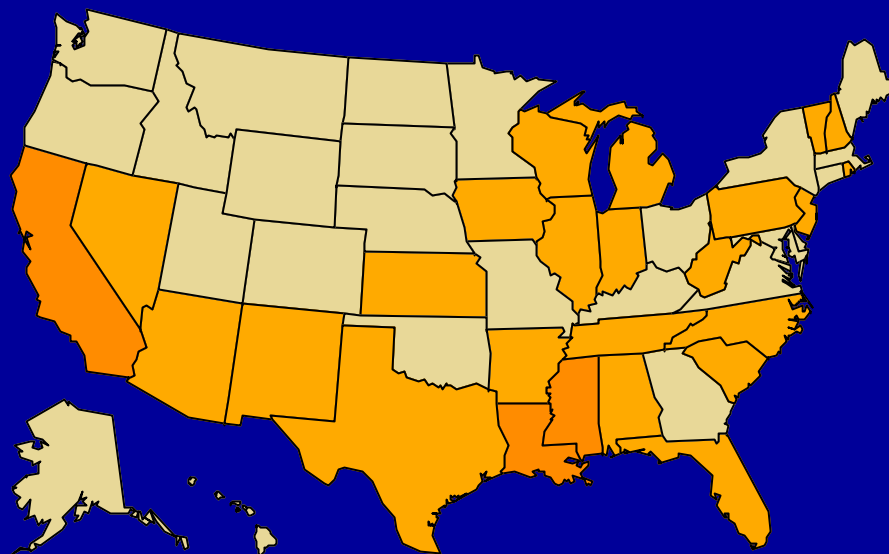
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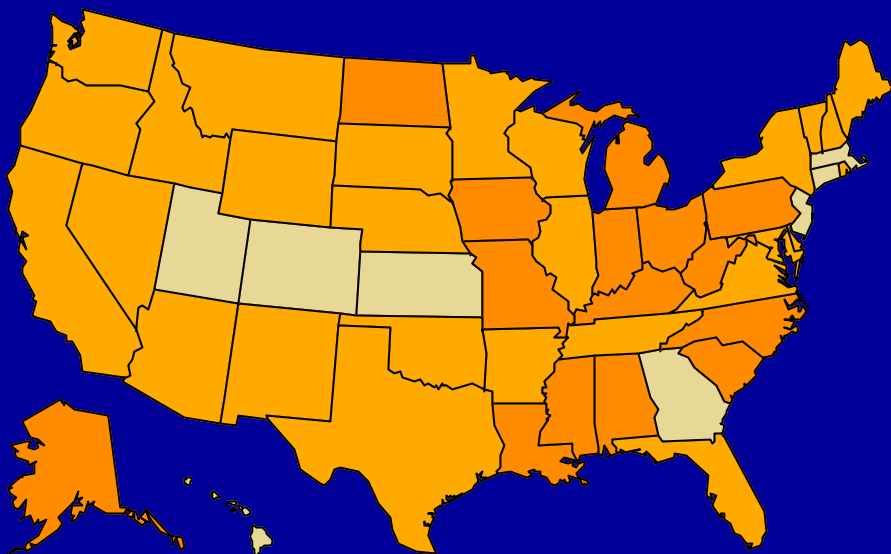




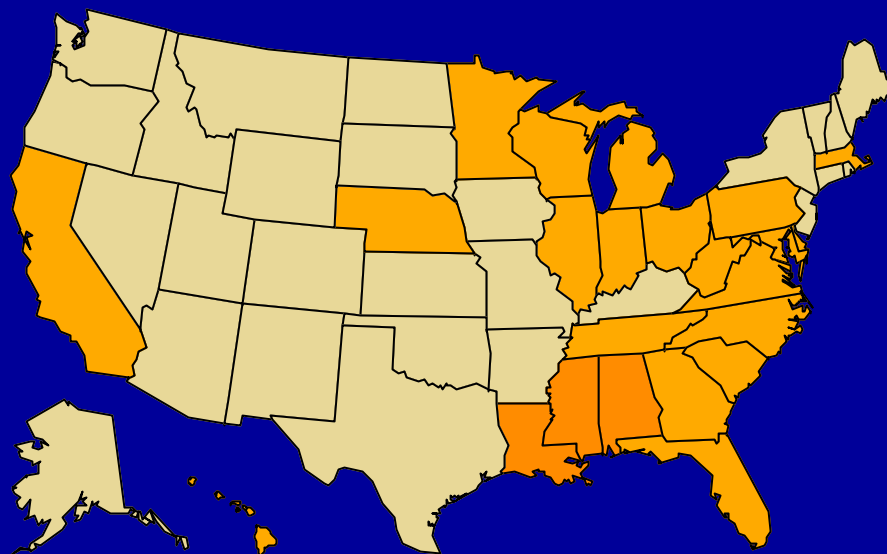
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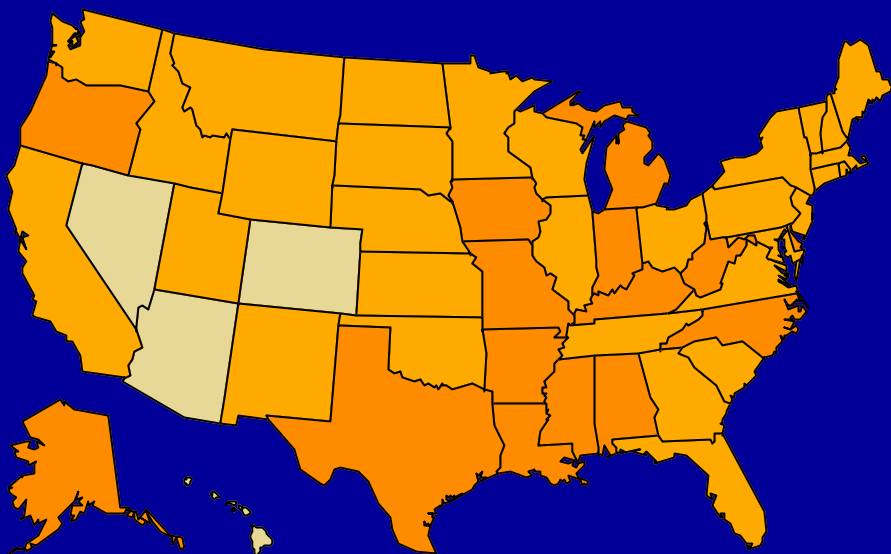
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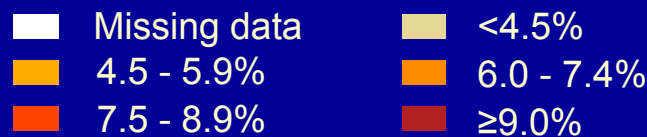
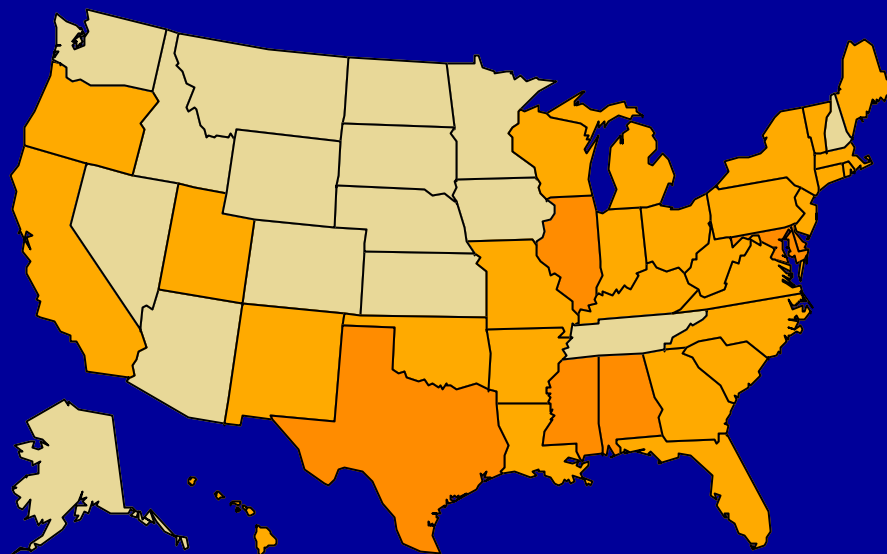
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## Diabetes



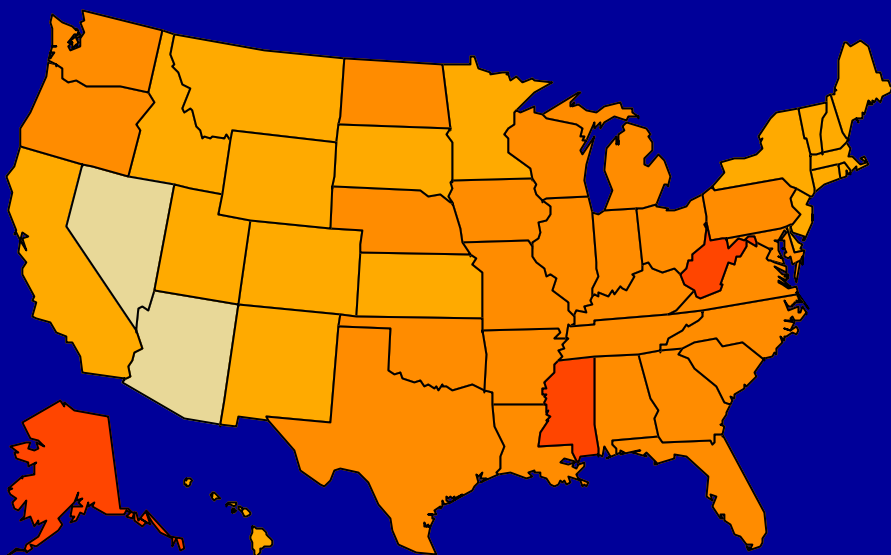
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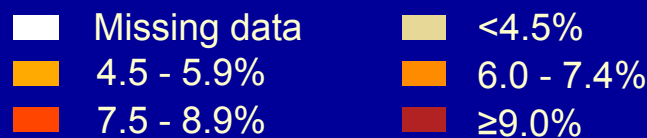
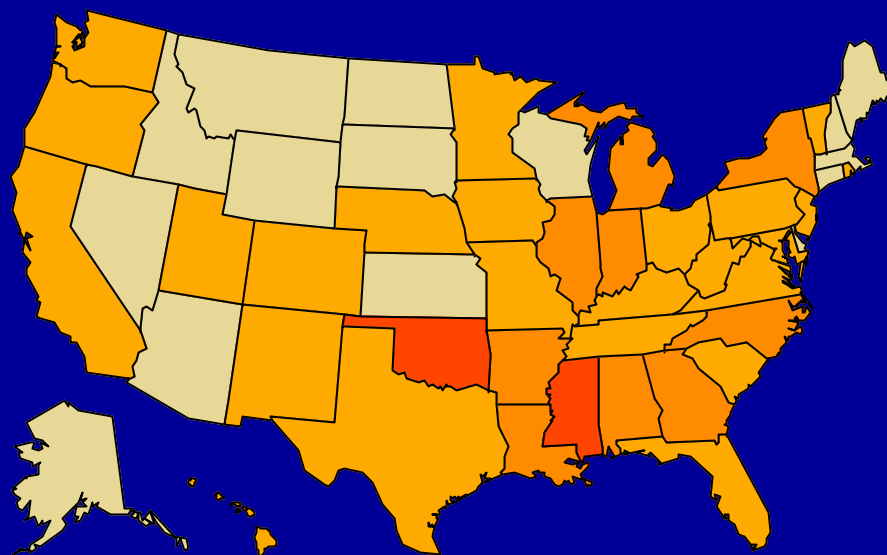
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## Diabetes



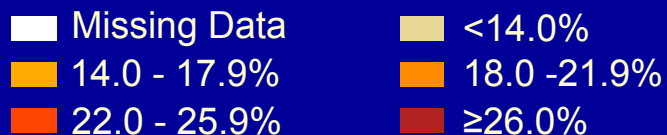
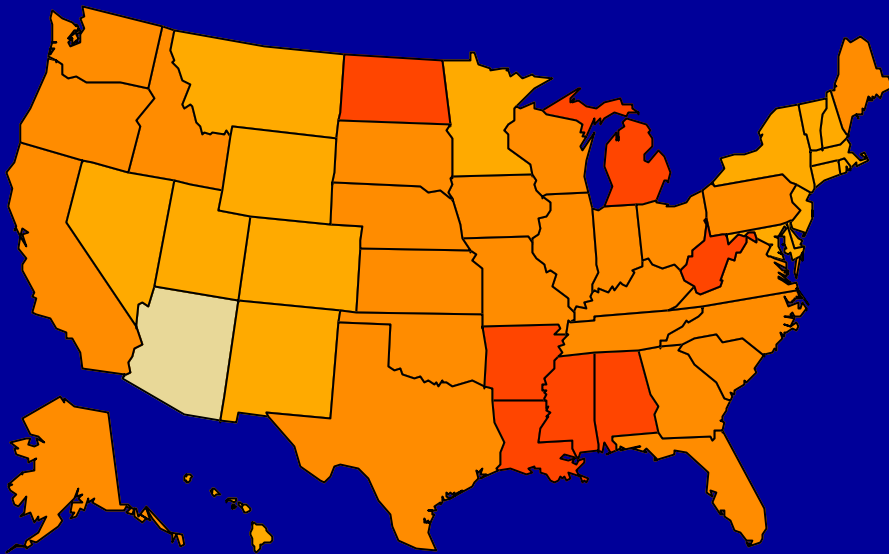
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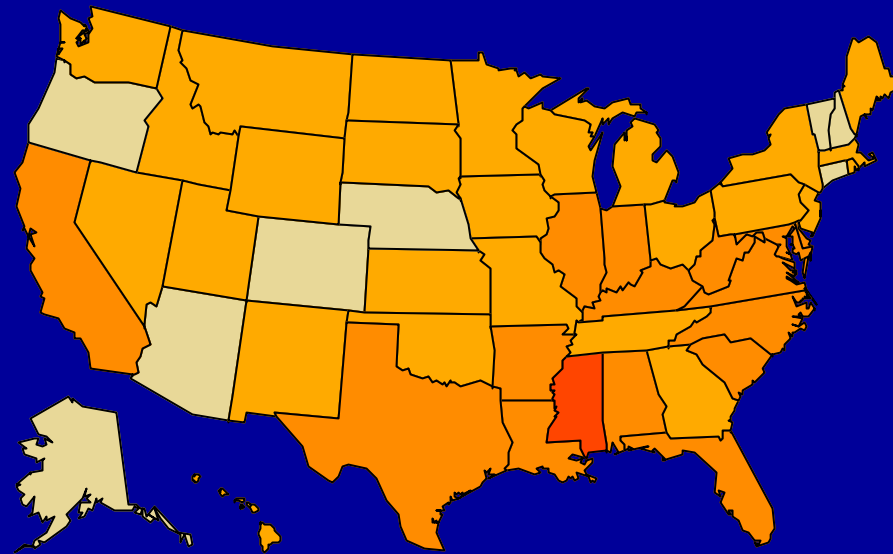
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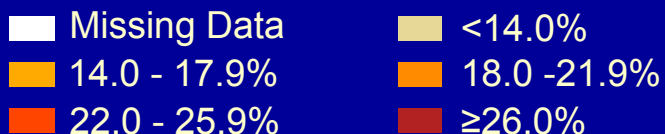
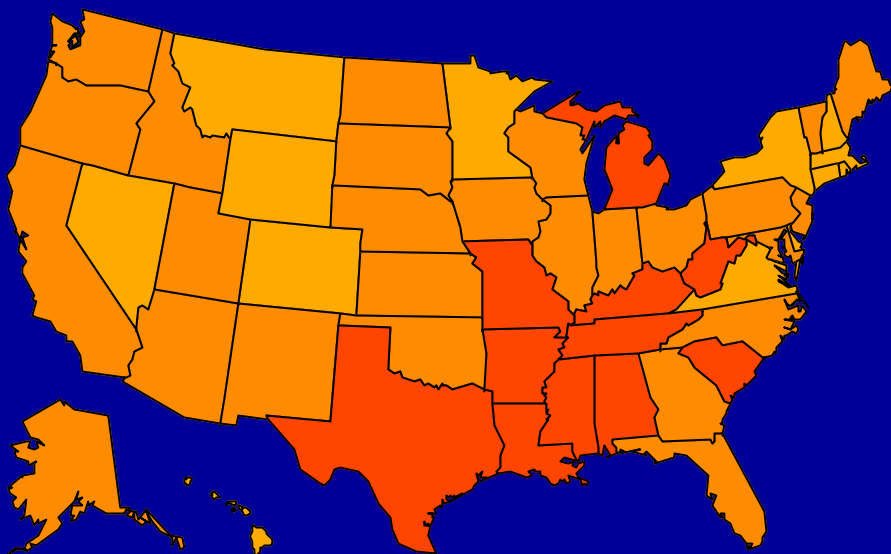
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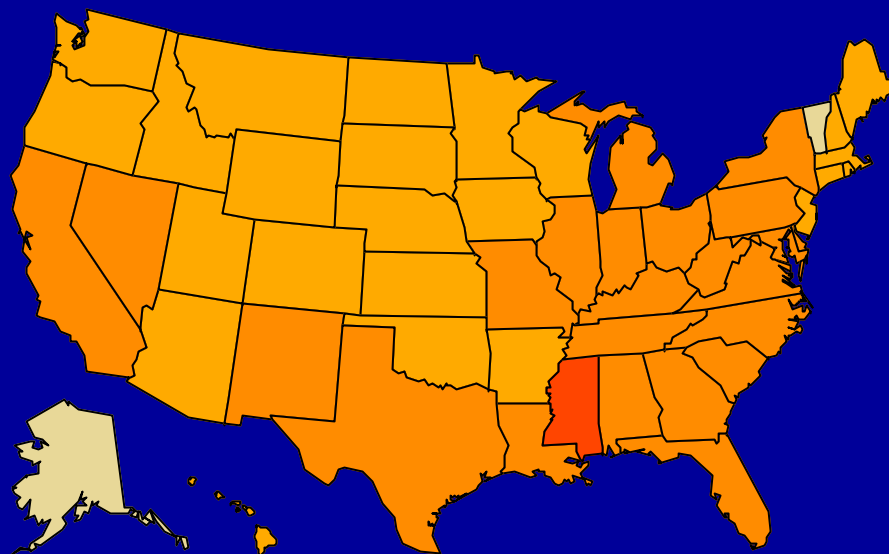
# Age-adjusted Percentage of U.S. Adults Who Were Obese or Who Had Diagnosed Diabetes

2000

## Obesity (BMI $\geq$ 30 kg/m<sup>2</sup>)



## Diabetes



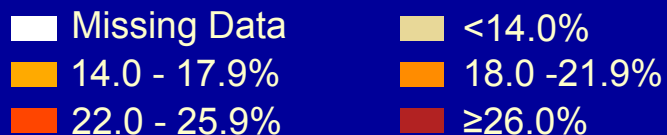
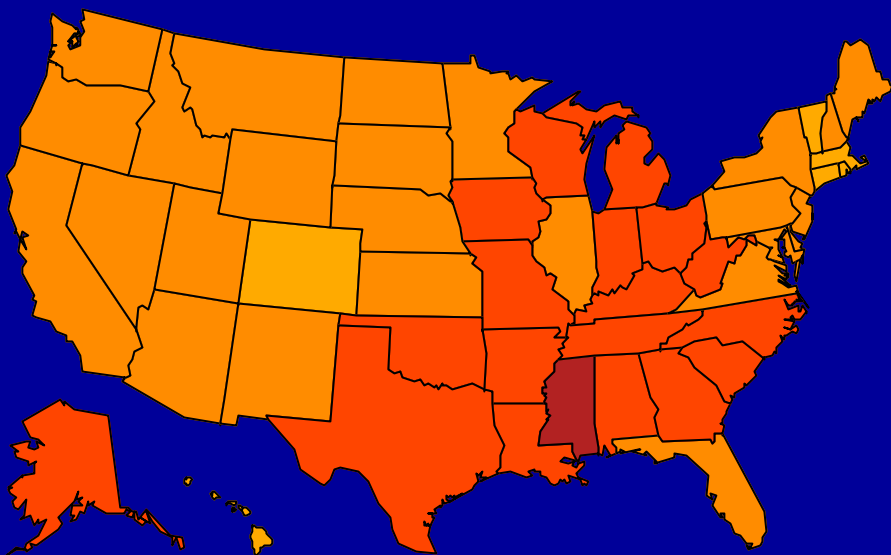
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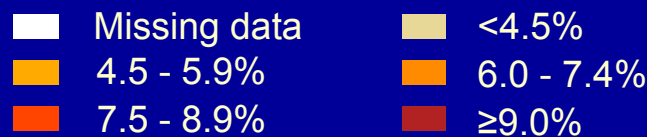
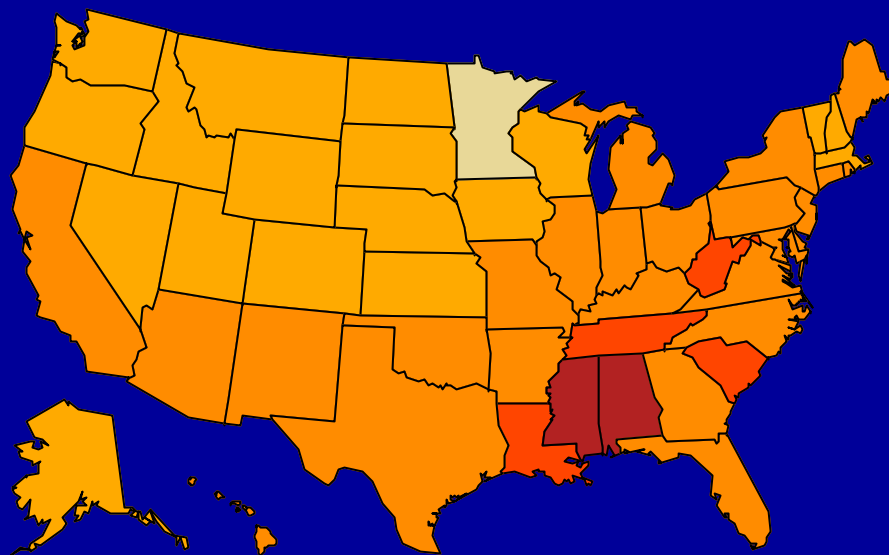
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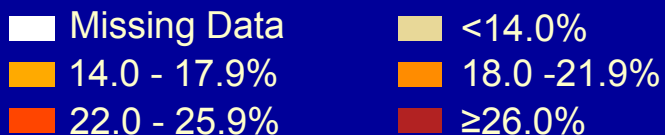
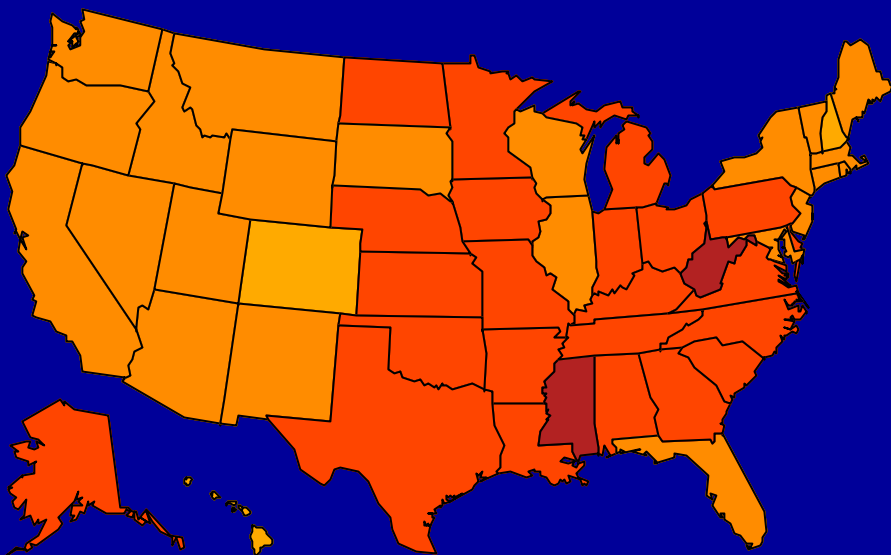
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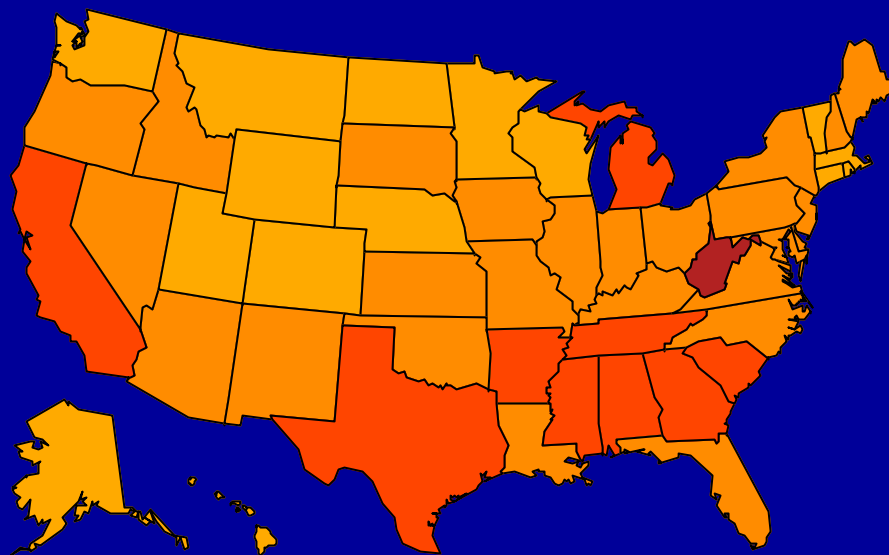
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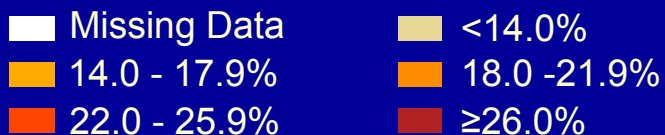
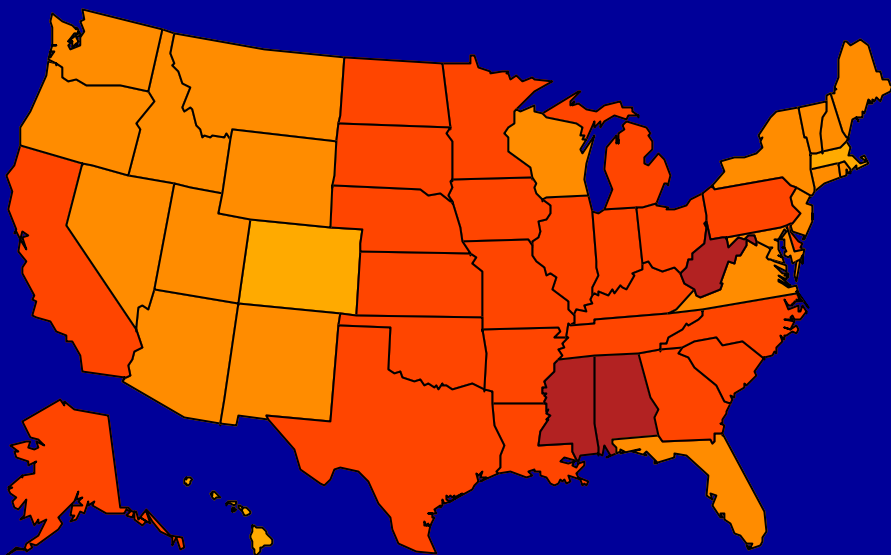
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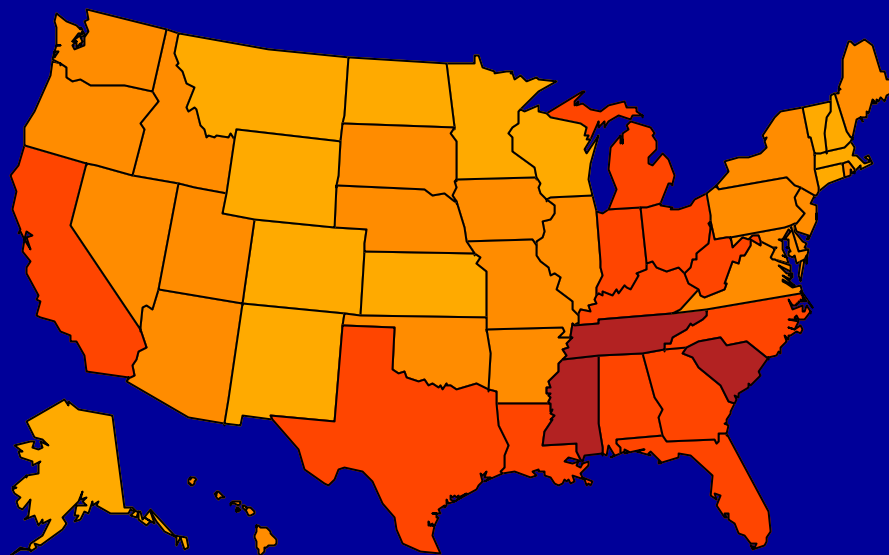
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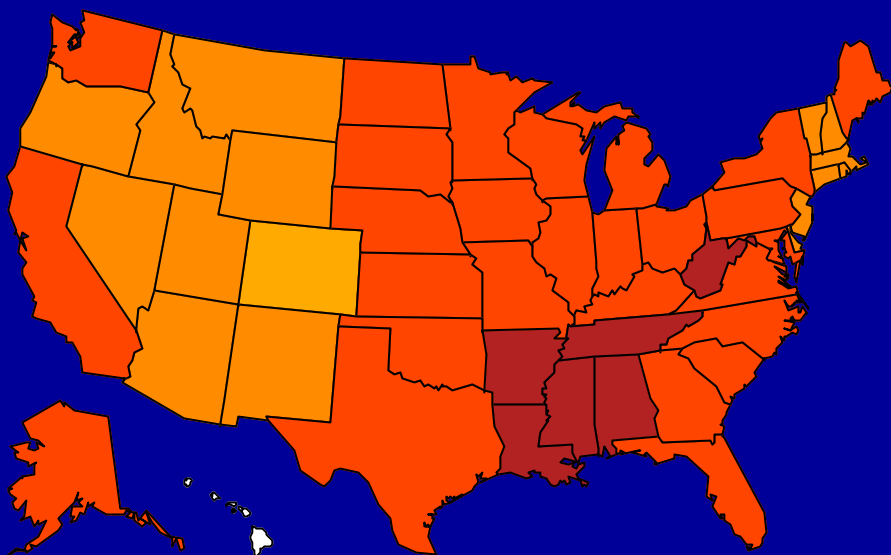




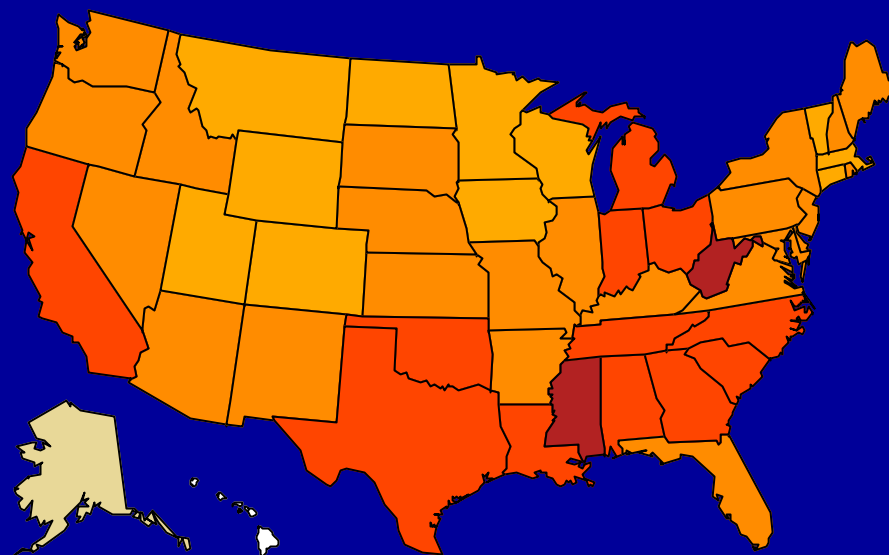
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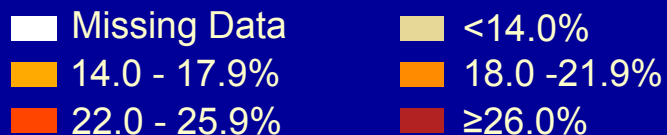
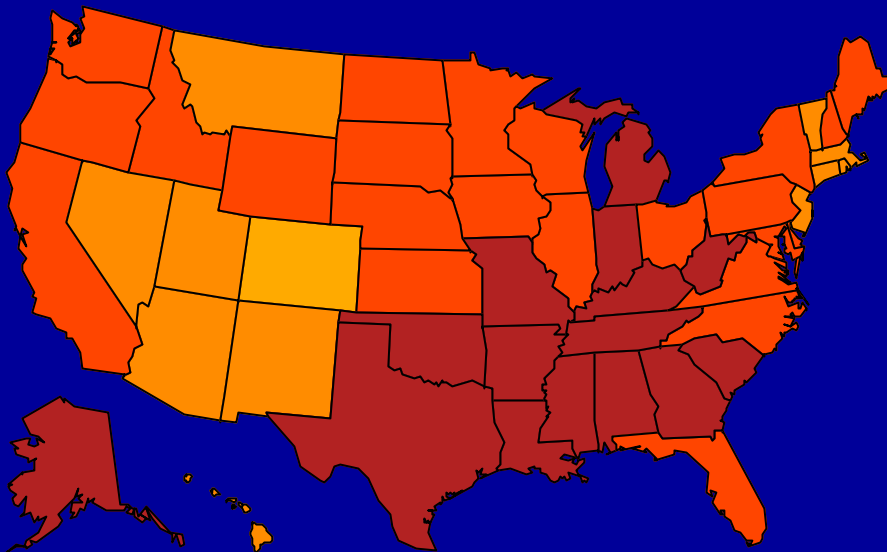
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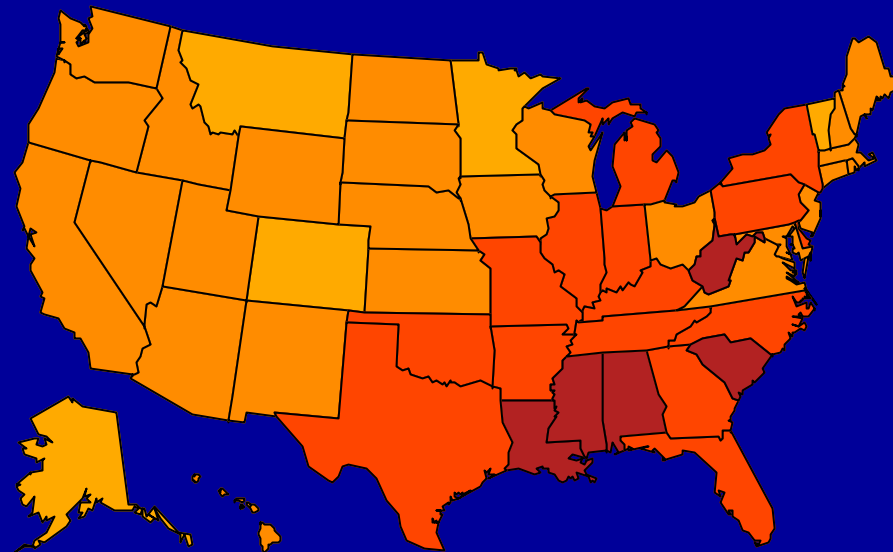
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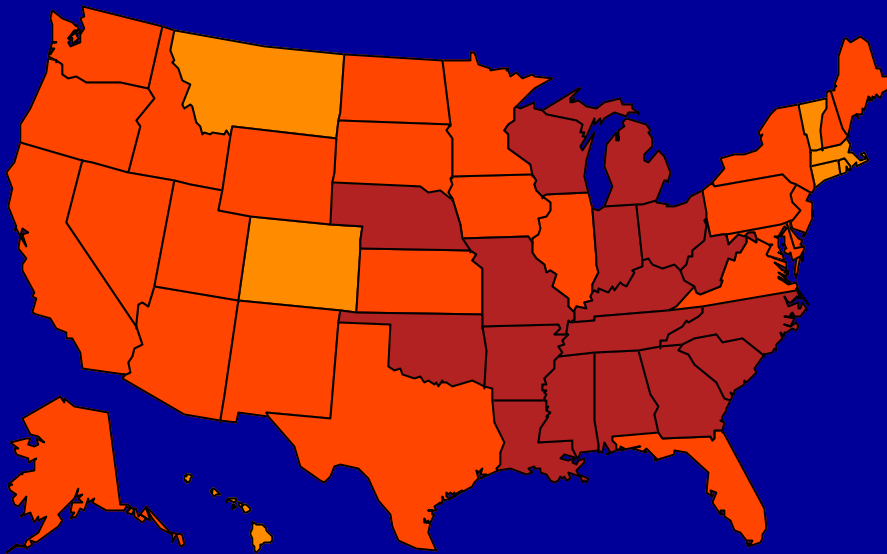
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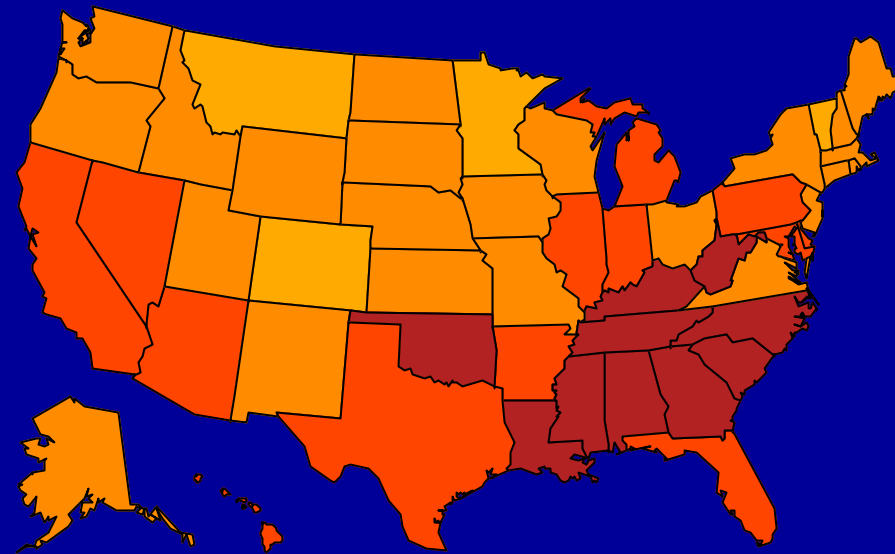
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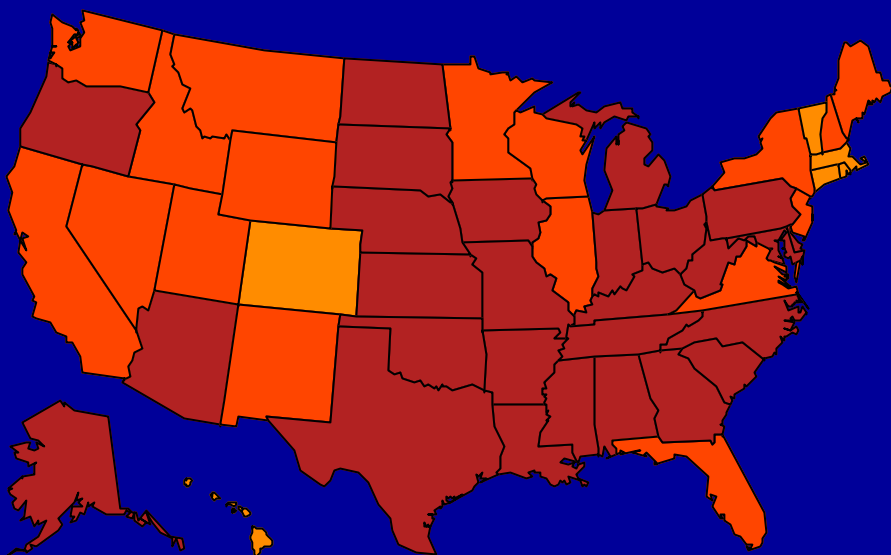
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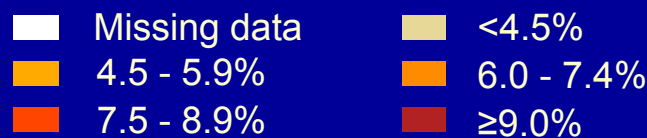
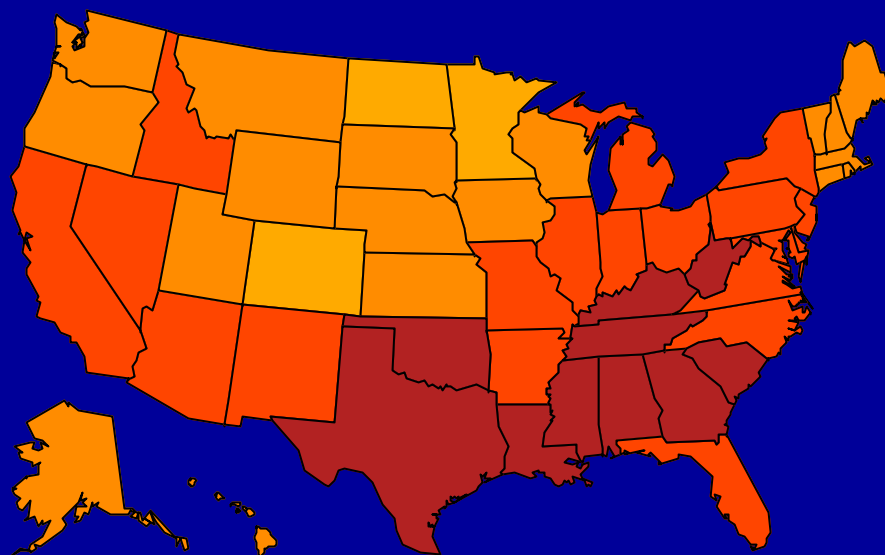
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## Diabetes



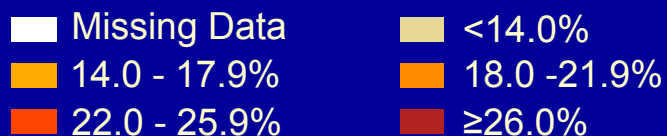
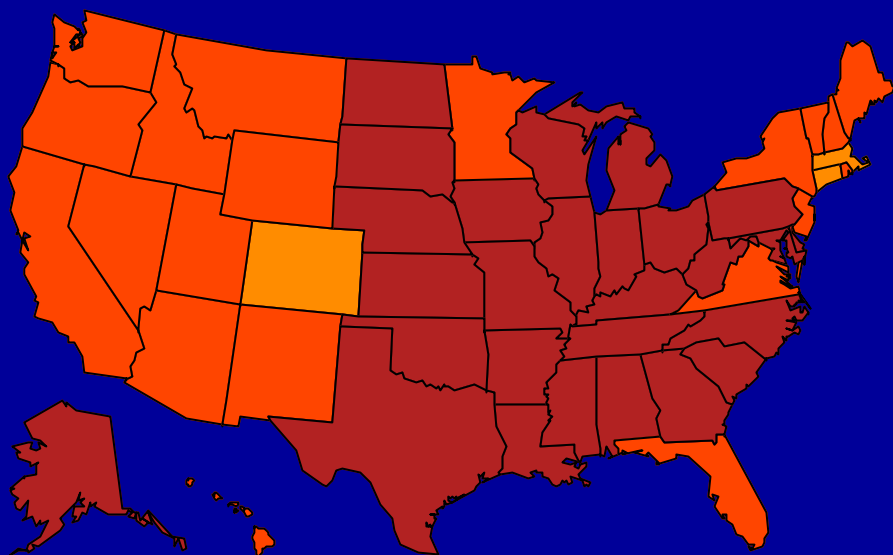
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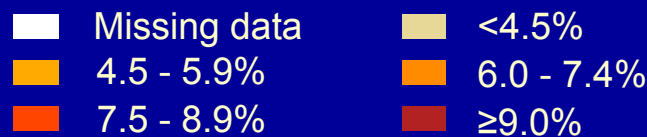
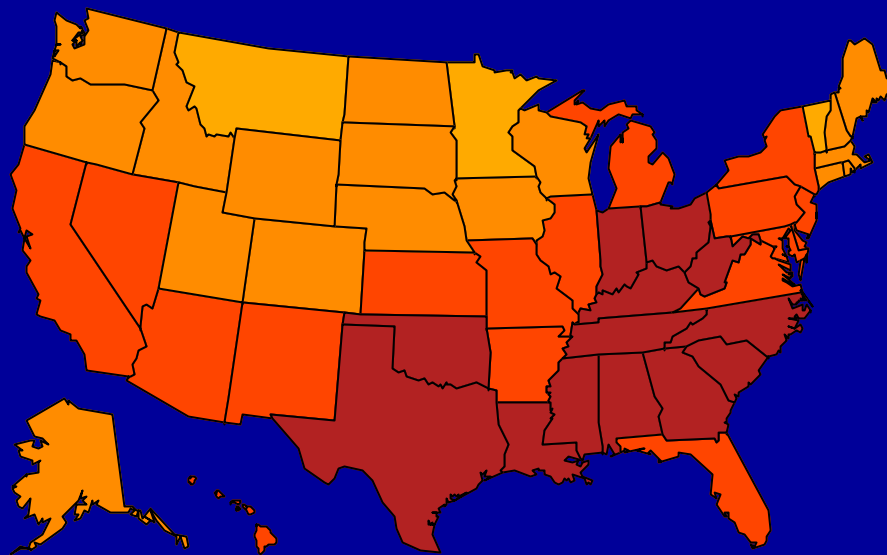
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2008

Obesity (BMI $\geq$ 30 kg/m<sup>2</sup>)



Diabetes

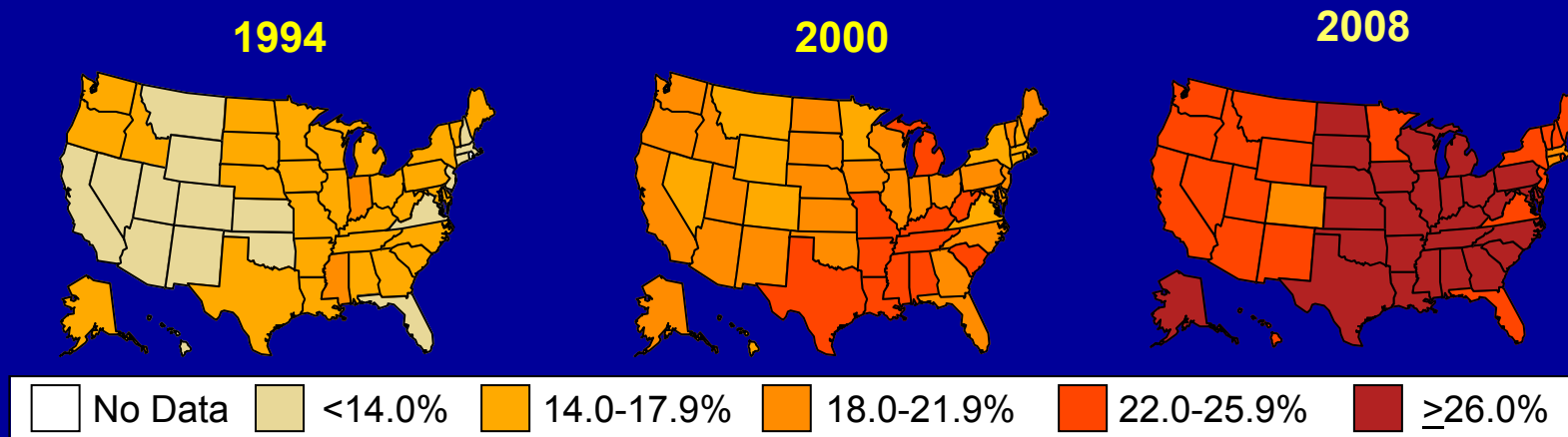


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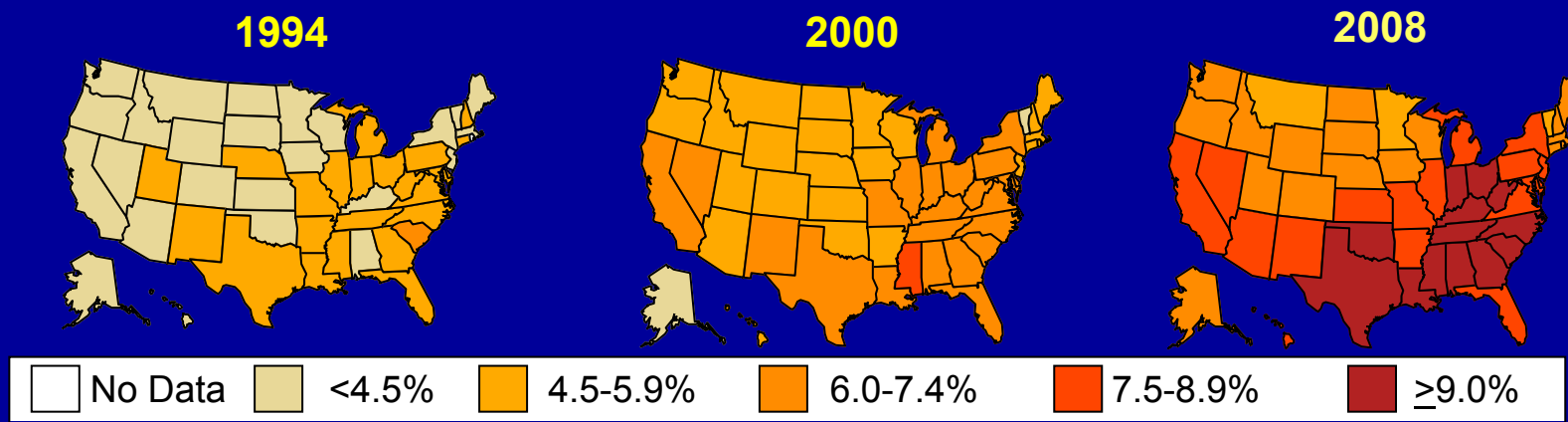


# Age-adjusted Percentage of U.S. Adults Who Were Obese or Who Had Diagnosed Diabetes

## Obesity (BMI $\geq 30$ kg/m<sup>2</sup>)



## Diabetes



# Diabetes Epidemic

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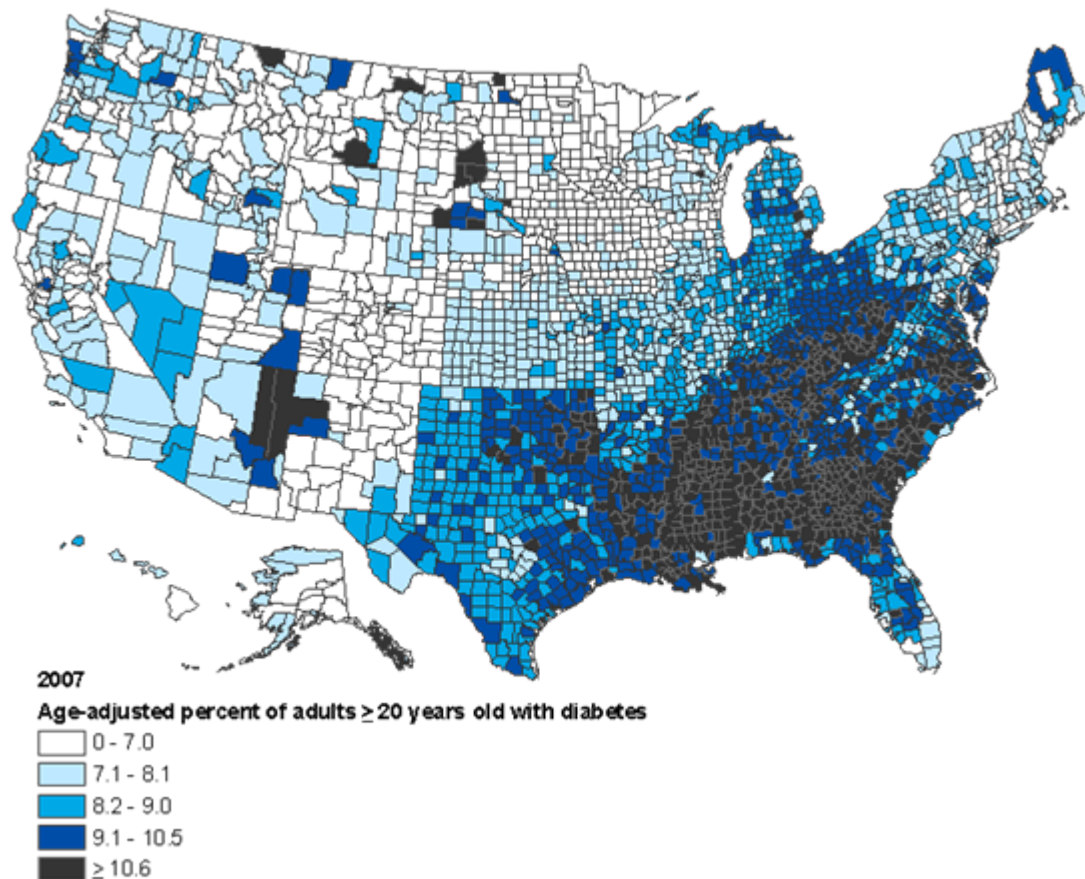
- 6<sup>th</sup> leading cause of death in US
- 70,000 annual deaths
- 23.6 million Americans
- 8% of population
- Age prevalence (over 60, 23.6%)
- Geographical prevalence (SE and Appalachian)



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## Age-adjusted percentage of adults aged $\geq 20$ years with diagnosed diabetes, 2007



MMWR 58:1259-1263, 2009

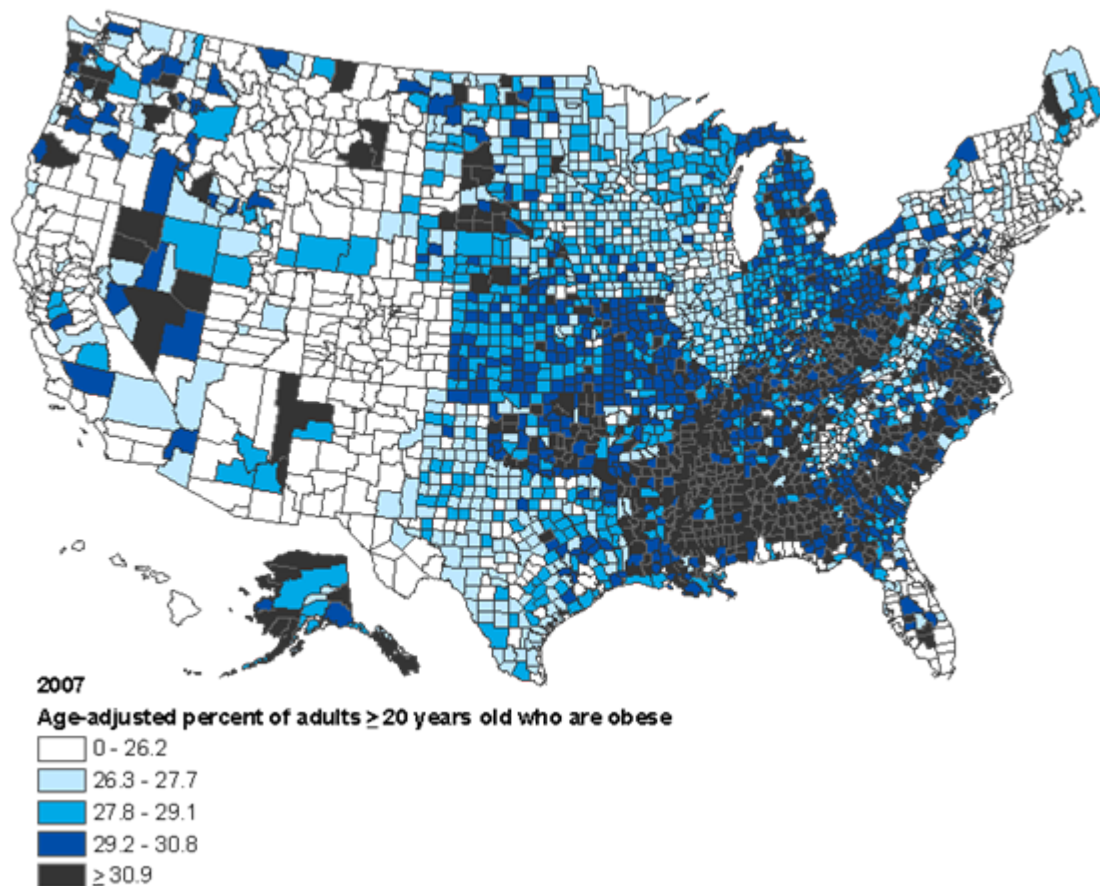


CDC's Division of Diabetes Translation. National Diabetes Surveillance System available at <http://www.cdc.gov/diabetes/statistics>





## Age-adjusted percentage of adults aged $\geq 20$ years who are obese, 2007



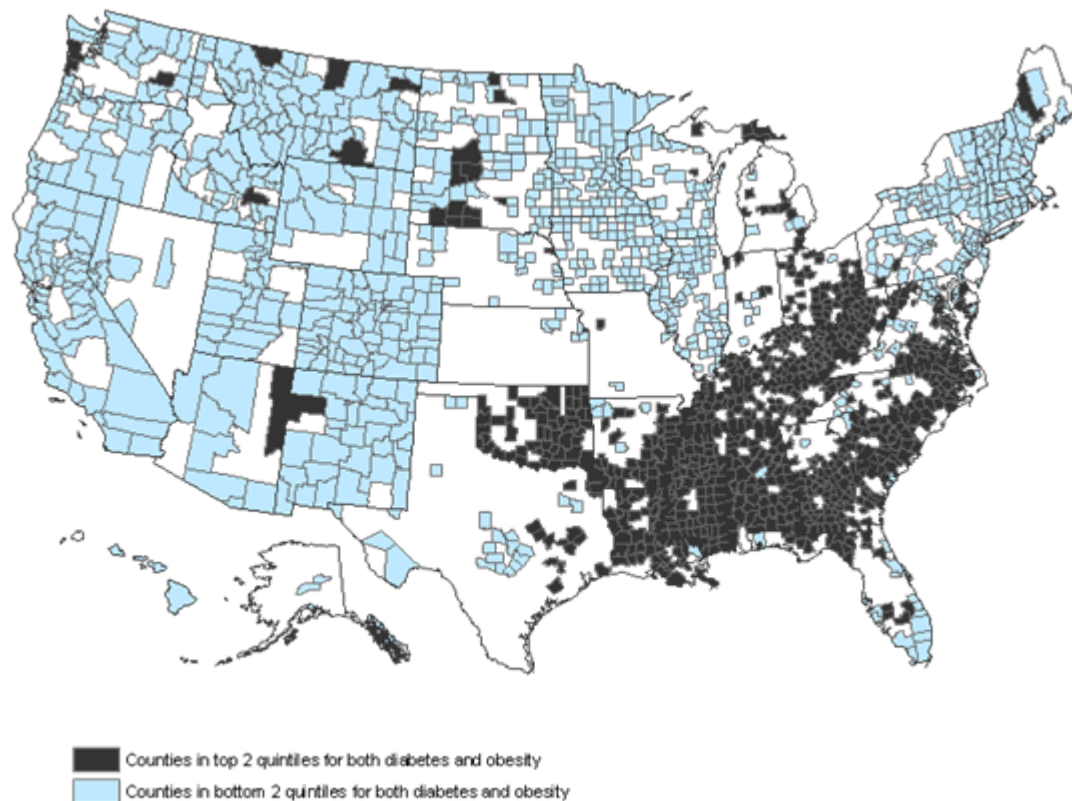
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## Counties in the top and bottom two quintiles of both diabetes and obesity, 2007



MMWR 58:1259-1263, 2009



CDC's Division of Diabetes Translation. National Diabetes Surveillance System available at <http://www.cdc.gov/diabetes/statistics>



# Diabetes & Hospitalization

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- 16.9 million days of hospitalization in 2002
- 24.3 million days of hospitalization in 2007
- \$1,853 – 2,281 average cost of hospital inpatient costs due to diabetes

(Source: Diabetes Prevalence by Danaei et al)



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# Diabetes Healthcare Costs

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27 billion for direct diabetic care  
+ 58 billion for chronic complications  
+ 31 billion for excess general medical costs  
= 116 billion direct costs in 2007

(Source: Diabetes Prevalence by Danaei et al)



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PHOTO: JUPITERIMAGES

# Costs of Diabetes

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- \$174 – 200 Billion per year for treatment
- 1 of every 5 health care dollars is spent on diabetics
- 2.3 times the cost of treating non-diabetics
- Productivity loss of 6.6% (14 days/year) attributed to diabetes alone

(Source: American Diabetes Association Statement 2008)



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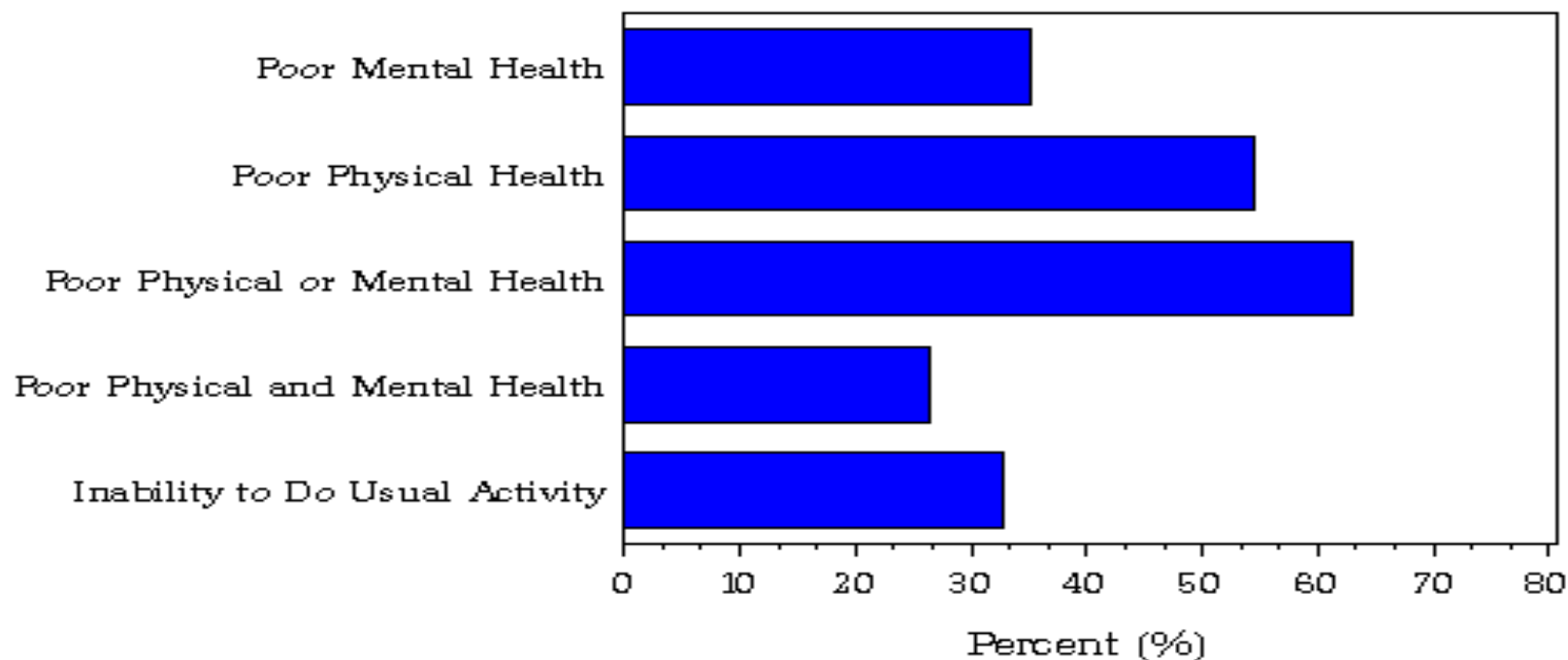


# People With Diabetes Report

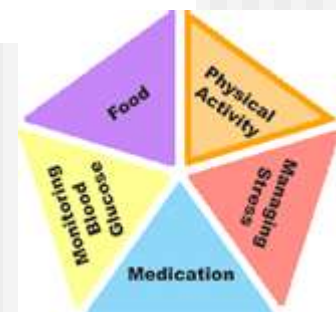
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# Stuart Colburn

DOWNNS • STANFORD, P.C.

ATTORNEYS AND COUNSELORS

DALLAS & AUSTIN

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