

ACA Consumer Advocacy

**State of the States**

**Update**

with

Charles Gaba

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## ACASignups.net

*Healthcare policy, data analysis & snark.*



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# Major State-Level Healthcare Policy Areas

- **Medicaid Expansion**
  - **Including Postpartum Extension**
- **Medicaid Unwinding**
- **Abortion/Reproductive Rights (Attacks & Defenses)**
  - **Including Transgender Attacks/Defenses**
- **ACA-related & Other Healthcare Policy/Legislation**

# Medicaid Expansion



# Medicaid Expansion

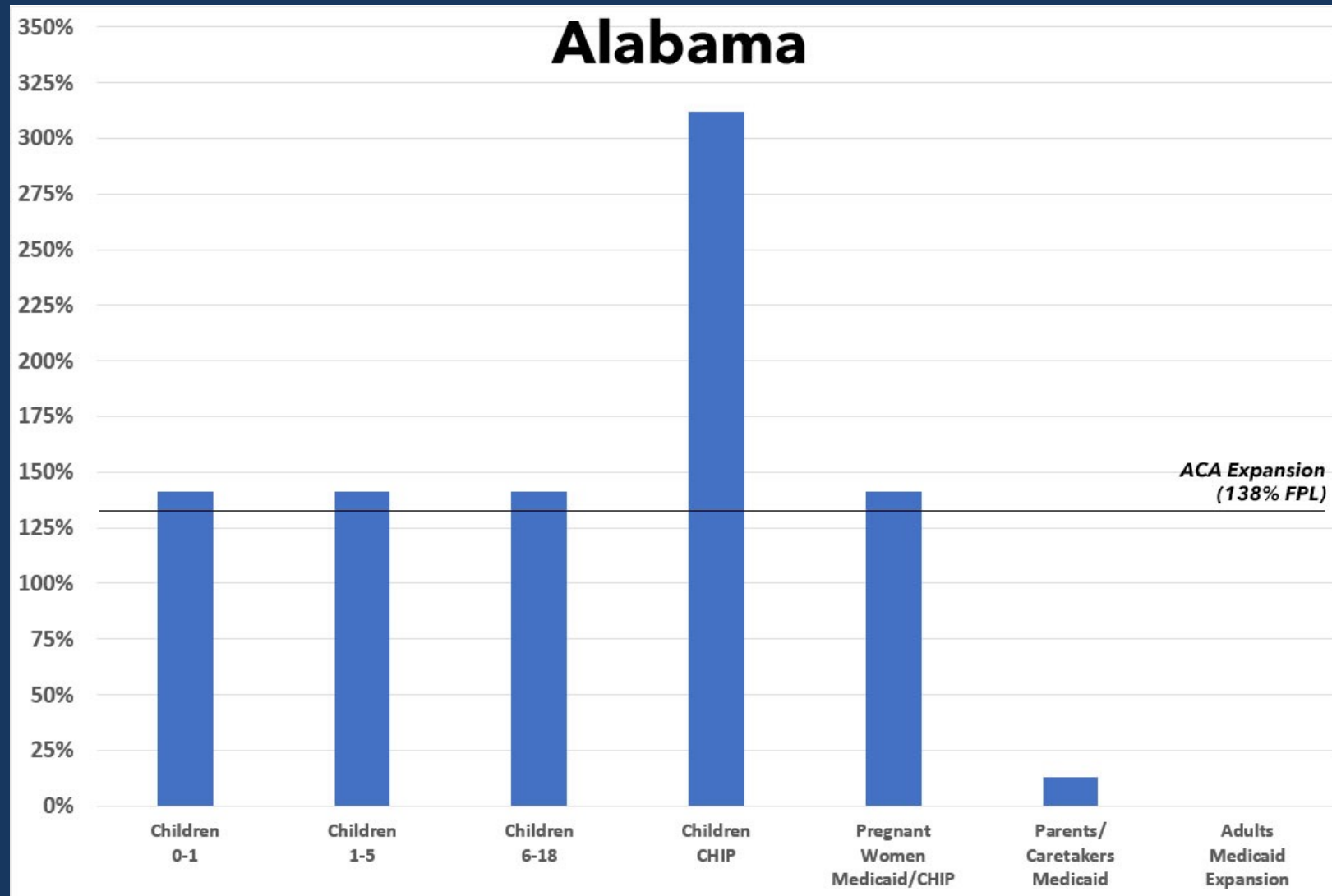
- Under the ACA, states can opt to expand Medicaid coverage to all residents earning up to 138% FPL (~\$20.1K/yr single; \$41.4K family of four)
- As of now, 40 states +DC have expanded; 12 haven't.
- **South Dakota** voters expanded Medicaid via ballot initiative in 2022
  - Effective July 1<sup>st</sup> for up to 52K residents
- **North Carolina** expanded Medicaid via legislature earlier this year
  - Effective when budget is passed (Jan 1<sup>st</sup> or sooner?) for up to 600K residents
- **Wisconsin**: Special case; *partly* expanded traditional Medicaid up to 100% FPL. ~23K residents could still gain coverage via expansion

# Medicaid Expansion

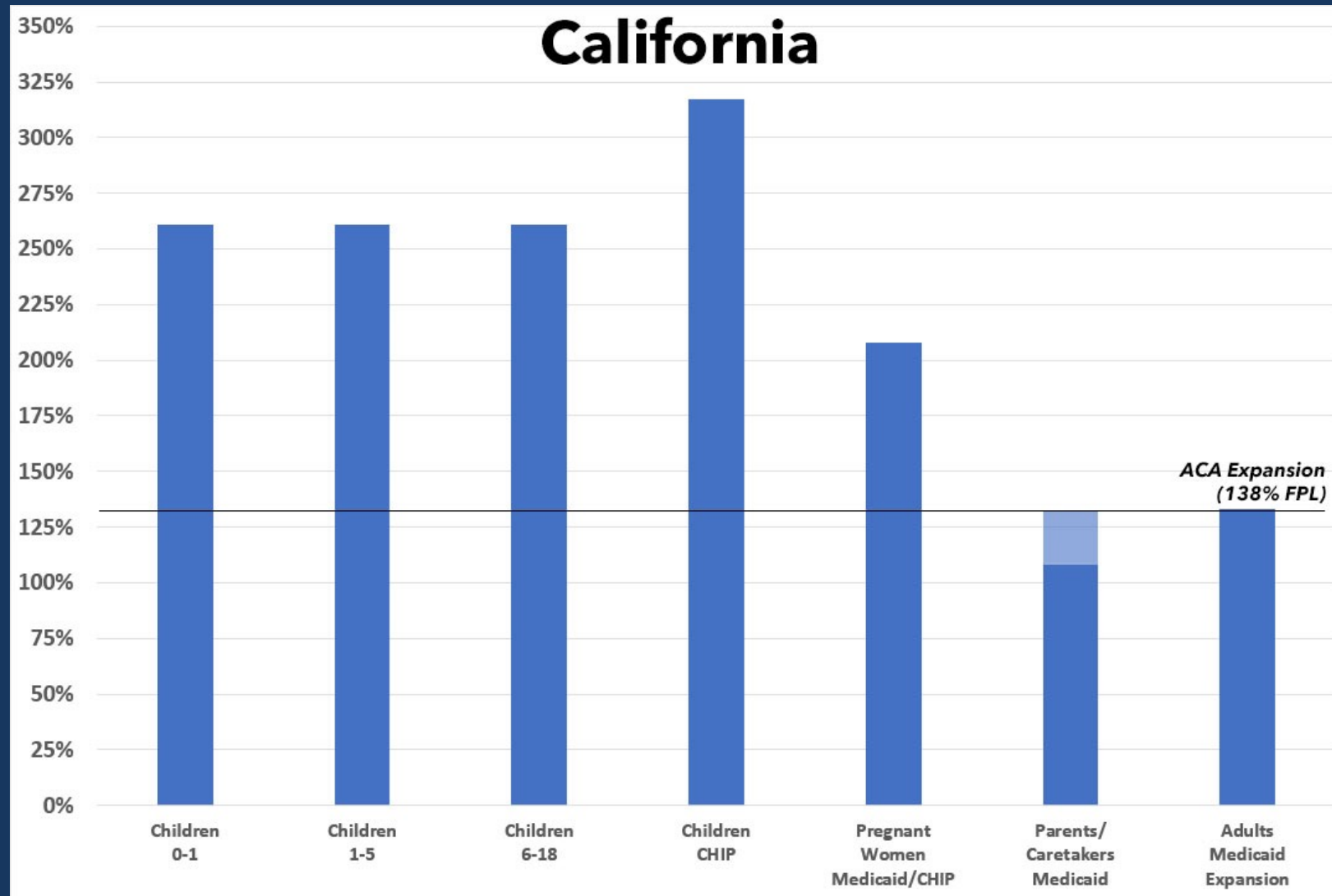
Multiple categories of income-based Medicaid/CHIP eligibility:

- Newborns up to 1 yr old
- Children age 1 – 5
- Children age 5 – 18 (19 in some states)
- Pregnant women
- Parents/caretakers of children up to 18
- Other Adults (“able-bodied” w/out minor children)
  - *aka ACA Medicaid expansion population*
- Income eligibility threshold varies widely by category & state

# Medicaid/CHIP Eligibility by income level



# Medicaid/CHIP Eligibility by income level

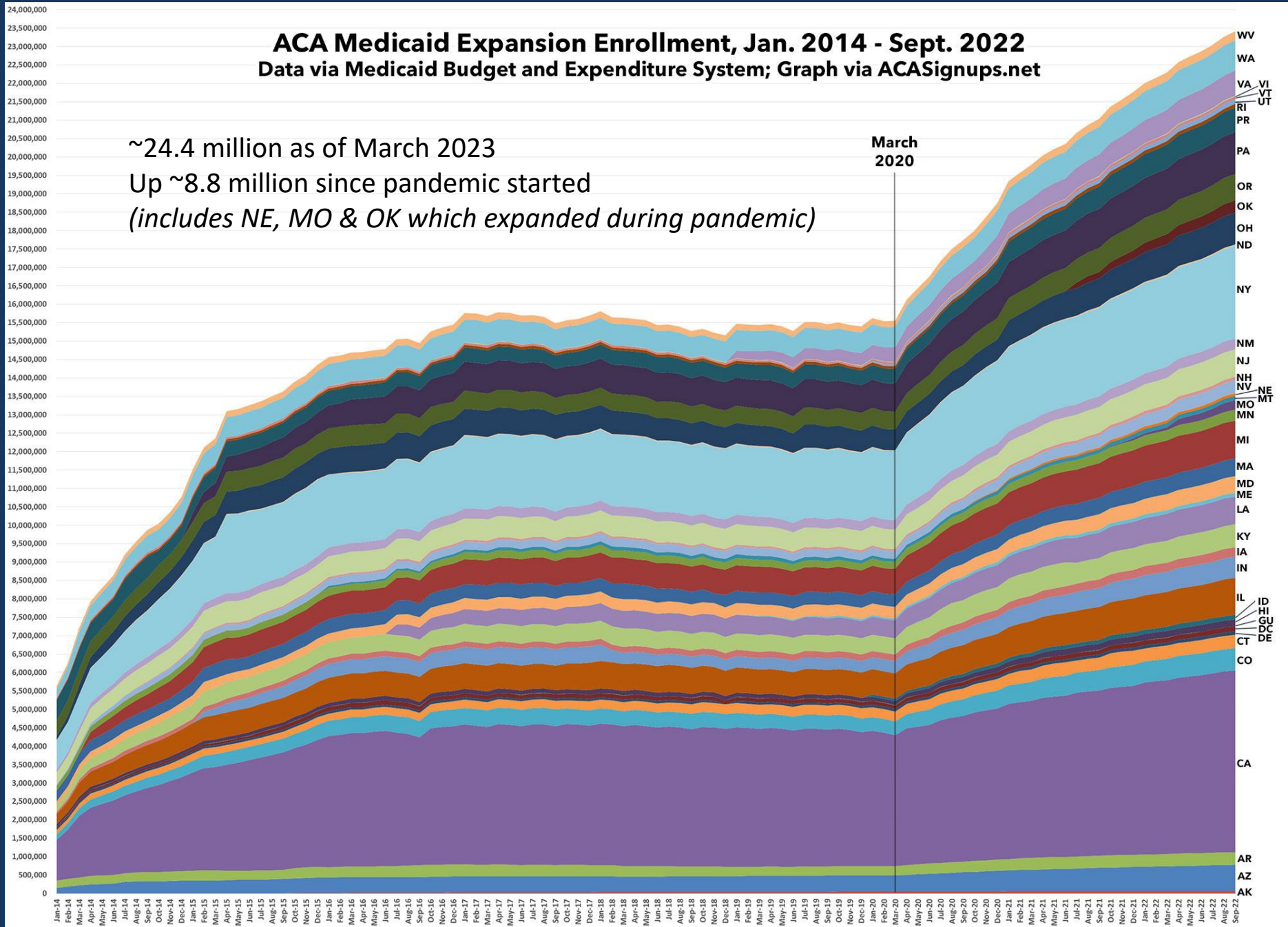




# ACA Medicaid Expansion Enrollment, Jan. 2014 - Sept. 2022

Data via Medicaid Budget and Expenditure System; Graph via ACASignups.net

~24.4 million as of March 2023  
Up ~8.8 million since pandemic started  
(includes NE, MO & OK which expanded during pandemic)





# Non-Expansion States

State	Total	Caught in "Medicaid Gap" (<100% FPL)	May Be Eligible for \$0/Low-Premium Marketplace Coverage (100%-138% FPL)
Alabama	219,000	128,000	91,000
Florida	726,000	388,000	338,000
Georgia	434,000	252,000	182,000
Kansas	82,000	44,000	37,000
Mississippi	147,000	88,000	60,000
South Carolina	166,000	94,000	72,000
Tennessee	218,000	124,000	94,000
Texas	1,435,000	772,000	663,000
Wisconsin	23,000	0	23,000
Wyoming	20,000	10,000	9,000
<b>Total</b>	<b>3,470,000</b>	<b>1,901,000</b>	<b>1,569,000</b>

*Kaiser Family Foundation: How Many Uninsured Are in the Coverage Gap and How Many Could be Eligible if All States Adopted the Medicaid Expansion?*

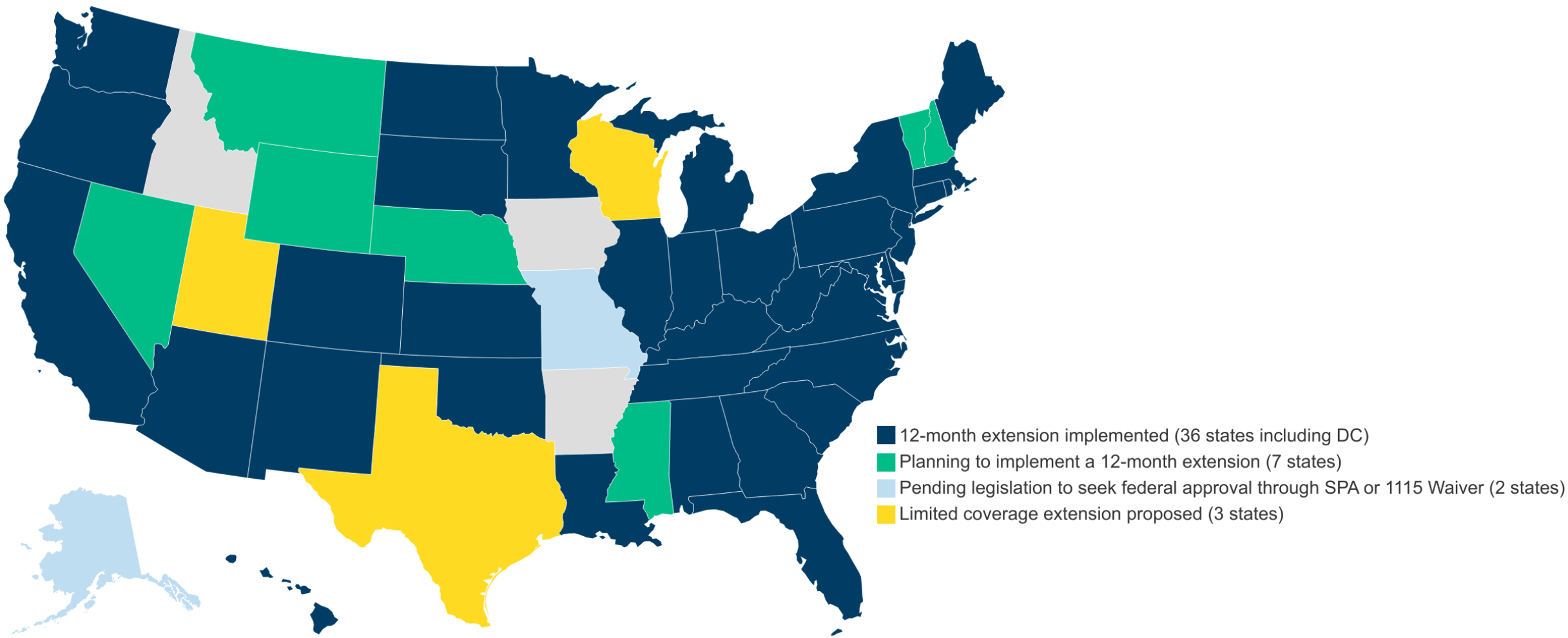
# Medicaid Expansion Organizations

- Cover Alabama
- Health Care for Florida
- Florida Health Justice Project
- Cover Georgia
- Alliance for a Healthy Kansas
- Tennessee Justice Center
- Cover Texas Now!
- Healthy Wyoming
- Southerners for Medicaid Expansion
- Doctors for America (*disclosure: I'm on the DFA board*)
- Many others!

# Postpartum Medicaid Expansion

- **Medicaid finances ~40% of all births in the U.S.**
- Federal law requires states to provide **pregnancy-related Medicaid/CHIP coverage through 60 days postpartum.**
- To help improve maternal health and coverage stability and to help address racial disparities in maternal health, a provision in the **American Rescue Plan Act** of 2021 **gives states a new option to extend Medicaid postpartum coverage to 12 months** via a state plan amendment (SPA).
- This new option **took effect on April 1, 2022** and is available to states for five years. The Centers for Medicare and Medicaid Services (CMS) released guidance on December 7, 2021 on how states can implement this new option
- As of June 22, 2023, **35 states + DC** have implemented the 12-month postpartum Medicaid/CHIP program, providing **an additional 10 months of coverage for up to 509,000 Americans/year**
- If every state implemented the program, **up to 720,000 Americans/year** would benefit

# Postpartum Medicaid Expansion



SOURCE: KFF analysis of approved and pending 1115 waivers, state plan amendments, and state legislation, as of June 22, 2023.



# Postpartum Medicaid Expansion

- **Implemented by:** AL, AZ, CA, CO, CT, DE, DC, FL, GA, HI, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, NJ, NM, NY, NC, ND, OH, , OK, OR, PA, RI, SC, SD, TN, VA, WA, WV & WI
- **ALASKA:** Legislation awaiting governor's signature
- **ILLINOIS:** Also received approval to extend CHIP coverage to postpartum mothers not eligible for Medicaid due to immigration status
- **MISSISSIPPI:** Planning on implementing postpartum expansion but no legislation yet
- **MISSOURI:** Legislation awaiting governor's signature
- **MONTANA:** Planning on implementing postpartum but no legislation yet
- **TEXAS:** Proposing extension to women who suffer miscarriages/stillbirths +6 months postpartum w/continuous coverage
- **UTAH:** Proposing coverage to women whose pregnancy ends in birth, miscarriage, stillbirth, or abortion due to rape, incest, or life endangerment.
- **UTAH & WYOMING:** Proposals would include continuous coverage during postpartum period
- **WISCONSIN:** Proposing limited extension to 90 days only
- **NO EXTENSION PLANNED/PROPOSED YET: ARKANSAS, IDAHO, IOWA**

# Georgia "Pathways to Coverage" Program w/Work Requirements

- Trump Admin tried to redefine Medicaid by approving a slew of Section 1115 waivers from numerous GOP-controlled states attempting to add work & reporting requirements for Medicaid eligibility
- Various state & federal courts struck down most of these, & the Biden Admin rescinded approval of work requirement waivers in 2021; SCOTUS dismissed pending appeals by those states
- One waiver **was** approved by the courts: Georgia's "Pathways to Coverage" which includes a **partial** expansion of Medicaid coverage **through 100% FPL**...but which includes work/reporting requirements as well as premiums for those deemed eligible
- **"Pathways" program is set to launch on July 1<sup>st</sup>, 2023:**
  - Work requirement will apply to enrollees < 65 w/"good cause exceptions"
  - Exceptions include those w/family emergencies
  - Supposed to include "reasonable accommodations" to help those w/disabilities to meet the requirement
  - State estimates it will only cover ~64K of the ~250K+ caught in the Medicaid Gap



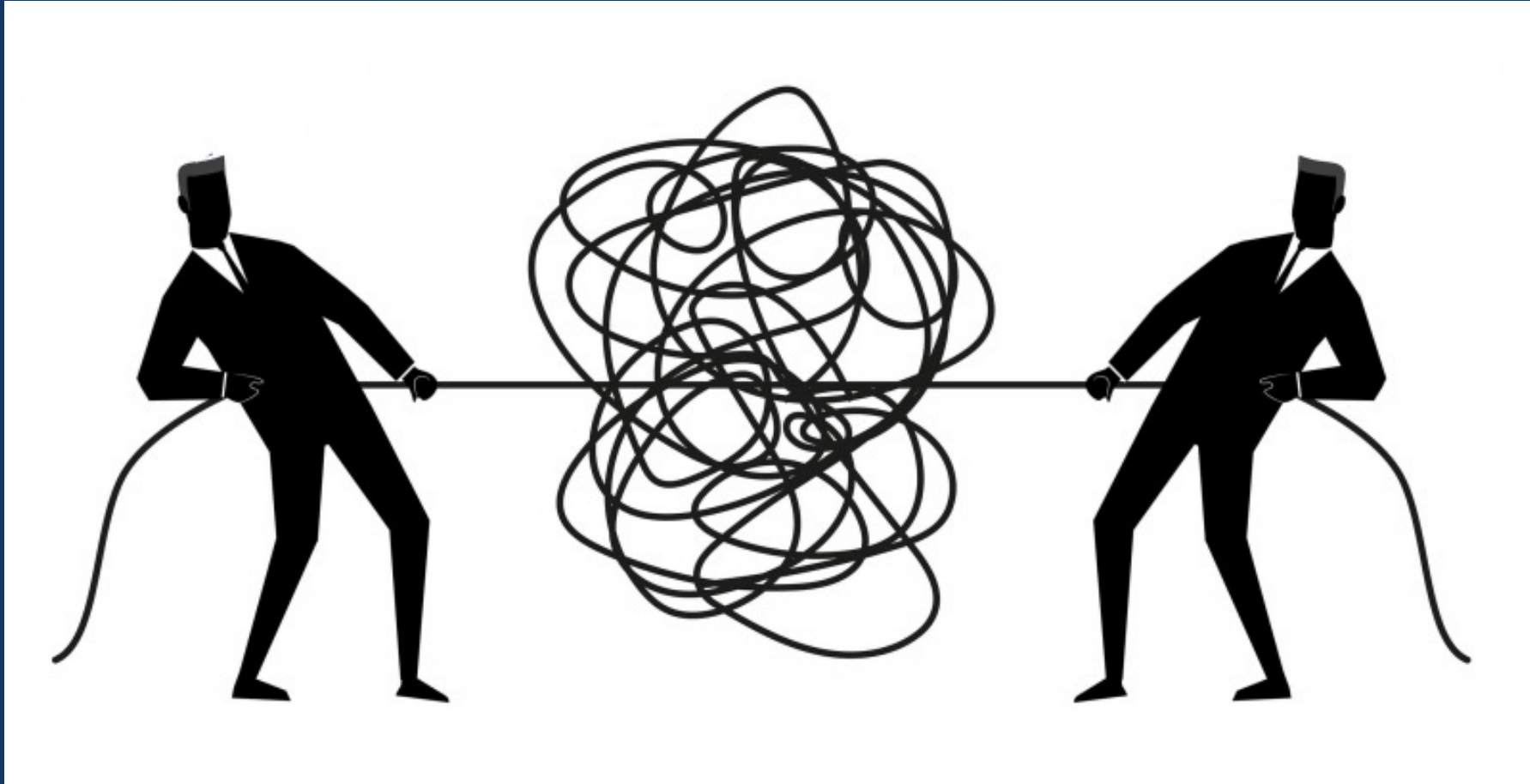
# Georgia "Pathways to Coverage" Program w/Work Requirements

- Expands eligibility to **parents 35-100% FPL** and **childless adults 0-100% FPL**; enrollment conditioned on **compliance with work requirements and premiums**
- Enrollees **50-85% FPL** subject to **\$7 monthly premium**; enrollees **85-100% FPL** subject to **\$11 monthly premium**
- Enrollees who miss **3 monthly premiums** in a benefit year (fail to pay each within a 2 month grace period) will face a **90 day suspension** period; if they fail to make at least one payment during this period, they will be **disenrolled**
- For enrollees who self-attest to using **tobacco**: enrollees **50-85% FPL subject to \$3 premium surcharge**; enrollees **85-100% FPL subject to \$5 premium surcharge**
- **80 hour/month work requirement; age exemption for those 65+**
- No retroactive eligibility, no hospital presumptive eligibility
- Enrollees get **Member Rewards Account (MRA)** that deducts copays/premiums & deposits **incentive points** for completing **healthy behavior incentives** (e.g. attending smoking cessation classes, annual well visits, or complying with diabetes prevention/management program). These points are non-monetary credits which beneficiaries may use to access dental services, glasses, contacts, and OTC drugs not covered by Medicaid.
- Only individuals eligible for EPSDT will receive non-emergency medical transportation (NEMT)
- Enrollees also subject to **\$30 charge for each non-emergency use** of the emergency department

# Potential for Medicaid Work Requirements in Other States

- Several other states have indicated they may pursue work requirements, but unlike Georgia, these states have **already adopted Medicaid expansion and would not be adding new coverage.**
- **Arkansas Governor Sarah Huckabee Sanders** directed the state to **submit a new work requirement waiver request** with a proposed effective date of **January 2024.**
- **Iowa and West Virginia** (two states that did not previously pursue work requirement waivers), **proposed state legislation** would direct each state to **seek waivers that include work requirements** and to resubmit such requests periodically until approval.
- **North Carolina** Governor Roy Cooper signed a law that would **direct the state to expand Medicaid** (contingent on appropriations in the biennial budget), and to **seek approval to apply a work requirement to this population if there is ever any indication that the federal government would approve such a waiver.**
- Because these states all propose applying a work requirement to an existing Medicaid population rather than to a new coverage group as in Georgia, **it is unclear if the rationale that the Federal District Court ruling used in Georgia would apply.**
- Biden Administration does not believe work requirements further Medicaid objectives, **a future presidential administration could revisit these waiver provisions.**
- However, any future work requirements approved would likely face legal challenges.

# Medicaid Unwinding



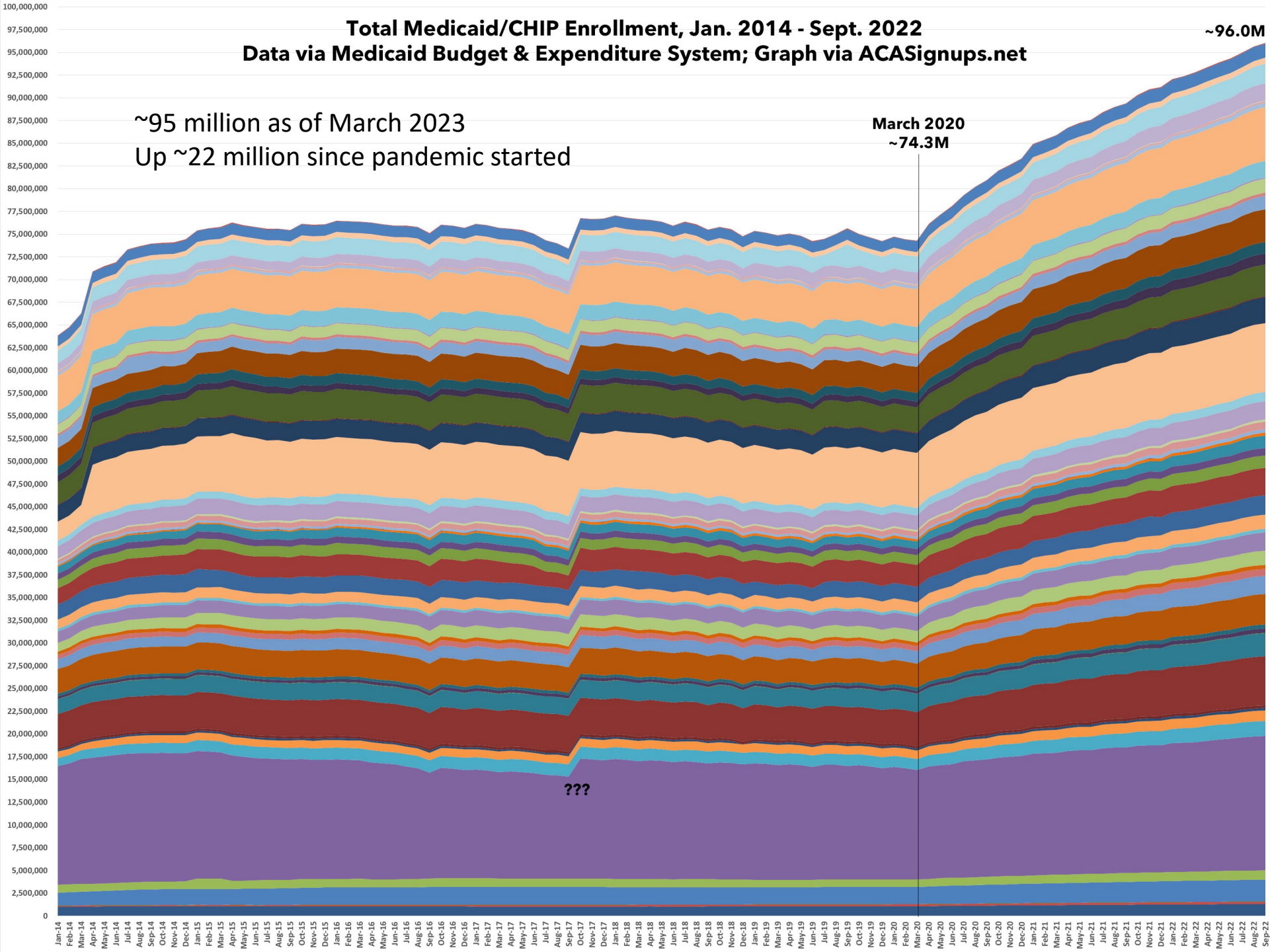
# Total Medicaid/CHIP Enrollment, Jan. 2014 - Sept. 2022

Data via Medicaid Budget & Expenditure System; Graph via ACASignups.net

~96.0M

~95 million as of March 2023  
Up ~22 million since pandemic started

March 2020  
~74.3M



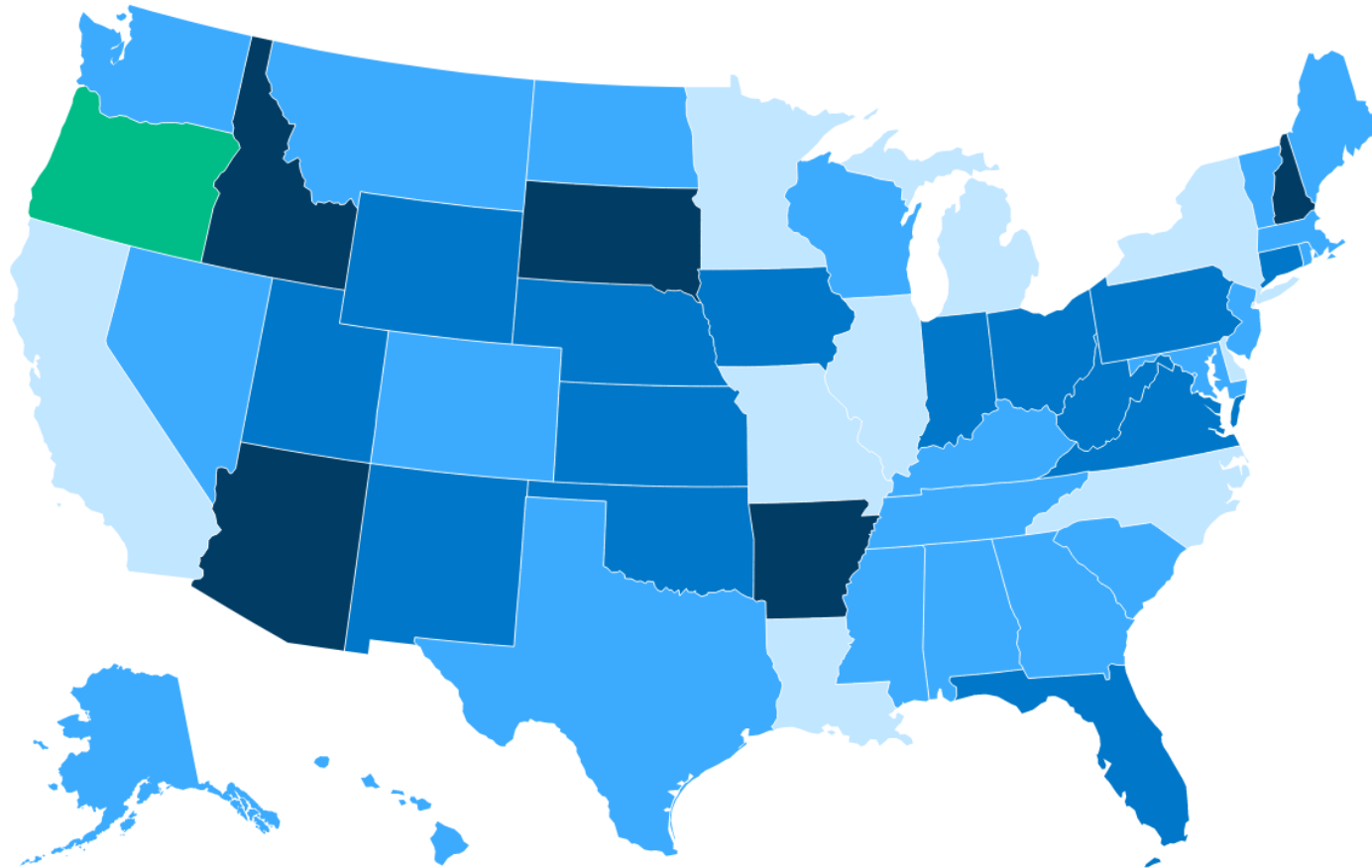
# Medicaid Unwinding

- Normally states “redetermine” Medicaid/CHIP eligibility monthly
- March 2020, Congress passed FFCRA: Increased federal funding but states had to provide continuous coverage for duration of pandemic
- Result: Total Medicaid/CHIP enrollment hits all-time high of ~95M as of March 2023
- For 3 full years, NO redeterminations done in any state
- April 1<sup>st</sup>, 2023: Public Health Emergency (PHE) ends; states could start redetermining eligibility again
- Most states taking 12 - 14 months to complete process
- Some started prepping early, others delaying as long as possible

Figure 3

## Month in Which Medicaid Procedural Disenrollments Are Expected to Begin

■ April (5 States) ■ May (14 States) ■ June (22 States) ■ July (9 States) ■ October (1 State)



SOURCE: "Anticipated 2023 State Timelines for Initiating Unwinding-Related Renewals, as of February 24, 2023," CMS

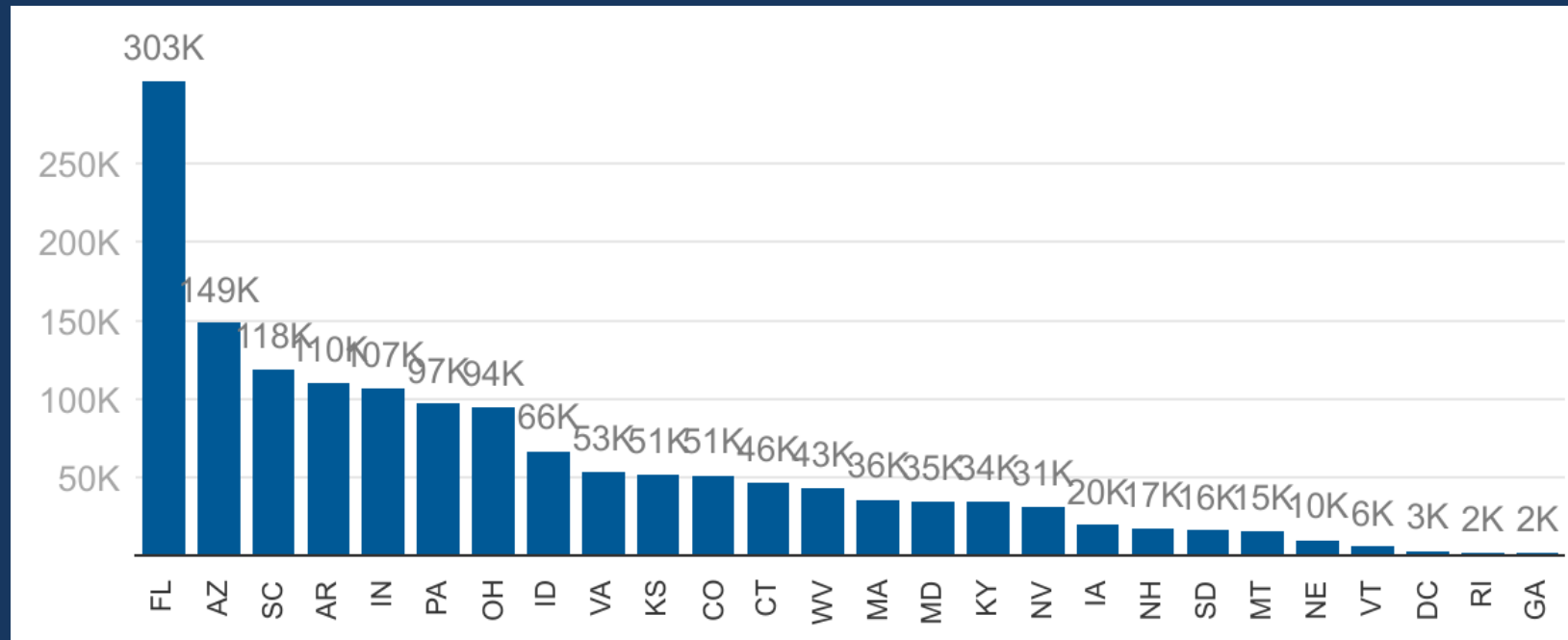
**KFF**

# Medicaid Unwinding

- Kaiser Family Foundation (KFF) estimates between 8 - 24 million will lose Medicaid/CHIP coverage total
- Some states being proactive about outreach/contacting enrollees; others just sending out mailers & leaving it up to enrollees to return by a given deadline
- Many enrollees have moved, not updated addresses, mistaken for junk mail, don't speak English well/at all, etc.

# Medicaid Unwinding

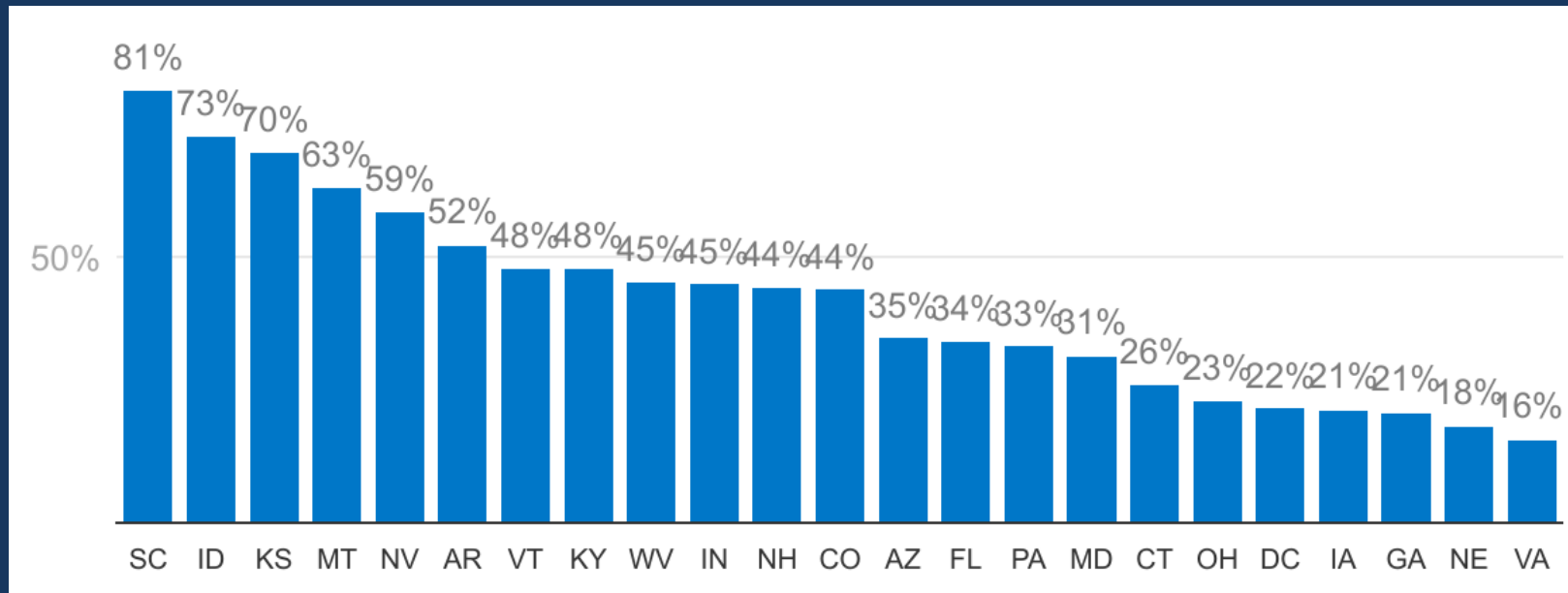
- Over 1.5 million have lost Medicaid/CHIP coverage already
- Likely much higher as this is via only 25 states which have reported in
- Ranges from ~2,000 in Georgia to over 300,000 in Florida





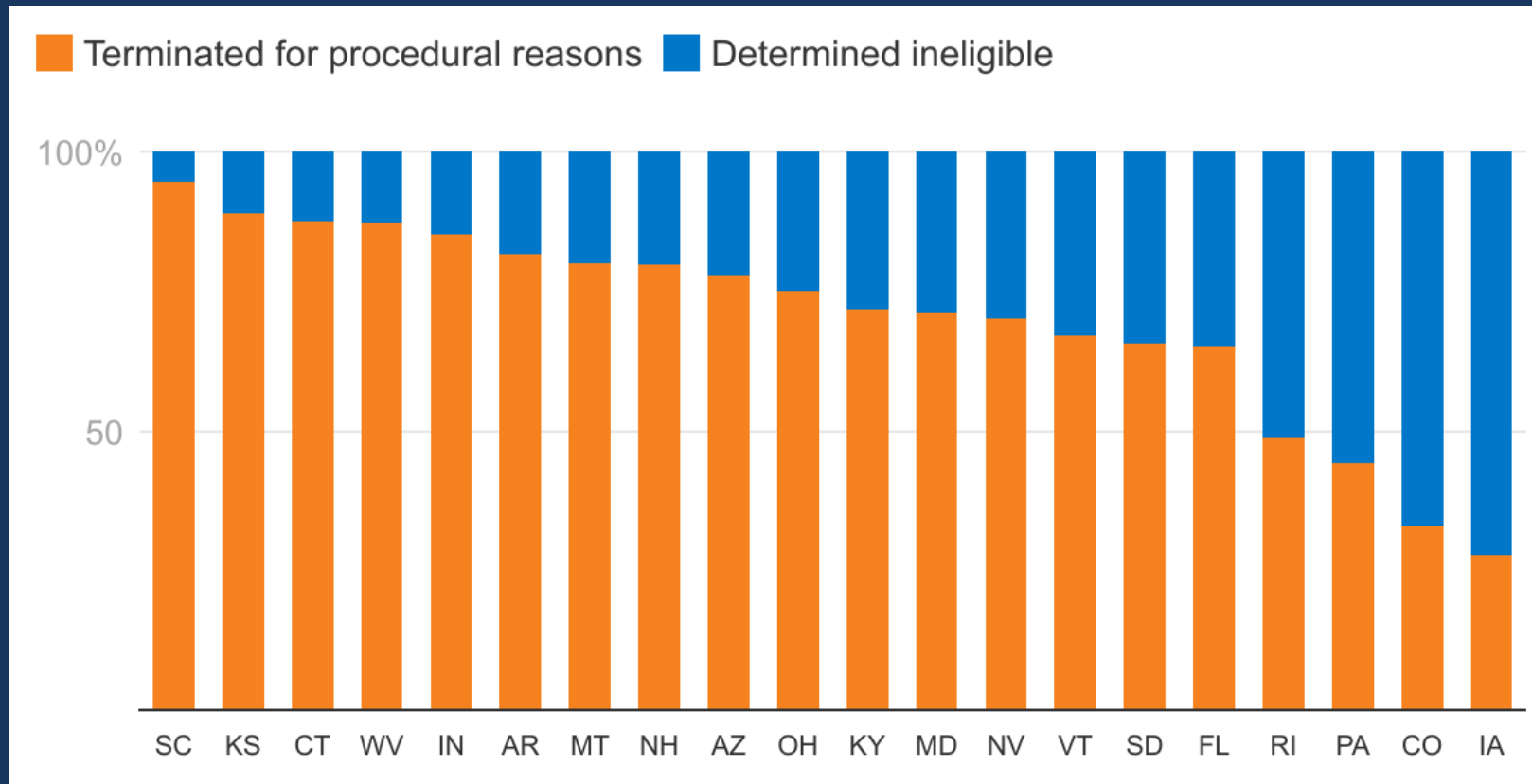
# Medicaid Unwinding

- ~4M reported to have been redetermined so far
- ~1.5M (37%) have lost coverage...but rate varies widely by state
- As low as 16% in Virginia to a whopping 81% in South Carolina



# Medicaid Unwinding

- 73% of coverage losses so far due to **procedural** reasons (red tape, failure to respond to inquiry, etc) as opposed to being actually determined ineligible...**at least 1.1 million nationally**
- Ranges widely from 28% in Iowa to as **nearly all (95%)** in South Carolina



# Medicaid Unwinding – State Actions

- **CONNECTICUT:** Working w/agencies to maximize outreach & streamline efforts to minimize coverage losses
- **MAINE:** Launched Special Enrollment Period via their state-based ACA exchange, CoverME.gov, through the end of July 2024 for anyone found no longer eligible for Medicaid coverage
- **MICHIGAN:** Pushing response date for redetermination info from the end of June to the end of July.
- **NEW JERSEY:** Special Enrollment Period via GetCovered.NJ.gov lasting up to 120 days for those losing coverage (vs. the normal 60 days)
- **NEVADA:** State Division of Welfare & Support Services working w/NVHealthLink to transfer people kicked off of Medicaid to a \$0-premium/low-premium ACA exchange plan.
- **NEW YORK:** Issuing a public warning about scams targeting NY Medicaid enrollees falsely claiming they have pay the scammer to keep their coverage
- **OREGON:** Launching a "Bridge Health Program" aka an ACA Basic Health Plan (BHP) program for those earning < 200% FPL for up to 55,000 of the ~300K expected to lose Medicaid coverage.

# Abortion/Reproductive Rights



# Abortion/Reproductive **Restrictions/Attacks** post-Roe v Wade

Legislation introduced via state legislatures this year according to the Guttmacher Institute (449 total):

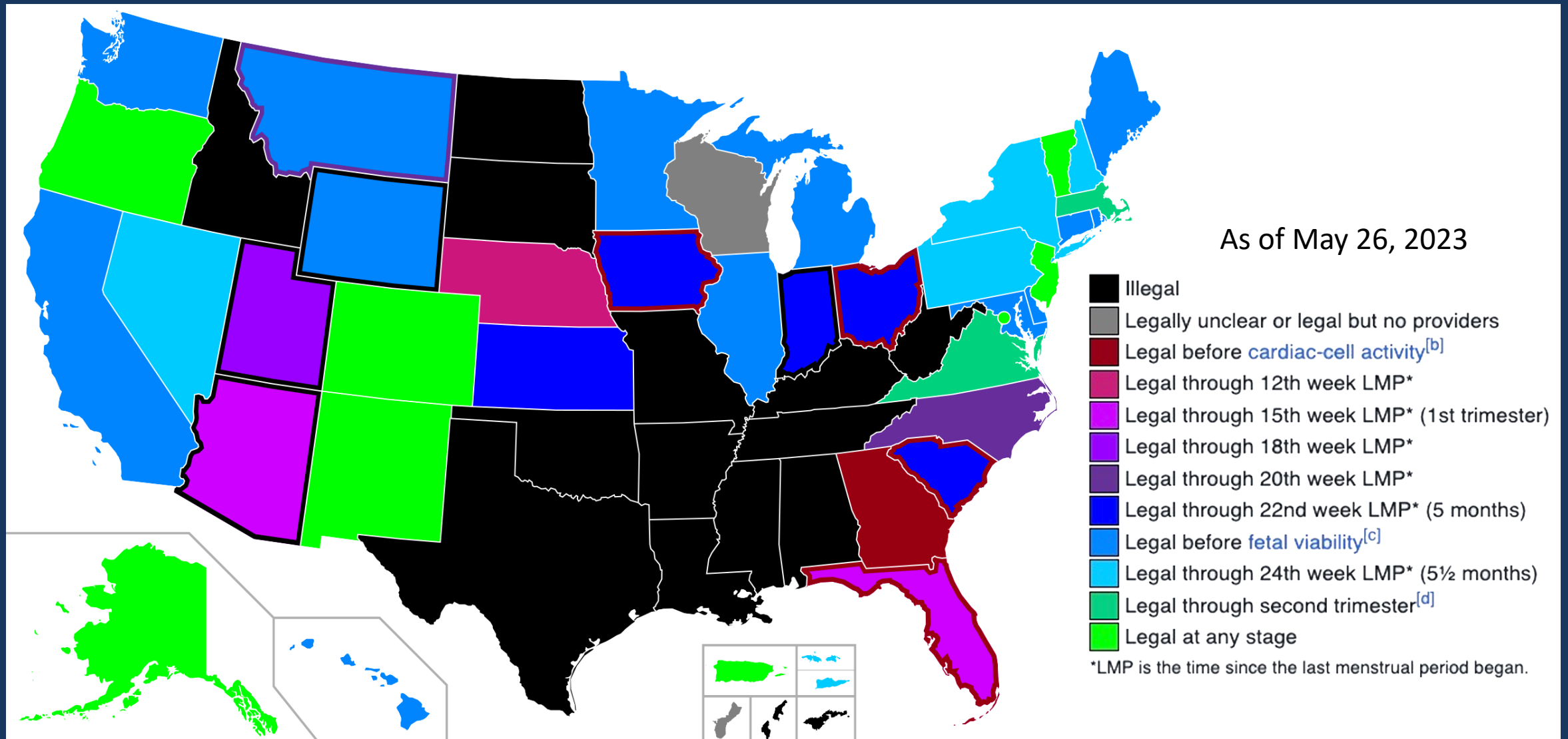
- 29 to ban abortion after 12 weeks
- 7 for genetic anomaly
- 2 for race selection
- 5 for gender selection
- 58 total/near total ban
- 2 via fetal personhood
- 10 to criminalize women/providers
- 18 to ban post-viability
- 3 to ban D&E, most common & safest method after 15 weeks
- 5 to ban late-term aka "partial birth"
- 1 to let provider omit medical info that could lead to abortion
- 7 to regulate clinic access
- 29 to allow/target abortion providers
- 58 to fund anti-abortion so-called "crisis pregnancy centers"
- 18 to allow refusal by medical providers
- 8 to restrict fetal tissue donation/research
- 23 to restrict coverage of abortion via Medicaid
- 10 to restrict coverage of abortion via PRIVATE insurance
- 2 to allow inaccurate information re. abortion & breast cancer
- 4 to allow inaccurate info re. mental health outcomes
- 1 to allow misleading info re. fetal pain
- 8 to allow counseling on medication abortion "reversal"
- 11 to require general "counseling"
- 4 to require providers to post signage re. "coerced" abortions
- 2 to require two trips to get an abortion
- 8 to mandate a waiting period
- 8 to ban the use of medication abortion
- 6 to prohibit telemedicine for medication abortion
- 8 to restrict access to medication abortion
- 1 to prohibit adults from helping minors access abortion
- 5 to require parental consent
- 12 to require parental notice
- 3 to limit abortion training
- 9 to only allow physicians to perform abortions
- 35 to institute requirements for so-called "born alive" infants
- 29 assorted other bills (ultrasounds, fetal heartbeats, etc.)

# Abortion/Reproductive Protections/Expansion post-Roe v Wade

Legislation introduced via state legislatures this year according to the Guttmacher Institute (267 total):

- 24 to *regulate* crisis pregnancy centers
- 2 to allow fetal tissue donation/research
- 22 to expand abortion coverage via Medicaid
- 36 to expand coverage via private plans
- 14 to expand access to abortion training/provision for providers
- 17 to expand access to medication abortion
- 7 to prohibit interference in medical care/decisions
- 2 to protect abortion clinics from violence
- 48 to protect access to legal abortion
- 6 to protect women who self-induce an abortion
- 71 to repeal abortion restrictions
- 18 to strengthen abortion protections in state constitution

# US Abortion Policies and Access Post-Roe v Wade



Via: Wikipedia

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **FLORIDA**

- In April, Gov. Ron DeSantis (R) signed legislation (S 300) that **bans abortion at six weeks of pregnancy, prohibits the mailing of medication abortion pills** and allocates funds to the state's alternatives to abortion program. The ban contains **limited exceptions where the pregnant person's health is endangered**, amends the 15-week ban's **fatal fetal anomaly exception** to allow such abortions until the third trimester and **allows abortion in cases of rape and incest until 15 weeks of pregnancy**. Individuals seeking an abortion under the rape and incest exceptions **must provide legal proof of the crime**, such as a police report or a note from a physician who examined the patient for signs of sexual assault.
- The law also **prohibits using state funds to pay for travel costs** associated with seeking an abortion, with limited health exceptions and where federal law dictates the use of such funds. Under the law, eligibility for the state's alternatives to abortion program, called Pregnancy and Parenting Support Services, is expanded to include anyone who has delivered a child in the past 12 months and to anyone who has adopted a child younger than 3; the bill allocates \$25 million to the program. In addition, the bill allocates \$5 million to family planning services.
- **The provision banning abortion is scheduled to go into effect either upon a ruling from the Florida Supreme Court upholding the 15-week ban, a ruling from the Florida Supreme Court finding that there is no right to abortion in the state constitution or upon voter approval of a ballot initiative declaring there is no right to abortion in the state constitution.** The rest of the bill went into effect upon signing.



# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **IDAHO**

- In January, the Idaho Supreme Court upheld the state's 2020 trigger ban (S 1385) and 2021 **six-week ban (H 366)**, as well as a 2022 law (S 1309) that **allows abortion providers to be sued for damages.**
- **The court found that the state's constitution does not guarantee a right to abortion.**
- **The bans, which have virtually no exceptions, have been in effect since late August.**
- In April, Gov. Brad Little (R) signed legislation (H 374) that **amends an existing ban** by **allowing abortions in cases of rape and incest only in the first trimester.**
- **Clarifies that treating an ectopic pregnancy does not violate the abortion ban.**
- **The law is scheduled to go into effect in July.**

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **NEBRASKA**

- In May, Gov. Jim Pillen (R) signed legislation (L 574) that:
- **Restricts abortion & bans gender-affirming care for people younger than 19.**
- **12-week abortion ban with exceptions for life, rape, incest and physical health**
- **Bans both hormonal and surgical gender-affirming care**
- **Prevents use of public funds for this care for those younger than 19**
- **Abortion ban went into effect upon approval**
- **Gender-affirming care ban is scheduled to go into effect in October.**

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **NORTH CAROLINA**

- In May, the legislature **overrode Gov. Roy Cooper's (D) veto; goes into effect in July.**
- **Bans most abortions at 12 weeks.**
- **Limited exceptions for life and health of the pregnant person**
- **Limited exceptions for rape and incest through 20 weeks of pregnancy**
- **Limited exceptions for fatal fetal anomalies through 24 weeks.**
- **Prohibits the use of medication abortion after 10 weeks**
- **Requires at least two in-person visits before a medication abortion** as well as a third in-person visit after the abortion.
- **Abortion clinics must be inspected annually by the Department of Health**
- **patients must receive medically inaccurate and unnecessary counseling & mandatory ultrasound** prior to their abortion
- **"Born alive" restrictions**
- **Prohibits abortion based on a presumed or confirmed fetal Down syndrome diagnosis**, as well as on the race of the fetus.
- **infant abandonment regulations**

*Via: Guttmacher Institute*

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **NORTH DAKOTA**

- In April, Gov. Doug Burgum (R) signed legislation (S 2150)

- **Near-total abortion ban**

- **Prohibits abortion with narrow exceptions for the life and health of the pregnant person**

- **Exeptions for rape and incest during the first six weeks**

- Amends state's abortion reporting requirements to **include the reason for the abortion** and the **gestational age of the fetus.**

- **Went into effect upon signing**

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **SOUTH CAROLINA**

- In January, **the South Carolina Supreme Court permanently struck down** the state's **six-week abortion ban** (S 1).
- The court declared that **the ban violates the right to privacy** found in the state constitution.
- The ban, enacted in 2021, **was in effect from late June to mid-August 2022**, when the court temporarily blocked enforcement.
- **Since late August, abortion has been legal in South Carolina until 22 weeks of pregnancy.**
  
- **In May, a judge temporarily blocked legislation (S 474) that bans abortion at six weeks:**
- **Includes exceptions for life, severe physical health conditions and fatal fetal anomaly**
- **Includes rape and incest exceptions, up to 12 weeks**
- **Changes definition of contraception** to a drug, device or chemical that prevents ovulation, fertilization and implantation.
- **The law will remain blocked until the South Carolina Supreme Court assesses if the law violates the state's constitution**

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **SOUTH DAKOTA**

- In March, Gov. Kristi Noem (R) signed legislation (S 1220) that **protects a woman who obtained an illegal abortion from being held criminally liable**
- This law is being added to the state's code on **unauthorized abortion**, which **holds abortion providers criminally liable** for performing the procedure.
- **Goes into effect on July 1.**

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **TENNESSEE**

- In April, Gov. Bill Lee (R) signed legislation (H 883) that:
- **Amends the state's abortion ban by outlining protections for abortion providers**
- **Adds ectopic and molar pregnancies as exceptions**
- Previously physicians may have had to **prove in court that an abortion they performed was medically necessary**; this law **removes the option to challenge that judgement**
- **Licensed physicians can perform abortions in a licensed hospital or ambulatory care center under emergency circumstances**, as determined by their medical judgement.

# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **WEST VIRGINIA**
- In March, Gov. Jim Justice (R) signed legislation (H 3199) that:
- **Exempts care for ectopic pregnancies from abortion reporting requirements.**
- **Went into effect upon signing**



# 2023 Total/Near-Total Abortion **Bans/Restrictions**

- **WYOMING**

- In March, legislation (H 152) that **imposes a near-total abortion ban became law** without Gov. Mark Gordon's (R) signature.
- However, a **judge temporarily blocked the ban**, and the **temporary order will remain in effect unless it is dissolved or modified by a court order**.
- **Initially scheduled to take effect in mid-March.**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **CALIFORNIA**
- **November 2022: Voters passed Proposal 1, Right to Reproductive Freedom Amendment by a 2:1 margin**
- **Prohibits the State from denying or interfering with an individual's reproductive freedom** in their most intimate decisions, which includes their **fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives.**
- **Specifies that this constitutional amendment is intended to further the constitutional right of privacy and the constitutional right to not be denied equal protection.**
- **Specifies that nothing contained in the measure narrows or limits the right to privacy or to equal protection.**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **DISTRICT OF COLUMBIA**

- In March, Congress approved legislation (B 808) that **protects reproductive health care providers in the District of Columbia**
- **Prohibits DC from helping interstate investigations into providing or supporting abortions or other reproductive health care**
- **Went into effect upon approval**
- In March, Congress approved legislation (B 830) that **prohibits licensing boards from taking action against clinicians who provide abortion care to residents of states where abortion is banned**
- **Went into effect upon approval**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **HAWAII**

- In March, Gov. Josh Green (D) signed legislation (S 1) that
- **Allows physician assistants and advanced practice registered nurses to provide abortions in the first trimester**
- **Expands the state's "shield laws" to cover patients, providers and support organizations**
- **Reaffirms the state constitutional right to reproductive autonomy and choice**
- **Went into effect upon signing**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **ILLINOIS**

- In January, Gov. J.B. Pritzker (D) signed an omnibus bill into law that:
- **Expands abortion rights and access in the state**
- **Establishes legal protections for reproductive health and gender-affirming health care**
- **Bars the state from assisting another state in prosecuting a person** for the provision of these services in Illinois
- **Protects the licenses of individuals who provide reproductive and gender-affirming care**
- **Advanced practice nurses and physician assistants are also authorized to provide abortion care**
- **Establishes a program for abortion training for them**
- **Clarifies that medication abortion is included in the abortion coverage requirement for health plans**
- **Requires health plans to cover hormonal therapy & HIV pre- and postexposure prophylaxis without cost-sharing, restrictions or delays**
- **Went into effect upon signing**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **MARYLAND**

- In May, Gov. Wes Moore (D) signed legislation (H 705) that:
  - **Proposes a constitutional amendment under the Maryland Declaration of Rights**
  - **Amendment would state that every person has the fundamental right to reproductive freedom, including abortion.**
  - **Amendment will be proposed to voters in the November 2024 general election**
- In May, Gov. Wes Moore (D) signed legislation (H 812) that:
  - **Provides additional privacy protections on patients' medical records** to reduce the risk of criminal prosecution for out-of-state patients seeking reproductive care in Maryland
- **Went into effect in June**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **MICHIGAN**

- In April, Gov. Gretchen Whitmer (D) signed legislation (H 4006) that:
  - **Repeals the state's pre-Roe ban. The ban was a total abortion ban, with an exception for the life of the pregnant person.**
  - **Went into effect upon signing.**
- In May, Gov. Gretchen Whitmer (D) signed legislation (S 147) that:
  - **Amends the state's civil rights act to prohibit discrimination on the basis of gender identity, gender expression, sexual orientation or an individual's abortion history**
  - **Goes into effect in March 2024**
- This is in addition to **last fall's passage of Proposal 3 by 14 points**, which established new **individual right to reproductive freedom**, including **right to make and carry out all decisions about pregnancy**, such as **prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility**; allow state to regulate abortion after fetal viability, **but not prohibit if medically needed to protect a patient's life or physical or mental health**; forbids state discrimination in enforcement of this right; **prohibit prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by this amendment**; & invalidated state laws conflicting with this amendment.

*Via: Guttmacher Institute*

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **MINNESOTA**

- In January, Gov. Tim Walz (D) signed legislation (H 1) that:

- **Establishes a legal right to reproductive health care, including abortion**, contraception, sterilization, pregnancy and fertility services.

- **Went into effect in February**

- In April, Gov. Tim Walz (D) signed legislation (H 366) that:

- **Allows physicians to perform reproductive health care services via telehealth** for patients in states hostile to abortion.

- **Protects physicians' licenses if they perform abortions for out-of-state patients** & protects the patients' health information

- **Went into effect in April**

- In May, Gov. Tim Walz (D) signed legislation (S 2995) that:

- **Expanded access to abortion and contraceptive services**

- **Amended existing legislation to allow abortions to be performed at birth centers**; it also expands and extends the provision of audio-only telehealth services in the state until a sunset date of July 2025.

- Mandates that primary care providers provide **comprehensive / accurate information** on all contraceptive options & that hospitals are reimbursed for providing long-acting reversible contraception immediately postpartum **& much more; goes into effect in January**

*Via: Guttmacher Institute*



# 2023 Abortion/Reproductive Care Protection/Expansion

- **NEVADA**

- In May, the Nevada legislature approved a **ballot measure (SJR 7) that would:**
- **Amend the state constitution to include a right to reproductive freedom**
- **The measure would guarantee the right of individuals to make decisions regarding their pregnancy, including the right to have an abortion, the right to use contraception and the right to be sterilized**
- **The state would maintain its ability to regulate abortion after viability**
- **Prevents the state from penalizing patients, providers and individuals** who assist in providing or helping people obtain reproductive care
- **The measure will appear on the state ballot in November 2024**
- **Note:** *This sounds very similar to the amendment Michigan passed last fall.*

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **NEW MEXICO**

- In April, Gov. Michelle Lujan Grisham (D) signed legislation (S 13) that:
  - **Protects gender-affirming and reproductive care for patients, providers and organizations that support this care**
  - **Prohibits the release of protected health care information**
  - **Protects these three groups from foreign subpoenas and litigation**
- **Went into effect in June**
  
- In March, Gov. Michelle Lujan Grisham (D) signed legislation (H 7) that:
  - **Protects a person's right to receive an abortion and gender-affirming care**
  - **Prohibits discrimination based on their reproductive and gender-based health care decisions**
- **Went into effect in June**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **NEW YORK**

- In March, Gov. Kathy Hochul (D) signed legislation (S 1351) that:
- **Extends the law barring state agencies from participating in investigations** by other states on New York abortion providers
- **Extends these protections to patients obtaining and seeking an abortion** and any **individuals providing abortion assistance**
- **Went into effect upon signing**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **RHODE ISLAND**
- In May, Gov. Daniel McKee (D) signed legislation (S 32) that:
- **Expands insurance coverage of abortion**
- **Repeals the provision that barred state employee health plans from covering abortion**
- **Requires abortion coverage for those on Medicaid**
- **Went into effect upon signing**

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **VERMONT**

- In May, Gov. Phil Scott (R) signed legislation (S 37 & H 89) that:
- **Protects access to reproductive and gender-affirming care**
- **Prevents providers from facing professional consequences** as a result of providing these types of care
- **Creates privacy protections for health care-related data**
- **Private and public insurance plans must cover gender-affirming care and abortion without cost-sharing**
- **Anti-abortion centers are prohibited** from advertising services they do not provide & from misleading advertising
- **Pharmacists are allowed to prescribe, order and administer emergency contraception**
- **Prohibits the enforcement of out-of-state judgements or actions targeting patients, providers, support organizations**
- **Protects access to clinics providing this care by banning individuals from interfering with**, injuring or intimidating people who obtain or provide these types of care
- **Some provisions went into effect upon signing; others go into effect in September or January**
- **Vermont also passed Proposal 5 by over 50 points in 2022, which guaranteed the right to personal reproductive freedom (including abortion)**

*Via: Guttmacher Institute*

# 2023 Abortion/Reproductive Care **Protection/Expansion**

- **WASHINGTON**

- In April, Gov. Jay Inslee (D) signed legislation (S 5242) that:

- **Prohibits cost-sharing for abortion for both private and state employee plans**

- **Went into effect in June**

- In April, Gov. Jay Inslee (D) signed legislation (H 1340) that:

- **Protects providers of reproductive health care and gender-affirming health care**

- **Acts as a shield law to prevent providers from being held civilly or criminally responsible for providing this care**

- **Went into effect upon signing**

- In April, Gov. Jay Inslee (D) signed legislation (H 1469) that:

- **Prevents the state government and businesses from cooperating with out-of-state investigations** into reproductive health care

- **Protects patients who receive these protected services, including gender-affirming care**

- **Went into effect upon signing**

*Via: Guttmacher Institute*

# 2023 Transgender **Attacks**/Protections

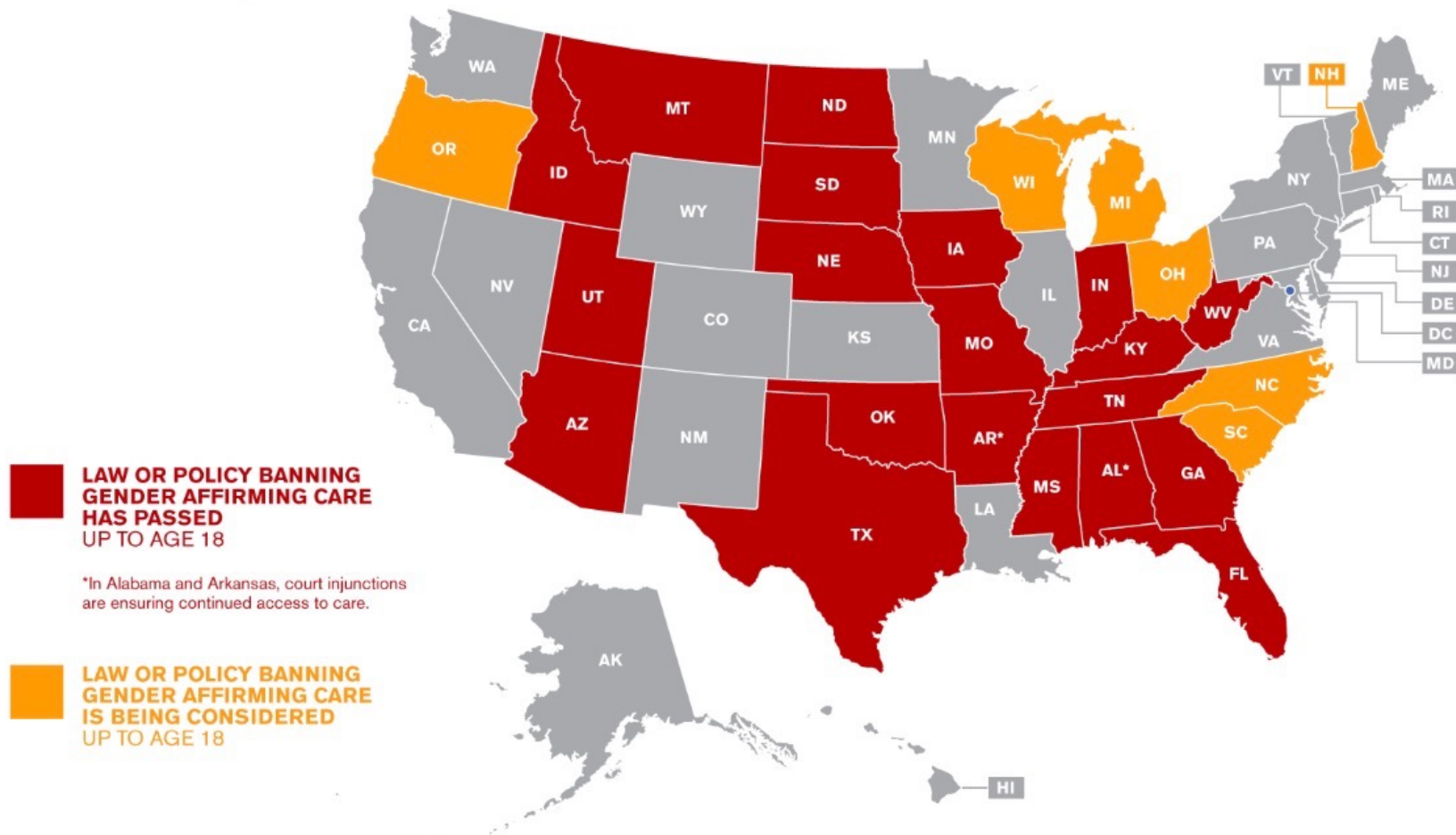
- As reported by The Williams Institute (in “How Many Adults and Youth Identify as Transgender in the United States?”), there are **more than 300,000 high school-aged (ages 13-17) transgender youth in the United States today**, many who need gender affirming care.
- **Many trans youth (44.1%, or 132,300) live in states in which transgender youth have lost access to, or are at risk of losing access to, gender-affirming care**, because of discriminatory laws and policies.
- **Three in ten (30.9% or 92,700 total) trans youth aged 13-17 live in states that have passed bans on gender affirming care**
- **An additional 13.2% (39,600 total) trans youth are living in states that are considering bills and policies that will deny more trans kids access** to life saving gender affirming care
- Some states, such as **Oklahoma, Texas, and South Carolina**, have considered banning care for transgender people **up to 26 years of age**.

*Via: Human Rights Campaign*

# 2023 Transgender **Attacks**/Protections



## Gender-Affirming Care Bans Impacting Youth



last updated 06/06/23

Via: Human Rights Campaign



# 2023 Transgender Attacks/Protections

- As of April 2023, **Colorado, Illinois, Maryland, New Mexico** and **Minnesota** have passed bills designed to shield transgender health care through legal protections, health care coverage and access:
- **Colorado:** Democratic Gov. Jared Polis signed a bill into law to ensure people in other states can come to Colorado for an abortion, to begin puberty blockers or to receive gender-affirming care without fear of prosecution. The law also extends legal protections to providers of abortions and gender-affirming care and a separate law expands insurance coverage.
- **Maryland:** Beginning Jan. 1, 2024, the Maryland Trans Equity Act broadens the kind of gender-affirming treatments covered under the state's Medicaid plan, aligning it with care that private insurers offer.
- **Michigan:** Michigan hasn't moved to explicitly protect gender-affirming care in statute. Like some other states, though, it has expanded the state's civil rights to include "sexual orientation" and "gender identity" as protected classes. Dem. Gov. Whitmer, signed a law to add those categories under Michigan's Elliott-Larsen Civil Rights Act, which originally protected religion, race, color, national origin, age, sex, height, weight, familial status, or marital status.
- **Minnesota:** Passed bill that will prevent state courts or officials from complying with child removal requests, extraditions, arrests or subpoenas related to gender-affirming health care that a person receives or provides in Minnesota

# 2023 Transgender Attacks/**Protections**

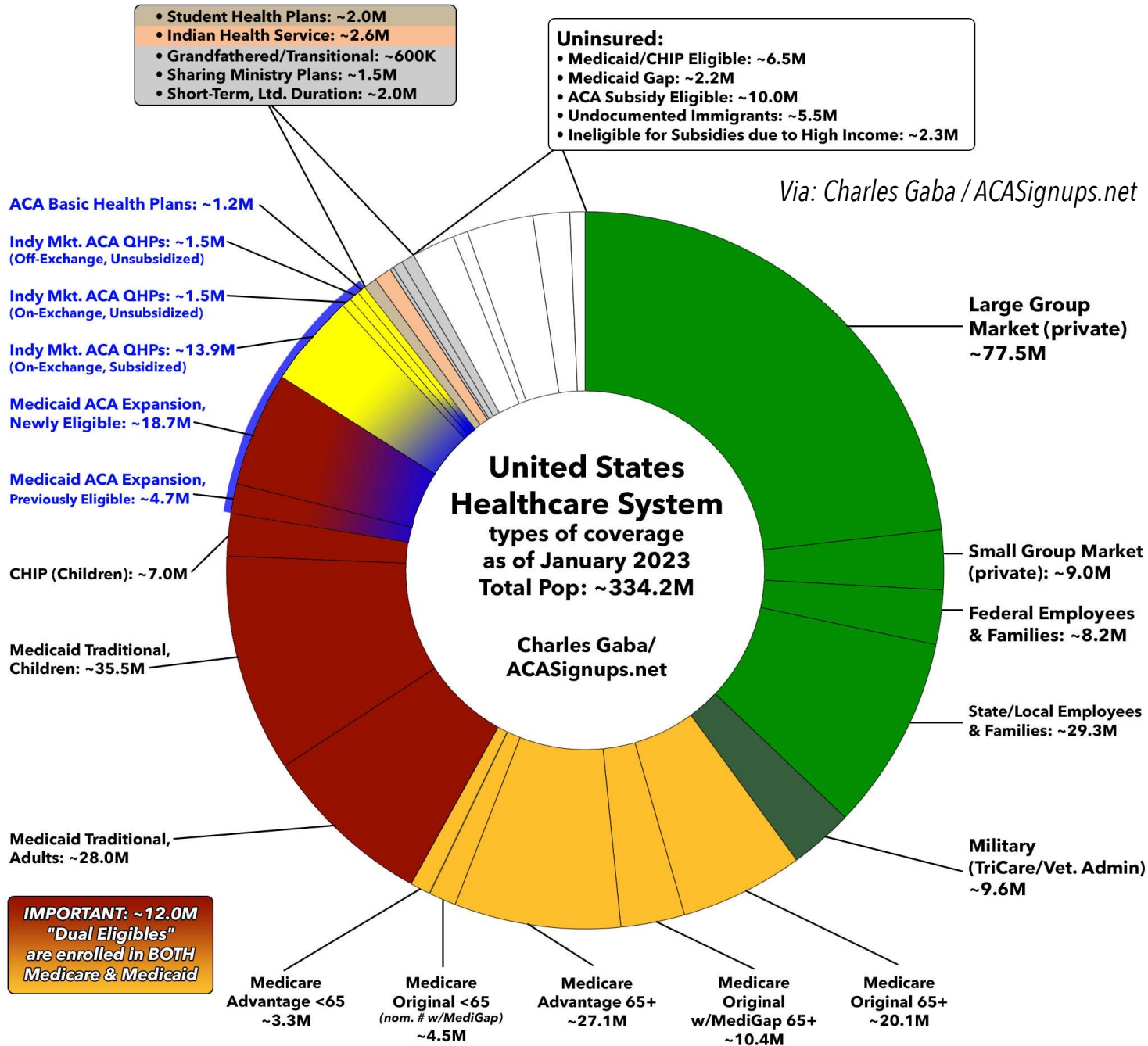
- **Democratic governors and state lawmakers** across the country are **mobilizing against a surge of Republican restrictions** on transgender health care by **establishing their states as sanctuaries** for gender-affirming care.
- Earlier this month, Democratic Gov. Wes Moore signed an executive order **making Maryland the 11th state, plus the District of Columbia, to declare itself a sanctuary**. A bill in **New York has cleared the legislature** and is awaiting the signature of Democratic Gov. Kathy Hochul.
- Last year, **California became the first state to declare itself a sanctuary**. It has since been joined by **Colorado, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, Vermont and Washington**. A growing number of **cities, including New York City; Kansas City, Missouri; and West Hollywood, California, also have become sanctuaries**.
- These states and cities are emerging as havens with **legal protections to shield health care providers, transgender people and their supporters from lawsuits and criminal penalties** levied by other states.

*Via: Missouri Independent: More blue states declare themselves sanctuaries for transgender health care*

# Other ACA/Healthcare Policy/Legislation



# The Psychedelic Donut, January 2023 Edition



# Affordable Care Act State Policy / Legislation

- **CURRENT STATUS OF STATE-BASED MARKETPLACES/EXCHANGES:**
- **33 states** utilize **Federally-facilitated Marketplace (FFM)**, **HealthCare.Gov**
- **18 states** (including DC) operate their own **state-based marketplace (SBM)**: CA, CO, CT, DC, ID, KY, ME, MD, MA, MN, NV, NJ, NM, NY, PA, RI, VT & WA
  - **Hawaii** moved from SBM to FFM in 2016 (total SBM failure)
  - **Idaho** moved from FFM to SBM in 2014 (was already planned)
  - **Kentucky** moved from SBM to FFM in 2017 (via political reasons) but moved back to all-new SBM in 2021
  - **Maine** moved to SBM in 2021
  - **Nevada** moved from SBM to FFM in 2014 (total SBM failure), but moved back to all-new SBM in 2019
  - **New Jersey** moved to SBM in 2020
  - **New Mexico** moved to SBM in 2021 (originally planned to happen in 2015)
  - **Oregon** moved from SBM to FFM in 2014 (total SBM failure); may move back to all-new SBM again (?)
  - **Pennsylvania** moved to SBM in 2020
- **GEORGIA**: Plans on moving to a full SBM **this November**
- **VIRGINIA**: Plans on moving to a full SBM **this November**

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

- **OTHER STATES PLANNING MOVE TO STATE-BASED MARKETPLACE:**
- **ILLINOIS:** Passed/signed legislation in spring 2023 to move to **full state-based exchange in fall 2025**
- **TEXAS:** Three bills currently in committee (HB700, HB2554, SB344) which would move state to full state-based exchange over the next few years
- **MICHIGAN:** *Bill introduced in 2022 to move state to full state-based exchange; hasn't been reintroduced yet.*
- **NEW HAMPSHIRE:** *SB243 introduced to create committee to study moving to SBE*
- **OREGON:** *Has come close to moving back to full SBE several times since moving to FFM in 2014; bill introduced again this year to request approval of moving to SBE*
- **WISCONSIN:** *Language to move WI to a SBE was included in the 2023 Executive Budget Act; didn't make it out of committee*

# Affordable Care Act State Policy / Legislation

- **GEORGIA: State-Based Exchange 180°**

- *(Already discussed Medicaid work requirements for partial expansion population)*
- In 2019, GOP Gov. Kemp submitted the "Georgia Access" Section 1332 waiver to CMS which would include a reinsurance program as well as elimination of **any** official ACA exchange (FFM **or** SBM) in favor of completely privatizing ACA exchange enrollment, among other things
- Trump's CMS approved all provisions, but in 2022 the Biden Admin rescinded approval of the privatized ACA exchange provision
- Georgia eventually relented & decided to completely reverse their philosophy, proposing to move to a full SBM **this fall** via **GeorgiaAccess.Gov**
- Controversial for several reasons:
  - Suspicions given their prior hostility towards formal ACA exchanges in general
  - Extremely tight time window from request to implementation
  - Potential additional confusion for residents given the ongoing Medicaid Unwinding process
  - Potential additional confusion given the "Pathways to Coverage" program launching in July
  - GA Sen. Warnock & Rep. McBath sent letter to CMS urging them to delay approval

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

- **CALIFORNIA: State-based supplemental subsidies in policy battle**
- Bill passed/signed in 2019 to provide **enhanced extra subsidies to ACA exchange enrollees** earning up to **600% FPL** starting in 2020
- **Program suspended in 2021** after ARP was passed w/enhanced **federal** subsidies beyond those provided by CA program; will remain suspended as long as ARP/IRA subsidies are in place (currently: **end of 2025**)
- State legislature then passed legislation directing revenue from CA's Individual Mandate Penalty (~\$367M/year) to go towards enhanced Cost Sharing Reduction (CSR) program instead
- Gov. Newsom vetoed bill, directing Mandate Penalty revenue to **general fund instead** until IRA subsidies expire
- CA does use ~\$18M/year to cover the **\$1/mo "Abortion Fund" fee** for all ACA exchange enrollees
- CA passed bill last year to require **disclosure of "Abortion Fund" balances** starting July 1<sup>st</sup>
- CA House has passed CA AB4, which would open up CoveredCA enrollment to **undocumented immigrants**, but **without providing federal subsidies**. An estimated ~17,000 undocumented immigrants would gain coverage if signed into law & implemented by 2025 as written.



# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

- **MINNESOTA: Basic Health Plan-based Public Option**

- Under the ACA, states have the option to create a **Basic Health Program** for people with incomes between **138 - 200% FPL** (just over the Medicaid expansion threshold), as well as documented immigrants not eligible for Medicaid due to the 5-year waiting period
- Minnesota retooled an existing pre-ACA program called MinnesotaCare into a BHP, which currently covers around ~110,000 Minnesotans (total MN population: ~5.7M)
- Under a bill passed/signed earlier this year, pending federal approval, an actuarial study & separate funding legislation next year, MNCare would be expanded to a Public Option buy-in program for state residents
- Premiums on sliding scale for those earning >200% FPL; wouldn't go into effect until 2027
- Would also include a small business option (companies w/under 50 employees)
- The new law also repeals laws limiting abortion access, requires Medicaid to cover medically necessary abortion, & eliminates deductibles, co-pays & coinsurance for Medicaid enrollees
- Also provides \$75/mo (\$900/yr) in supplemental Cost Sharing Reduction (CSR) assistance to Gold Plan enrollees earning <400% FPL for 2 years only (2025-2026) during the transition period

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

- **ARKANSAS: Medicaid “Private Option”**

- Unique Medicaid expansion program: Uses Medicaid expansion funds to cover cost of paying for private **ACA exchange** policies for enrollees instead of actually enrolling them in Medicaid
- Recently changed name of program to ARHOME; enrollees can pick from (or get autoenrolled in) certain Silver ACA plans; premiums paid for via Medicaid funds.
- As of 2022, ~90% of ARHOME enrollees were in private plans and 10% were in traditional Medicaid
- Both New Hampshire & Iowa experimented w/similar programs for a few years but have since moved to standard Medicaid expansion
- **As of 2023, ARHOME can no longer charge premiums for enrollees over 100% FPL** due to change in federal waiver authorization by Biden Admin.

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

## • **NEW MEXICO: Medicaid-based Public Option**

- NM recently passed & signed **HB 400, the Medicaid Forward Public Option** bill earlier this year, which requires a study/design to be submitted by Oct. 2024 for a **Medicaid buy-in public option** program to be implemented starting **January 2026**
- **NM** is one of the few states capable of potentially making a true Medicaid-based PO work due to its high FMAP (plus, nearly 50% of NM's total population already enrolled in Medicaid now)
- Starting in 2023, NM has begun providing supplemental premium/cost sharing subsidies to ACA exchange enrollees via their "**Healthcare Affordability Fund**;" enrollees earning up to 200% FPL pay **no premiums** but extra state savings are also available to enrollees up to 300% FPL
- NM covering **1<sup>st</sup> month of net premiums** for those transferring from Medicaid (via unwinding) who earn up to 400% FPL
- In 2022 NM unanimously passed an **Easy Enrollment** bill which gives residents a 2<sup>nd</sup> chance to enroll when filing their state tax returns if they missed Open Enrollment, joining several other states
- In 2022, NM Office of the Superintendent of Insurance (OSI) announced that starting in 2023, NM was setting the **individual market tobacco rating multiplier to 1.0** (ie, removing the 50% smoker premium surcharge)

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

## • **NEW YORK: BHP Program Expansion**

- Under the ACA, states have the option to create a **Basic Health Program** for people with incomes between **138 - 200% FPL** (just over the Medicaid expansion threshold), as well as documented immigrants not eligible for Medicaid due to the 5-year waiting period
- New York became the 2<sup>nd</sup> state to launch a BHP (after MN) in 2015 called **The Essential Plan**; it currently covers **over 1.1 million New Yorkers** (5x as many as are enrolled in ACA exchange plans)
- Due to weirdness surrounding the funding formula for BHPs exacerbated by enhanced ARP/IRA subsidies, **NY's BHP program has a \$10 BILLION surplus** in funding...but legally it can **only be spent on the BHP program**
- Since ARP/IRA subsidies went into effect, NY has made their BHP more generous to existing enrollees, **eliminating premiums, deductibles & virtually all co-pays** while adding **free dental & vision coverage**
- NY is now requesting federal approval via a Section 1332 waiver to expand the BHP program up the income scale to 250% FPL w/no deductibles, virtually no co-pays/coinsurance & \$15/mo premium
- NY's waiver currently accepting public comment thru July 5<sup>th</sup>; if approved they estimate BHP enrollment would increase by **~100,000** (~80K switching from ACA exchange plans; **~20K currently uninsured**)

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

## • ILLINOIS: State-Based Exchange & Filing Transparency

- HB 579 to establish a full state-based ACA marketplace passed both the state House & Senate in May 2023; Gov. Pritzker supports & should be signing at any time
- Ironically, Illinois' new SBM (to launch in fall 2025) is expected to have slightly **higher** carrier fees than the federal exchange (2.75%) since CMS is reducing the FFM fee to 2.2% next year
- HB 2296 also passed/signed in May:
- Illinois will join 41 other states in requiring insurance companies to provide **specific information about how they set their rates** & the DOI will have the authority to **deny rate hikes that are not adequately justified**.
- DOI will have authority to **approve, modify, or disapprove health premium rates** that it determines to be unreasonable or inadequate in the individual and small group market.
- Increased transparency by adding **reporting requirements** for insurance companies.
- Gives DOI data needed to **explain to consumers and small businesses in layman's terms why people pay what they pay in a yearly report**.

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

## • **MICHIGAN: Codifying ACA Protections**

- Eight bills to collectively **codify federal ACA protections into state law** introduced by legislative Democrats this month (5 introduced in the House; 3 others have already passed the state Senate)
- HB 4619 **prevents health insurance discrimination against gender identity/expression, sexual orientation, race, color & creed**
- HB 4620 codifies **guaranteed issue** (preventing denial or limitation of coverage for those w/pre-existing conditions)
- HB 4621 codifies the right for **young adults to remain on their parents policy until age 26**
- HB 4622 **eliminates annual or lifetime limits** on health insurance claims for major medical policies
- HB 4623 **mandates ACA's Essential Health Benefits**, also heading off any potential Braidwood v. Becerra fallout
- SB 356 moves "description of benefits" guidelines away from legislative text over to state health director (?)
- SB 357 prohibits **health insurance rescission**
- SB 358 supposed to **codify ACA's 60% - 90% Actuarial Value requirements** (metal level minimums)

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

## • **NEW JERSEY: Cover All Kids expansion & strict Silver Loading?**

- Legislation passed/signed last year to implement “**Easy Enrollment**” program allowing residents a 2<sup>nd</sup> chance to enroll via their tax returns if they missed Open Enrollment; launched in 2023
- Since 2021, NJ has offered **supplemental state subsidies to ACA exchange enrollees earning up to 600% FPL**; these were enhanced since federal ARP/IRA subsidies were implemented
- In 2021, NJ passed/signed the Cover All Kids legislation to help ensure children under 19 have healthcare coverage via a 2-stage approach: **Phase 1** (starting in 2021) **eliminated premiums & waiting periods** for enrollees, while also boosting enrollment outreach initiative funding
- Phase 2 started in 2023; it expands coverage to **undocumented** immigrant children as well (up to 355% FPL)
- NJ-based colleague Andrew Sprung reports **15-16K undocumented immigrant kids are already covered** via the expanded program
- A bill has also been introduced (SB 3896) to impose **strict Premium Alignment (“Silver Loading”)** for individual & small group market pricing to maximize value & savings for enrollees via lower-priced Gold (& Bronze) plans

# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

- **OREGON: 3<sup>rd</sup> State w/Basic Health Plan?**
- Legislation passed last year to implement a Basic Health Plan (BHP) program; awaiting CMS approval
- BHP proposal consists of three phases:
  - Phase 1 would immediately allow those earning 138 - 200% FPL who **lose Medicaid coverage via the Unwinding process to remain covered by Medicaid temporarily** via a **"Bridge Program"**
  - **Phase 1 was approved in April 2023**
  - Phase 2 would implement a BHP program **for this population only** starting in **mid-2024**
  - Phase 3 would **open up the BHP program to all documented residents earning 138 - 200% FPL starting in January 2026**
  - Bridge Program estimated to enroll up to **~55,000 Oregonians**, plus **another ~30,000** once the BHP is fully operational



# Affordable Care Act State Policy / Legislation

*(shoutout to Louise Norris @ HealthInsurance.org for assist on some of the following)*

- **VIRGINIA: State-Based Exchange this fall**

- Bills passed/signed in 2020 to move **Virginia to state-based ACA marketplace to go live in November 2023**
- VA's SBM website still not made public to avoid confusion, especially given Medicaid Unwinding process
- Bill passed/signed this year to **eliminate 50% tobacco surcharges** for both individual & small group markets (Gov. Youngkin vetoed it last year but signed it this year)
- Other states w/tighter tobacco surcharges than ACA's 50% allowance:
  - Arkansas: 20%
  - California: None
  - Colorado: 15%
  - Connecticut: 50% (*same as ACA*)
  - DC: None
  - Kentucky: 40%
  - Massachusetts: None
  - New Jersey: None
  - New Mexico: None (via regulation, as of 2023)
  - New York: None
  - Rhode Island: None
  - Vermont: None

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