Update on Women's Health Policy

How the Courts, State and Federal Laws, and Regulations Are Shaping Policy and Women’s Health

November 16, 2021

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Agenda

Introduction

- **Alina Salganicoff,** Senior Vice President for Women's Health Policy

Presentations

- **Future of Abortion Access: Eyes on SCOTUS and the States**
  - **Laurie Sobel, JD,** Associate Director
- **The Title X Program: Restoring and Improving Access to Family Planning Care**
  - **Brittni Frederiksen, MPH, PhD,** Senior Policy Analyst
- **Strengthening Maternity Care Coverage**
  - **Usha Ranji, MS,** Associate Director
- **Paid Leave: Implications for Families and Future Directions**
  - **Michelle Long, MPH,** Senior Policy Analyst

Audience Q&A

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Submit Questions for Q&A

Attendee audio and video is turned off, so if you would like to submit a question for the panelists, please click on the Q&A button at the bottom of your screen:

You can submit questions for the Q&A session at any time during the web briefing; we will answer as many as we can after the presentation.

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The Future of Abortion Access

Laurie Sobel, JD
Associate Director, Women's Health Policy

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Right to Abortion: Established and Subsequently: Limited by the Supreme Court

Roe v. Wade **1973**

- ***Bellotti v. Baird*** **1979**
- ***Webster v. Reproductive Health Services*** **1989**
- ***Rust v. Sullivan*** **1991**
- ***Stenberg v. Carhart*** **2000**
- ***Whole Woman's Health v. Hellerstedt*** **2016**
- ***Dobbs v. Jackson Women's Health*** – a case challenging the 15-week gestation ban in Mississippi **2021**

- **1977** **Hyde Restrictions go into effect**
- **1980** ***Harris v. McRae***
- **1990** ***Hodgson v. Minnesota***
- **1992** ***Planned Parenthood v. Casey***
- **2007** ***Gonzalez v. Carhart***
- **2020** ***June Medical Services v. Russo***

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Many States Restrict Access to Abortion

State laws in effect as of September 2021

Topic of abortion restriction law	Number of states
Ultrasound provision	27 states
State-imposed threshold for abortions later in pregnancy	23 states
Waiting periods - between 18 – 72 hours	25 states
Parental notification and consent	37 states
Sex and race selection abortion ban	11 states
Targeted regulations of abortion providers and clinics	24 states
Counseling on irrelevant/misleading abortion information	18 states
Medication abortion restrictions	33 states
Inaccurate information medication abortion reversal	8 states
Bans on certain types of abortion procedures	21 states

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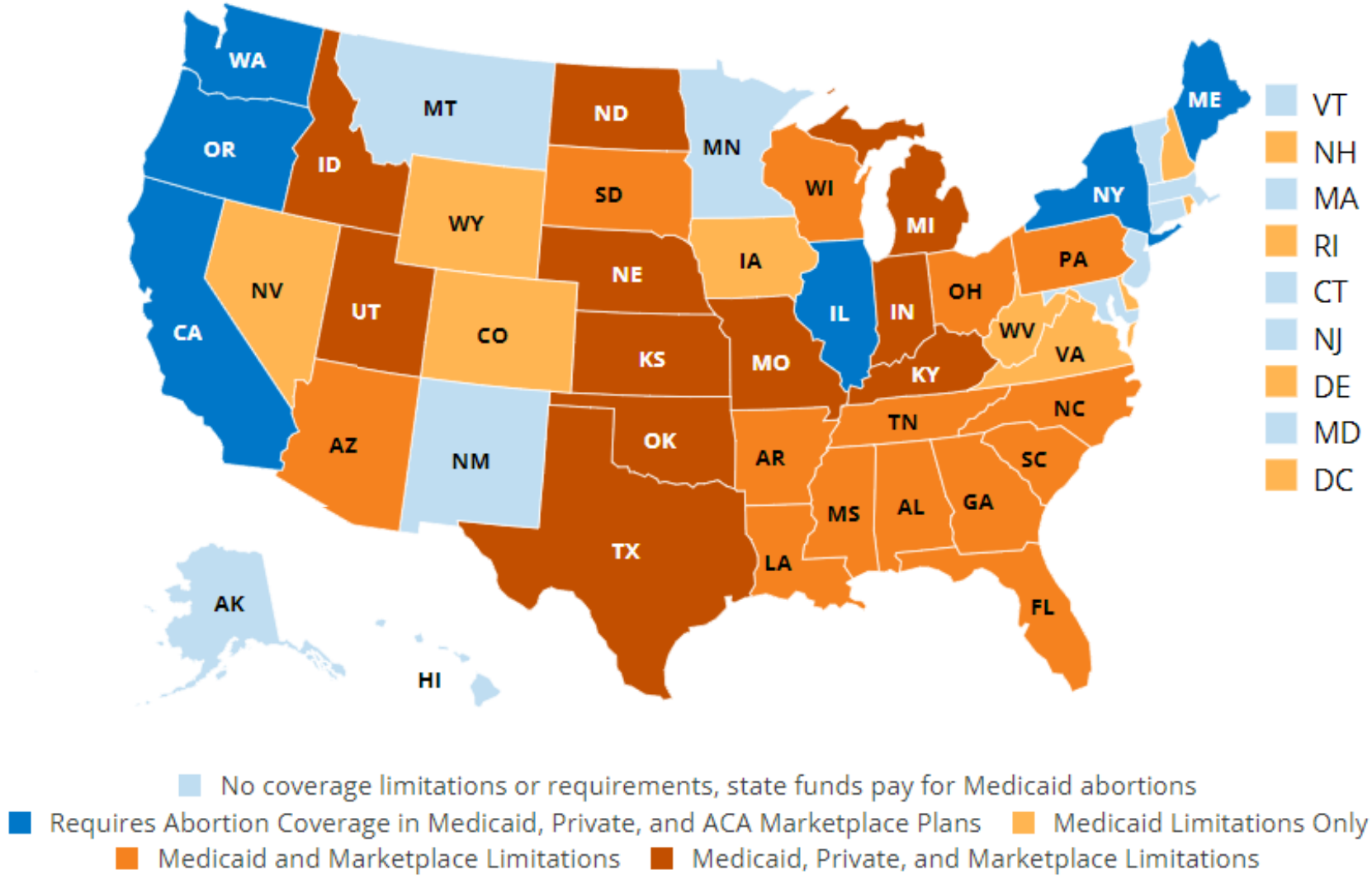
SOURCE: KFF analysis of Guttmacher Institute. State Laws and Policies, An Overview of Abortion Laws, as of September 1, 2021.

Hyde Amendment and State Laws Shape Abortion Coverage

State Policies on Abortion Coverage in Medicaid, Private Insurance, and ACA Exchange Plans, 2021

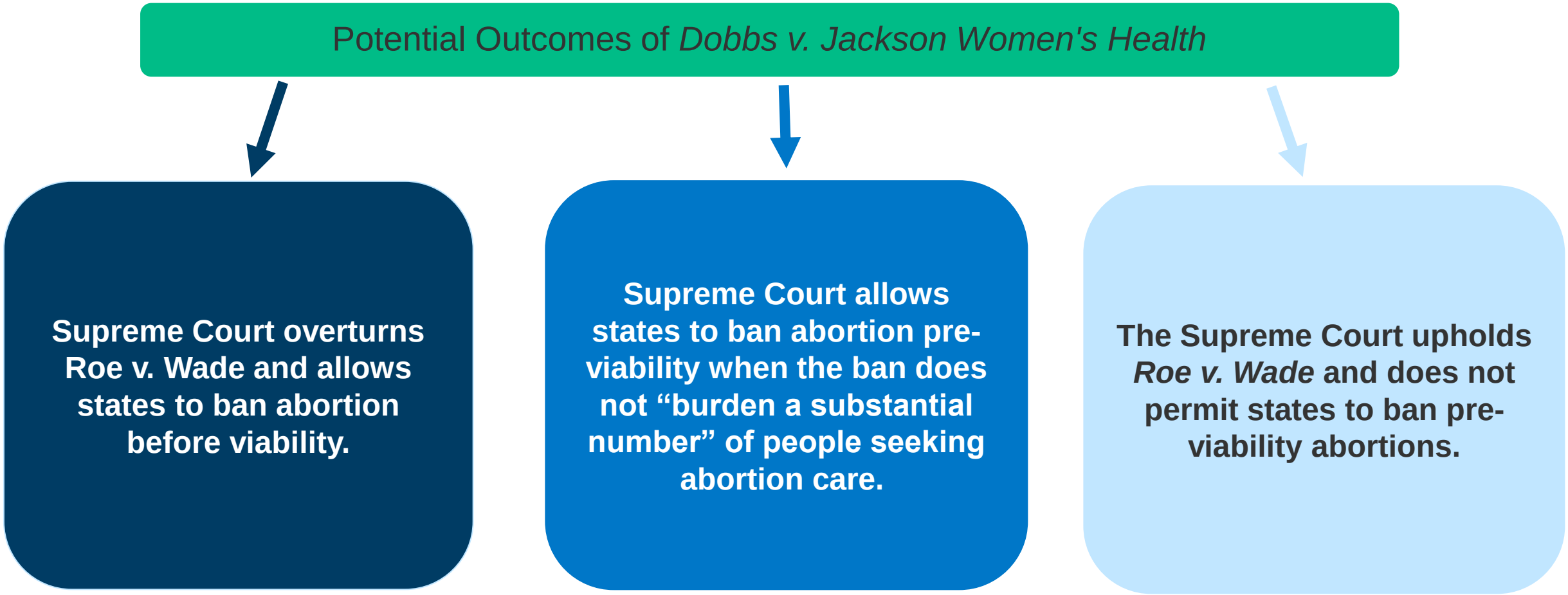


SOURCE: KFF. Interactive: How State Policies Shape Access to Abortion Coverage. 2021.

Dobbs v. Jackson Women's Health (Oral Argument Dec 1st)

	The State of Mississippi (defending law requiring 15-week gestational ban)	**Jackson Women's Health** (the only abortion clinic in Mississippi; provides abortions up to 16 weeks)
Should The Court Overturn *Roe*?	• Court's **viability standard set in *Roe v. Wade* is unsatisfactory** and does not allow the state to protect unborn life or maternal health. • Abortion is not necessary for women to participate equally in economic life because **contraception is widely available**.	• **Viability is the central principle in *Roe* and *Casey*** and there is no basis for overruling the viability line. • **Contraception is not universally available and is not fail-safe.** "Further, many indicators of gender equality continue to lag behind the ideal Mississippi imagines."
Should The Court Apply Undue Burden Standard Set by *Casey?*	• **The 15-week ban does not impose a substantial obstacle** to "a significant number of women" seeking abortions. • At most 4.5% of the women who obtain abortions from Jackson Women's Health did so after 15 weeks gestation.	• "**The very essence of a constitutional right is that the government cannot outright prohibit a certain subset of people no matter how small** from exercising that right."

Abortion and SCOTUS: How Might a Conservative Majority Change Abortion Rights?



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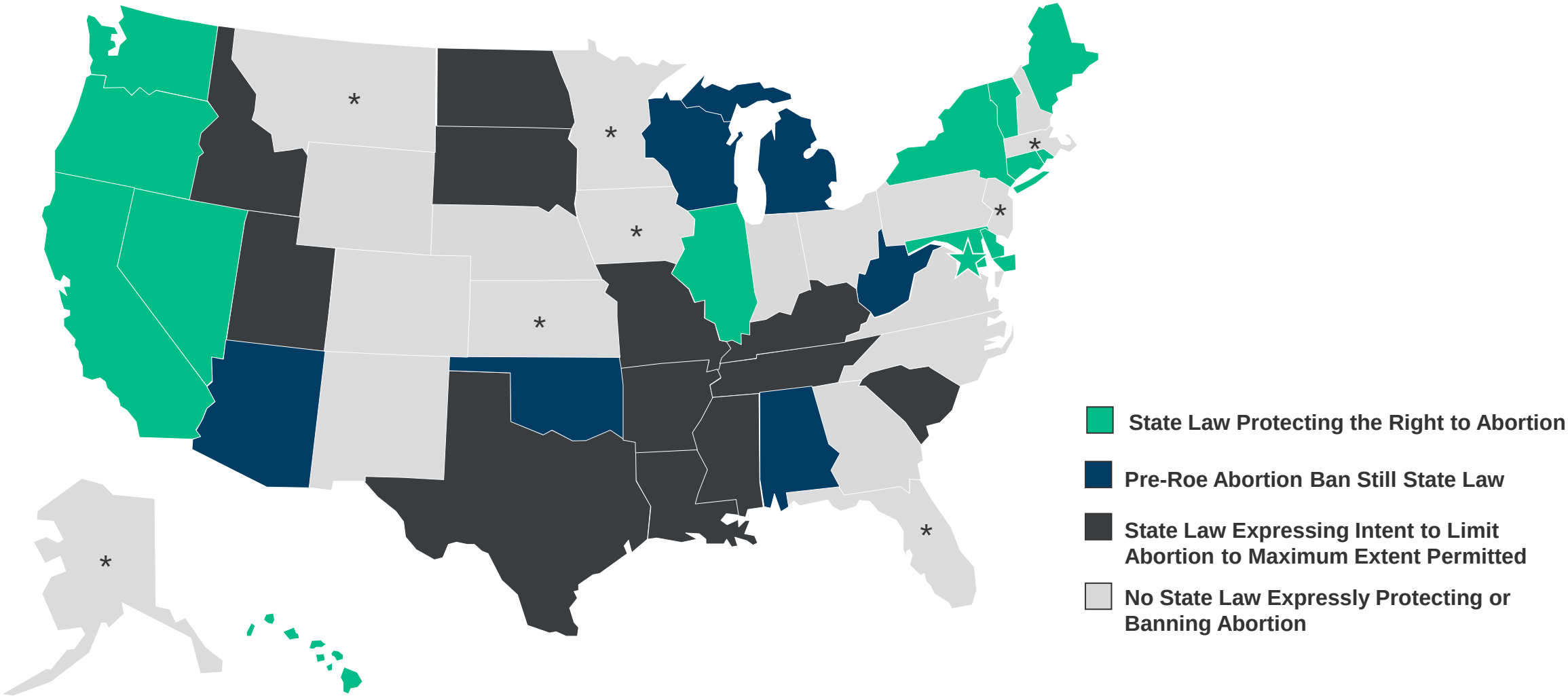
18 States Would Effectively Ban Abortion if *Roe v. Wade* is Overturned; 13 States and DC Have Laws Upholding Right to Abortion



NOTE: For more information on these laws, please see Appendix Table 1. The State Supreme Courts of the states marked with an asterisk (*) recognize the right to abortion under the State constitution. States that would effectively ban abortion if Roe v. Wade is overturned may include exceptions for cases of rape, incest, or life endangerment. Alabama and South Carolina both have blocked laws which express their intent to limit abortion to the maximum extent permitted.
SOURCE: KFF, Abortion at SCOTUS: Dobbs v. Jackson Women's Health, November 2021.

SB 8: Access to Abortion in Texas is Very Limited

- SB 8 allows any person to sue any person who performs or "aids or abets" performance of an abortion when there is detectable fetal heartbeat (approximately 6 weeks LMP).
- The state does not enforce this law; private individuals enforce the law through civil action.
- Clinics & DOJ sued to block the law in federal court.
- SCOTUS heard oral arguments on Nov 1st. — about whether the lawsuits could continue (not *Roe v. Wade*).
- Impact of Law: 50% drop of legal abortions performed in September 2021 compared to September 2020.

SOURCE: White, Kari, et al., Initial Impact of Texas Senate Bill 8 on Abortions in Texas and at Out-of-State Facilities, Texas Policy Evaluation Project, October 2021

Federal Policy Addressing Access to Abortion

- **The Women's Health Protection Act** - would create a federal statutory right for health care providers to provide abortion care, and a right for patients to receive abortion care, and ban many state restrictions.
  - Passed House; Pathway in Senate is uncertain

- **Hyde Amendment** – Not included in the House Appropriations bill for the first time in 45 years

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The Title X Program: Restoring and Improving Access to Family Planning Care

Brittni Frederiksen, PhD, MPH
Senior Policy Analyst, Women's Health Policy

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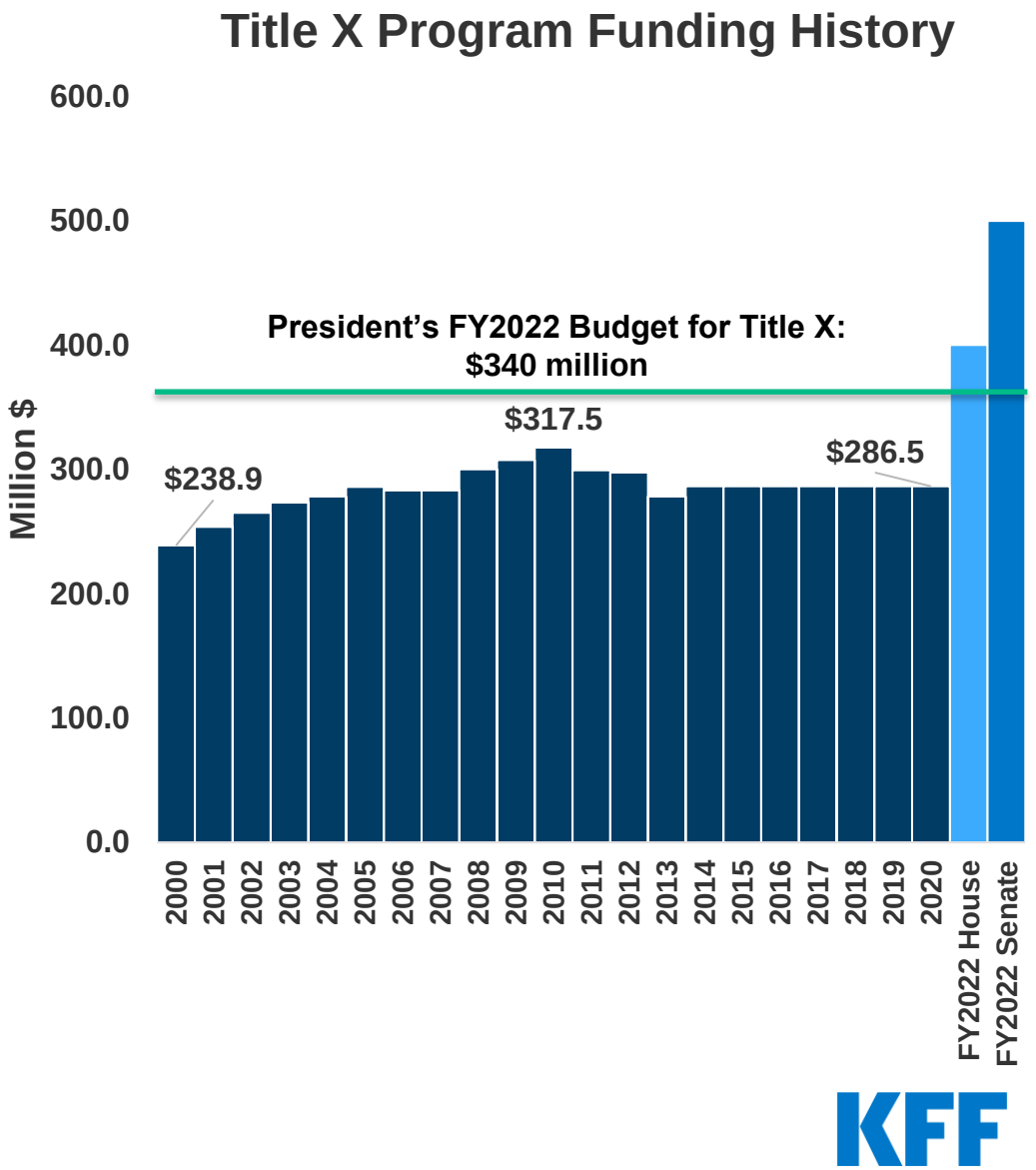
The Title X Family Planning Program

- Since 1970, the Title X program has been the only federal grant program specifically dedicated to supporting the delivery of family planning care
- The Title X program historically has set the standard for providing quality family planning services based on recommendations of the CDC and U.S. Office of Population Affairs, known as QFP
- Administered by the HHS Office of Population Affairs (OPA), and funded at **$286.5 million** per year since 2015, the program has historically served around 4 million low-income, uninsured, and underserved clients each year
- Historically, Title X grantees have been funded in all 50 states, D.C. and U.S. territories supporting approximately 4,000 clinics nationwide
- The FY2022 House and Senate spending bills have increased funding levels for Title X. The House increased to $400 million and Senate proposed **$500 million** for Title X



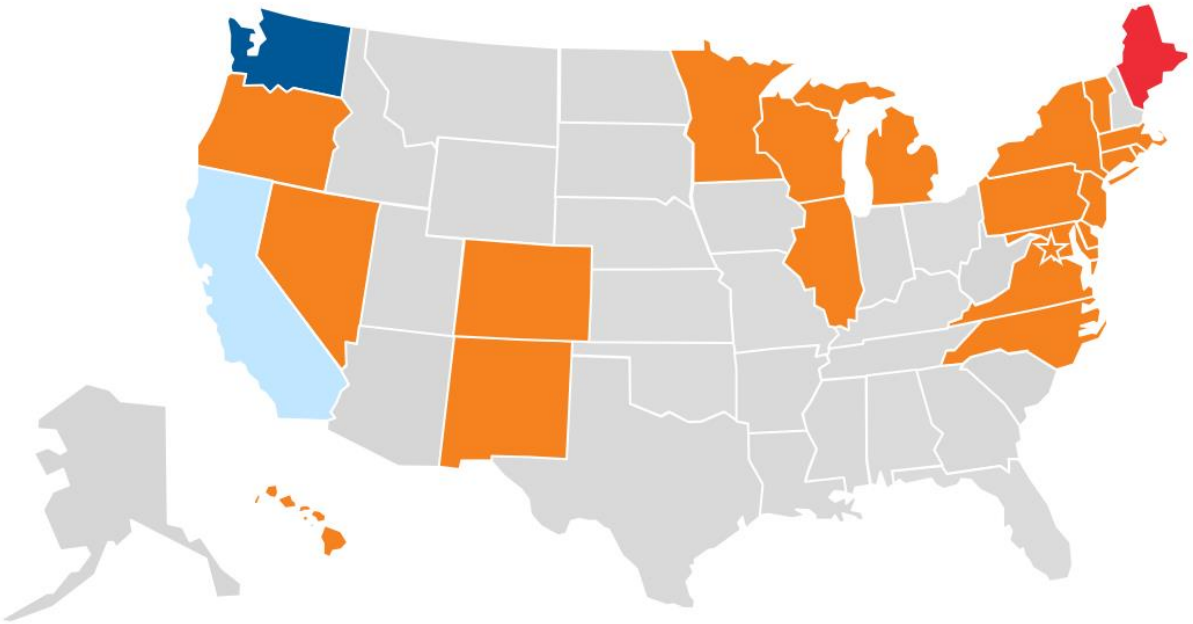
SOURCE: Title X Program Funding History

Trump Administration Regulations Changed the Title X Family Planning Program

2019 Trump Regulations

- Required financial and physical separation of abortion services for sites that offer abortion
- Encouraged participation by “non-traditional” organizations such those that are faith-based that only offer abstinence or fertility awareness rather than a broad range of methods
- Prohibited Title X sites from referring pregnant clients seeking abortions to abortion providers
- Required all pregnant clients to be referred to prenatal care even if they sought an abortion
- Prioritized providers offering comprehensive primary care services over those specializing in reproductive health services

These regulations were challenged by 24 states



Planned Parenthood clinics that made up 10% of the network left

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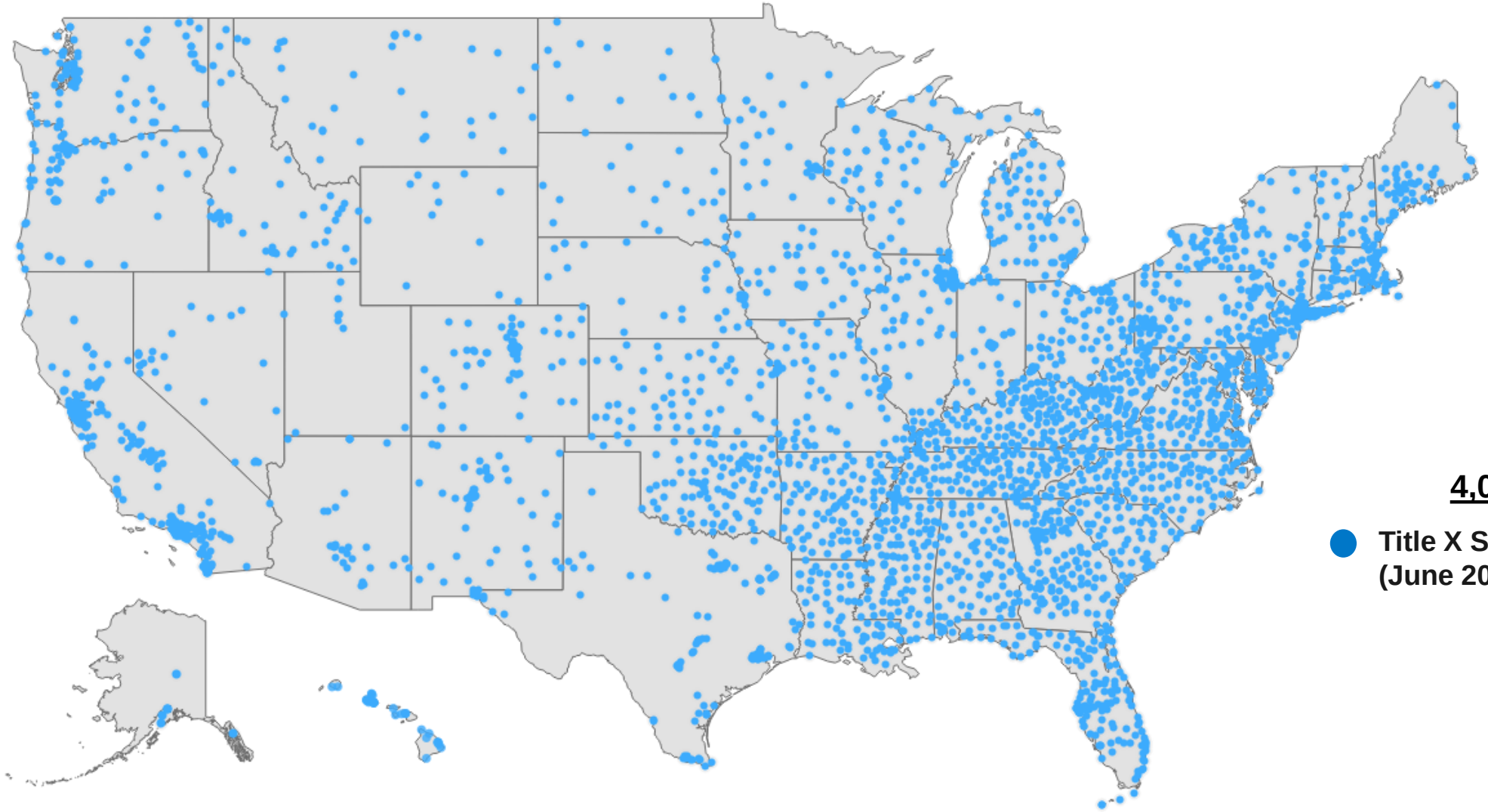
SOURCE: Compliance With Statutory Program Integrity Requirements and Litigation Challenging Title X Regulations

Title X Family Planning Network Prior to Trump Regulations, June 2019



4,006 Title X Sites

Title X Sites Pre-Trump Regulations (June 2019)

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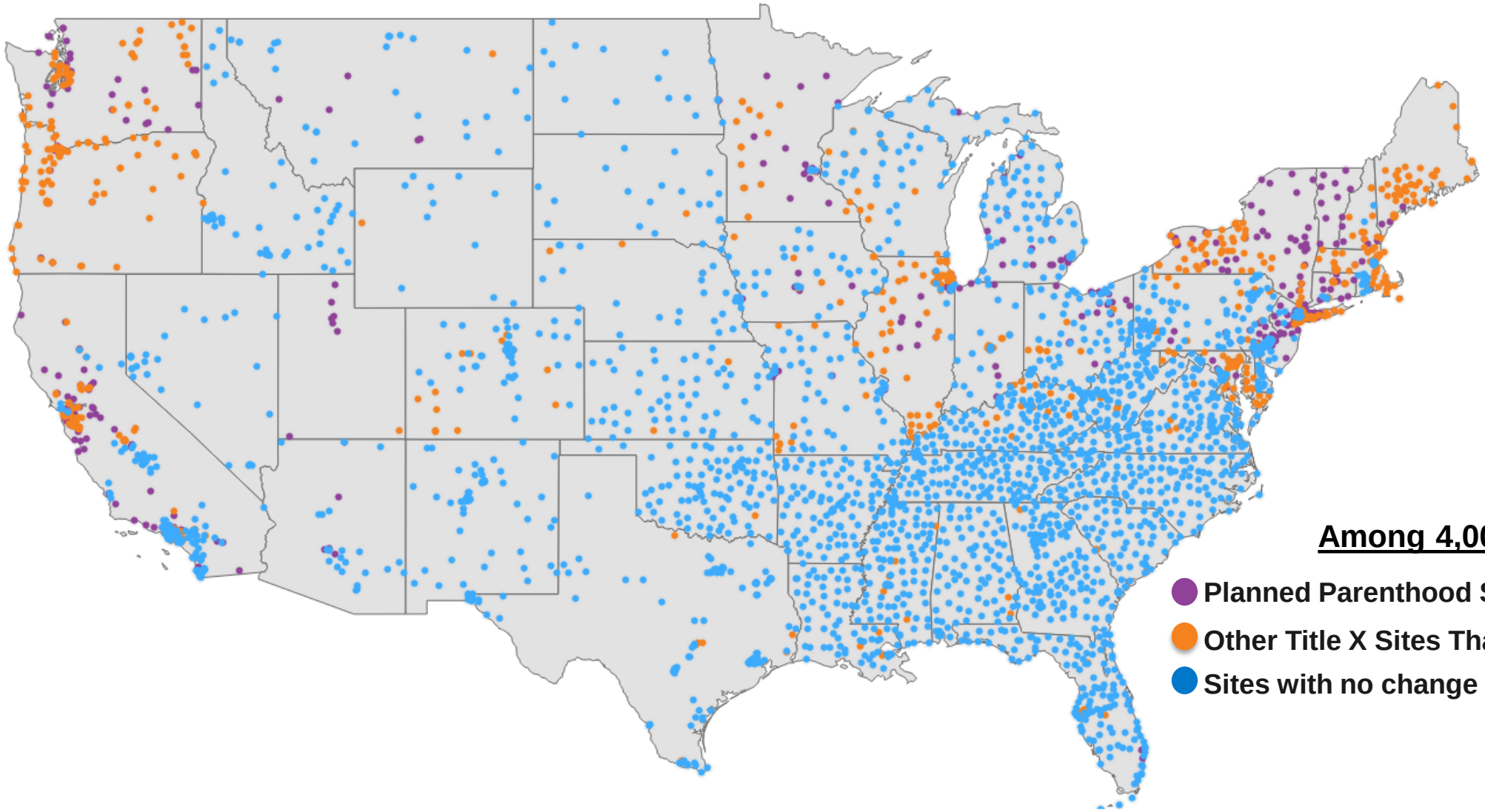
SOURCE: KFF analysis of Office of Population Affairs' Title X Family Planning Directories, June 2019 – August 2021

Title X Sites That Left the Network After the Trump Regulations Went Into Effect



Among 4,006 Title X Sites

- Planned Parenthood Sites That Left (405 sites)
- Other Title X Sites That Left (878 sites)
- Sites with no change (2,723 sites)

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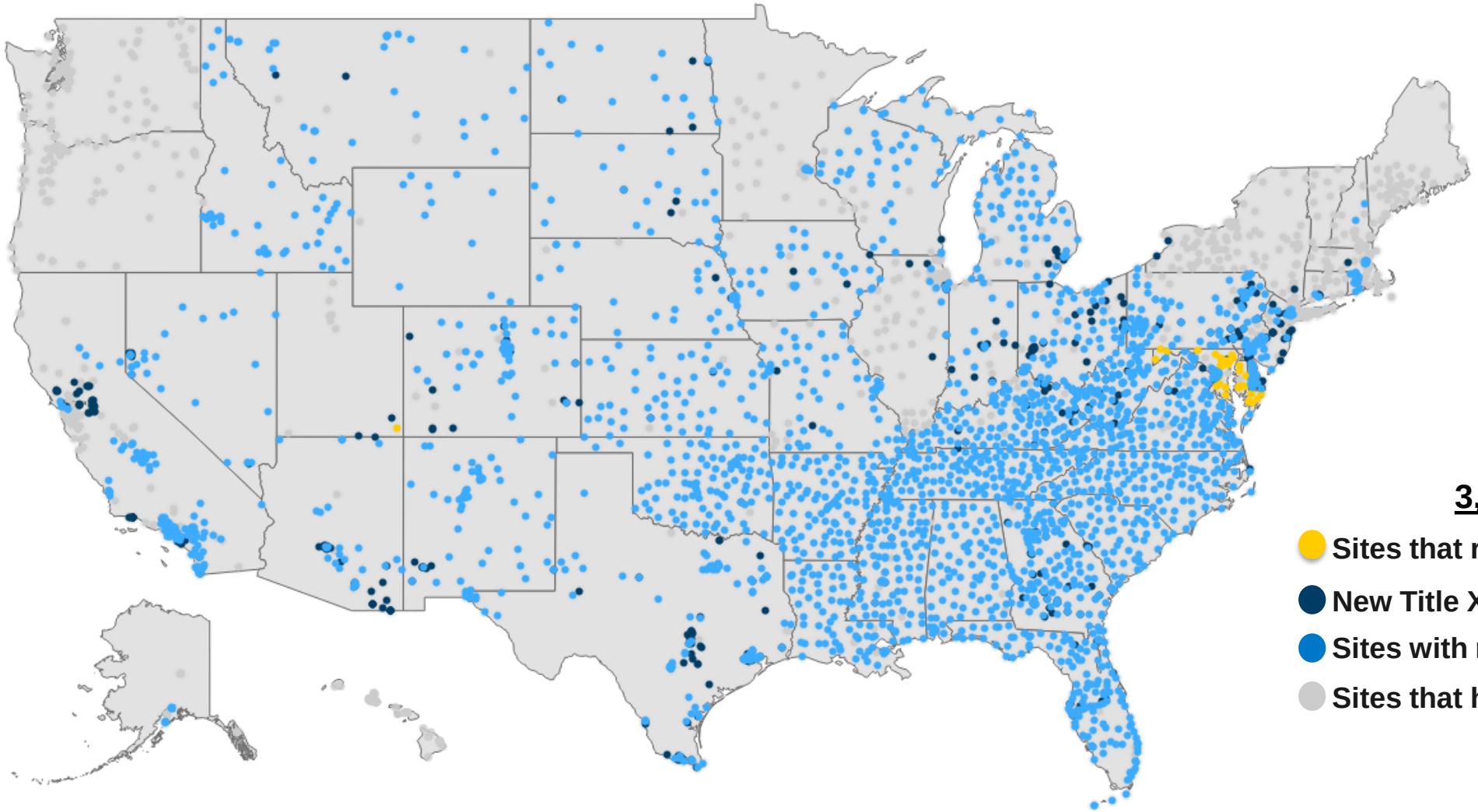
SOURCE: KFF analysis of Office of Population Affairs' Title X Family Planning Directories, June 2019 – August 2021

Status of Title X Family Planning Program Sites Since Trump Regulations, August 2021



3,223 Title X Sites

- Sites that rejoined the program (54 sites)
- New Title X sites (446 sites)
- Sites with no change (2,723 sites)
- Sites that have not returned (1,229 sites)

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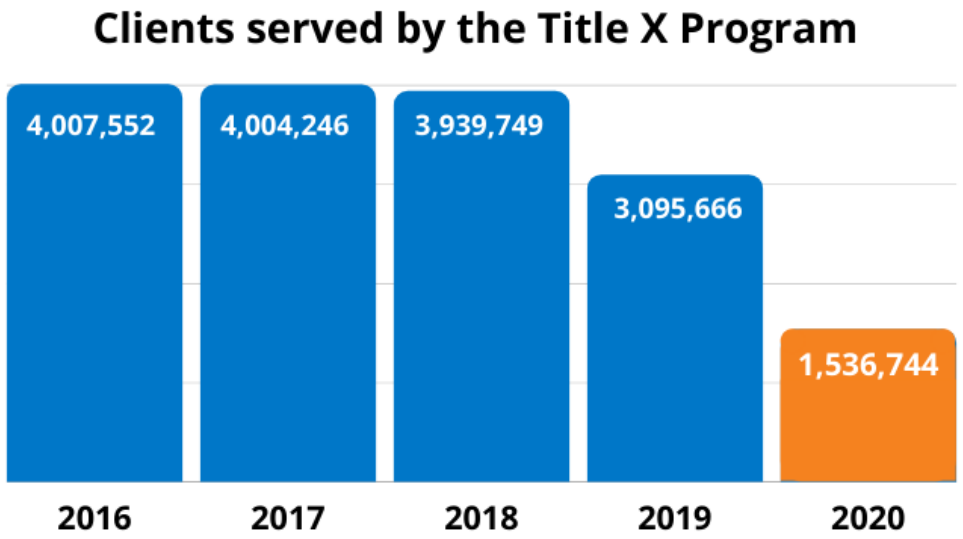
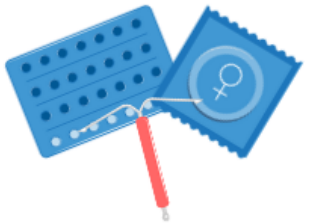
SOURCE: KFF analysis of Office of Population Affairs' Title X Family Planning Directories, June 2019 – August 2021

The Trump Administration's 2019 Final Rule and the COVID-19 Pandemic Resulted in a Marked Decrease in Clients Served by Title X



↓60%

The Title X notice of proposed rulemaking (NPRM) reveals preliminary figures for FY2020 that indicate **1.5 million clients were served**. This is a **60% decrease** from the usual 4 million clients the program has served for many years.



Under the Trump regulations **~300,000 fewer uninsured clients** and **~800,000 fewer clients with incomes <250% FPL** were served.

SOURCE: Office of Population Affairs. Title X Family Planning Annual Report 2020 National Summary. September 2021.

Key Aspects of the Final Biden Administration's Title X Regulations

Trump Administration Regulations

- Required financial and physical separation of abortion services
- Encourage participation by "non-traditional" organizations such as those that only offer one method of family planning compared to a broad range of methods
- Prohibited Title X sites from referring pregnant clients to abortion providers
- Required all pregnant clients to be referred to prenatal care
- Prioritized providers that offer comprehensive primary care services over those that specialize in reproductive health services

Biden Administration Regulations

- Allow co-located abortion services and abortion referrals
- Require clinics to provide a broad range of family planning methods or a prescription/referral if requested
- Pregnant clients must have the opportunity to receive options counseling
- Added confidentiality protections for adolescents
- Include telehealth as an option for providing medical services
- Require services are provided in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed
- Add a new funding criterion – the ability to advance health equity

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SOURCE: Health and Human Services Department. Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services. October 7, 2021.

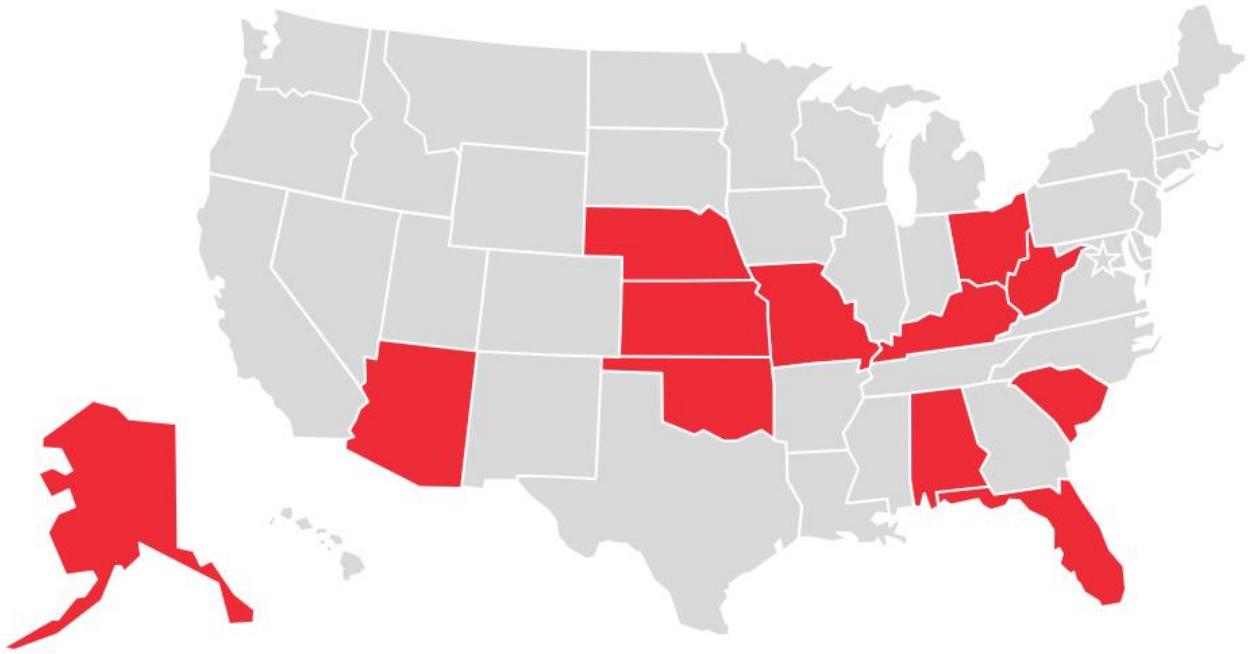
Litigation Challenging Biden Administration Regulations

- On October 25, 2021, a lawsuit was filed against HHS by the state of Ohio and 11 other states to block the implementation of the new Biden Administration's regulations

- These states claim the final regulations violate Section 1008 of the Public Health Service Act that says "none of the Title X appropriated funds can be used in programs where abortion is a method of family planning"

- The States are requesting a ruling as soon as practicable and no later than December 31, 2021

States Suing HHS to Block Implementation of Biden Regulations



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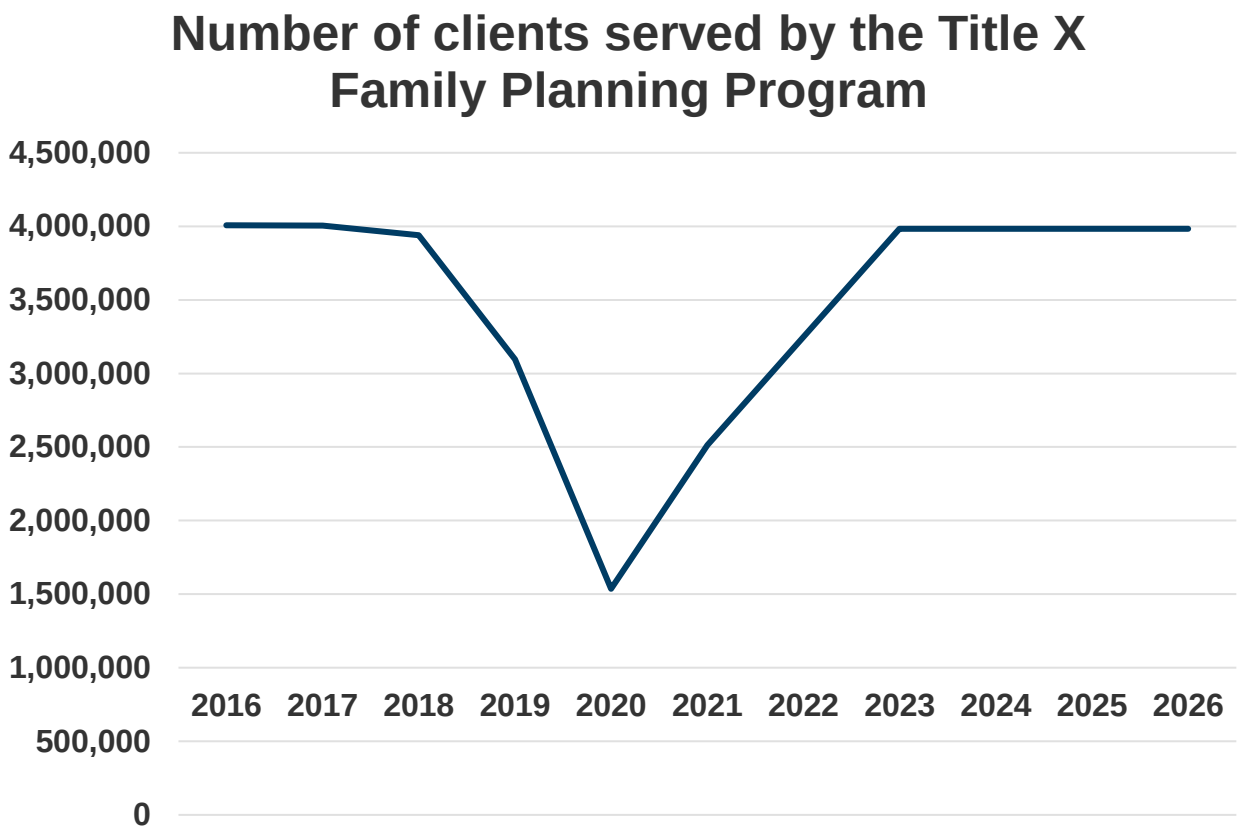
HHS Anticipates It Will Likely Take At Least Two Years to Rebuild the Title X Network

- If HHS budget is approved, there will be a sizable increase in resources for Title X
- Notice of Funding Opportunity announced October 27, 2021 with applications due January 11, 2022 for Title X Family Planning Service Grants ($256 million)
- $9.25 million estimated for 10 grantees in areas with dire needs for family planning services and additional HHS funding awarded to Texas' largest Title X grantee in response to Texas' S.B. 8 abortion ban
- $45 million planned in Spring 2022 to expand and enhance telehealth infrastructure and capacity among Title X grantees



SOURCE: Family Planning Annual Report 2019 National Summary and Proposed 2021 Regulation "Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services"

SOURCE: Rebuilding Title X: New Regulations for the Federal Famly Planning Program

Strengthening Maternity Care Coverage

Usha Ranji, M.S.
Associate Director, Women's Health Policy

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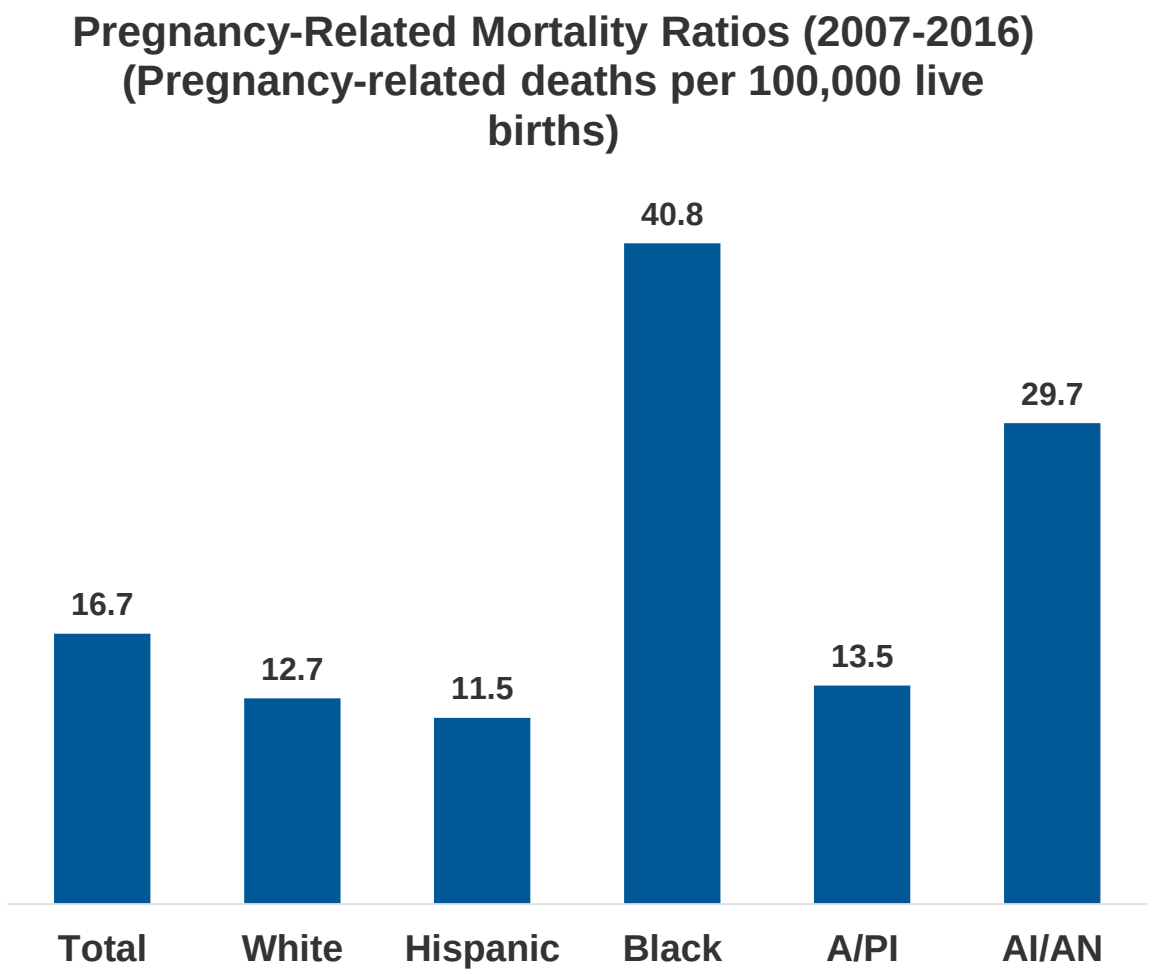
Maternal Health in the Spotlight

- Policymakers considering a range of strategies that address different areas of maternal health prompted by preventable pregnancy-related deaths and stark racial and ethnic disparities
- ~1/3 of pregnancy-related deaths occur after one week postpartum
- Root issues are multi-factorial and complex. Reproductive justice highlights need to address complex, historic challenges that include poverty, racism and bias, and access to care throughout lifespan
- Policy responses have included:
  - Investments in data, documentation, and clinical quality improvement efforts, which have helped in some areas, but r/e disparities remain
  - Strengthening access and improving coverage

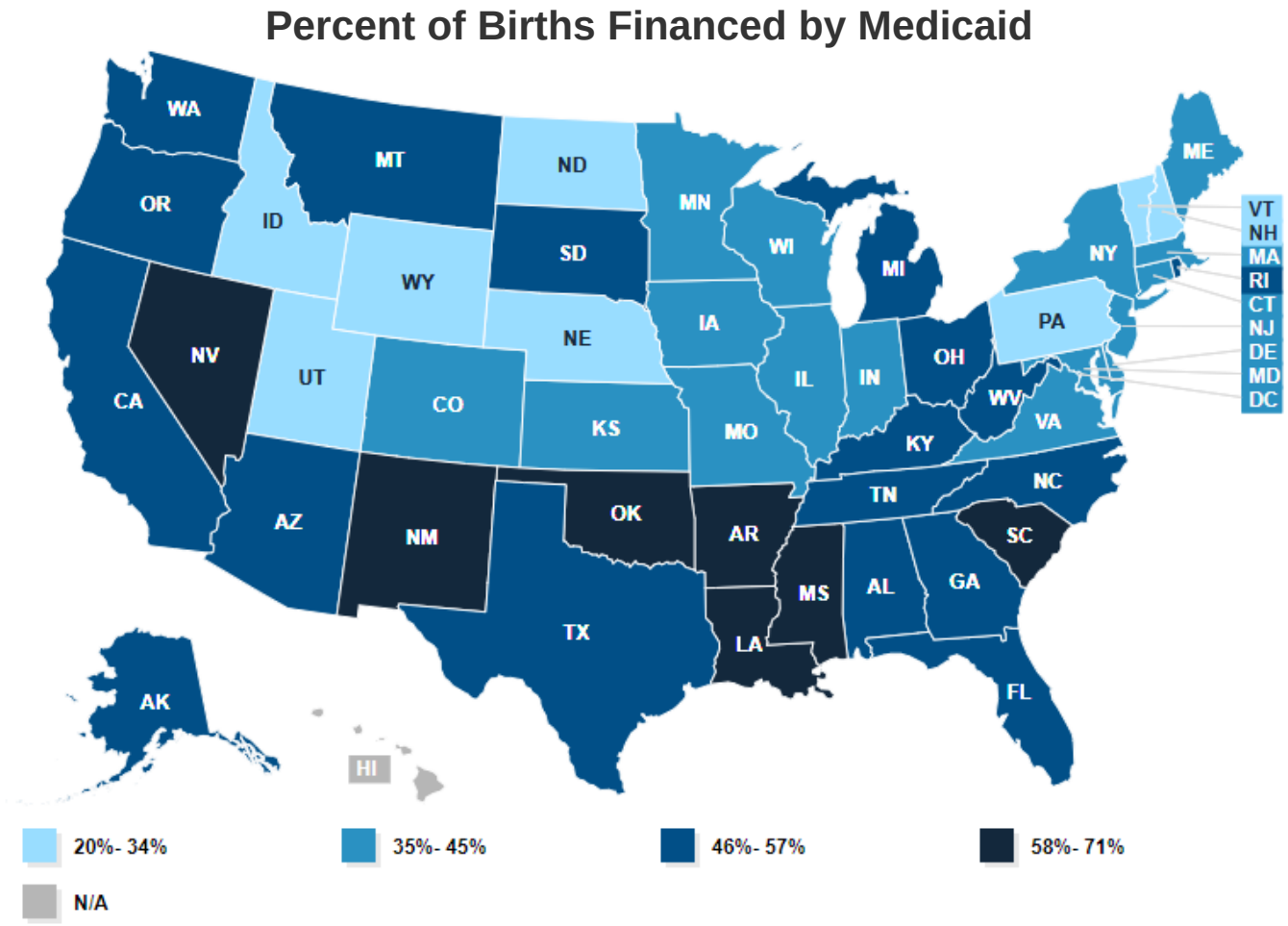


NOTE: A/PI refers to Asian/Pacific Islander. AI/AN refers to American Indian and Alaska Native.

SOURCE: Peterson et al. 2019. Racial and Ethnic Disparities in Pregnancy-Related Deaths – United States, 2007-2016, Mortality and Morbidity Weekly Report.

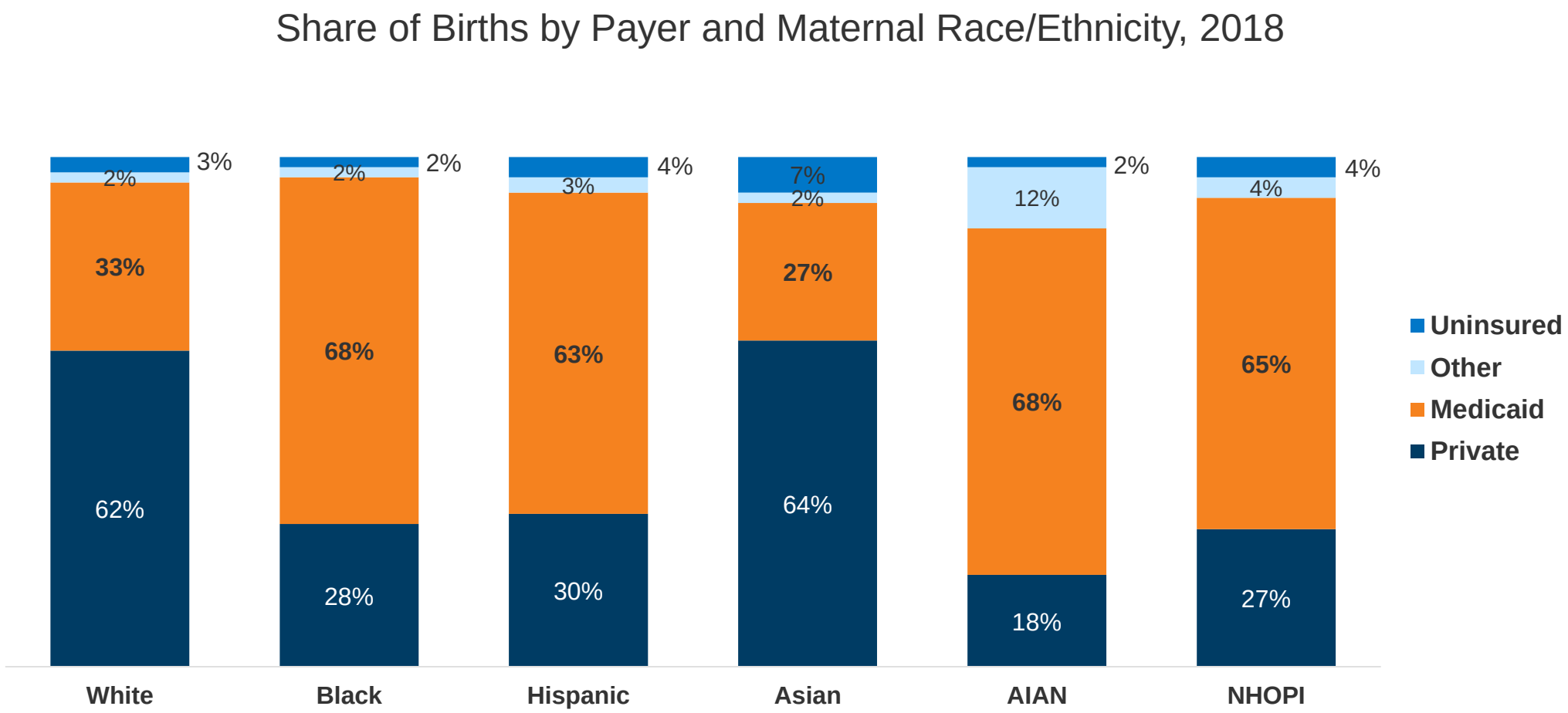
Medicaid is the Leading Payor of Maternity Care in Many States

- Medicaid covered 42% of births nationally in 2019
- Maternity services are mandatory benefit and cost-sharing is prohibited
- Minimum eligibility threshold is 138% FPL, but most states set higher levels
- Postpartum coverage under traditional Medicaid ends at 60 days, but varies between states (Coverage discontinuation suspended during public health emergency)



SOURCE: Martin JA, Hamilton BE, Osterman MJK, Driscoll AK. Births: Final Data for 2019. National Vital Statistics Reports; vol. 70, no. 2: National Center for Health Statistics. 2021.; KFF Survey of Medicaid Officials in 50 states and DC conducted by Health Management Associates, October 2019.

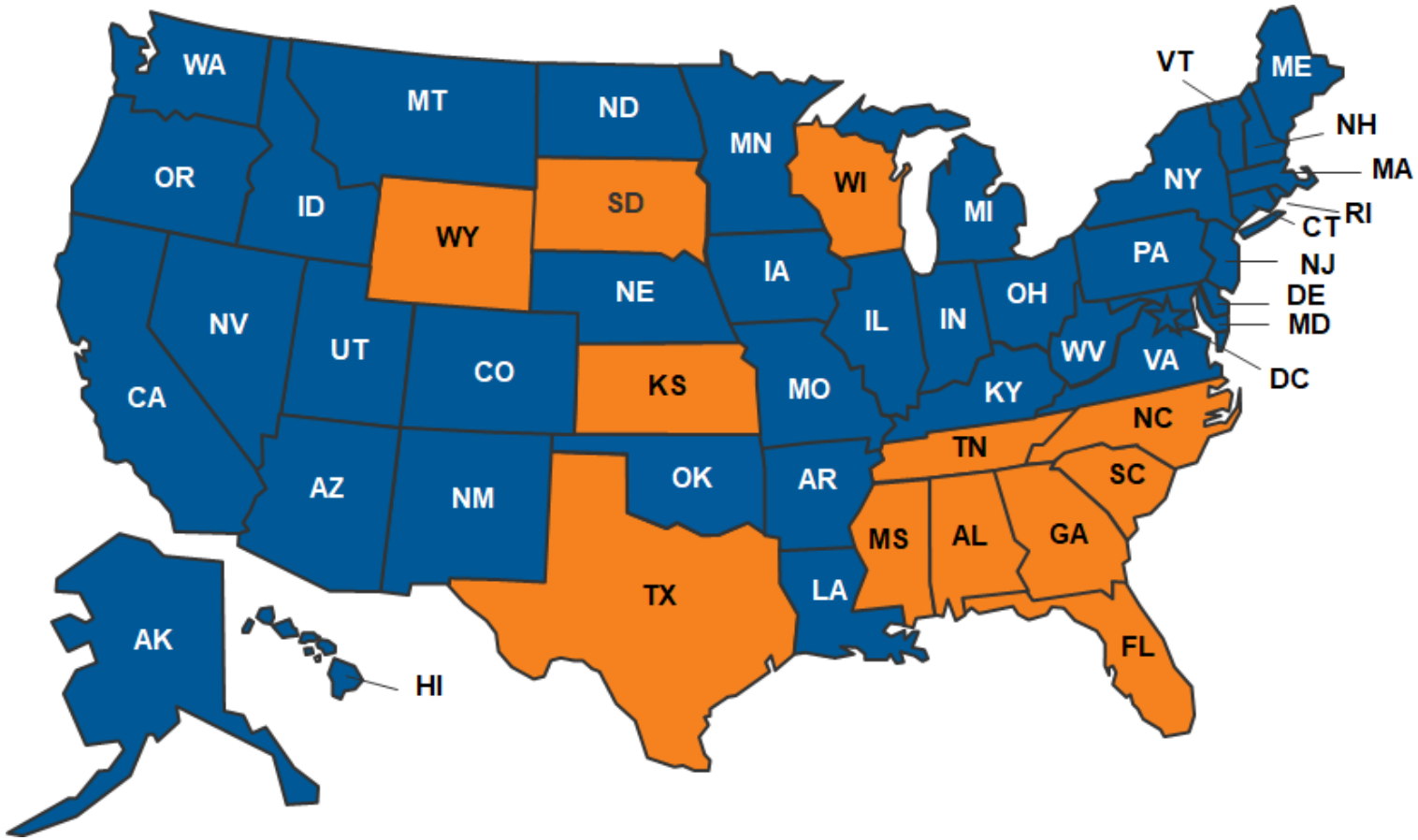
Medicaid Finances Most Births to Black, Hispanic, Native American, and Native Hawaiian and Pacific Islander People



NOTE: AIAN refers to American Indians and Alaska Natives. NHOPI refers to Native Hawaiians and Other Pacific Islanders. Persons of Hispanic origin many be of any race but are categorized as Hispanic for this analysis; other group are non-Hispanic. Medicaid includes Medicaid or a comparable state program; other includes Indian Health Service, CHAMPUS/TRICARE, and other government programs.

SOURCE: Centers for Disease Control and Prevention, National Center for Health Statistics, Division of Vital Statistics. Natality Records, 2018, WONDER Online Database.

Medicaid Expansion Provides a Pathway to Continued Postpartum Coverage



- Expands eligibility for full Medicaid benefits to all qualifying individuals with incomes <138% FPL

Adopted (39 States including DC)

Not Adopting At This Time (12 States)

NOTE: Current status for each state is based on KFF tracking and analysis of state activity. See link below for additional state-specific notes.

SOURCE: "Status of State Action on the Medicaid Expansion Decision," KFF State Health Facts, updated September 8, 2021. https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/

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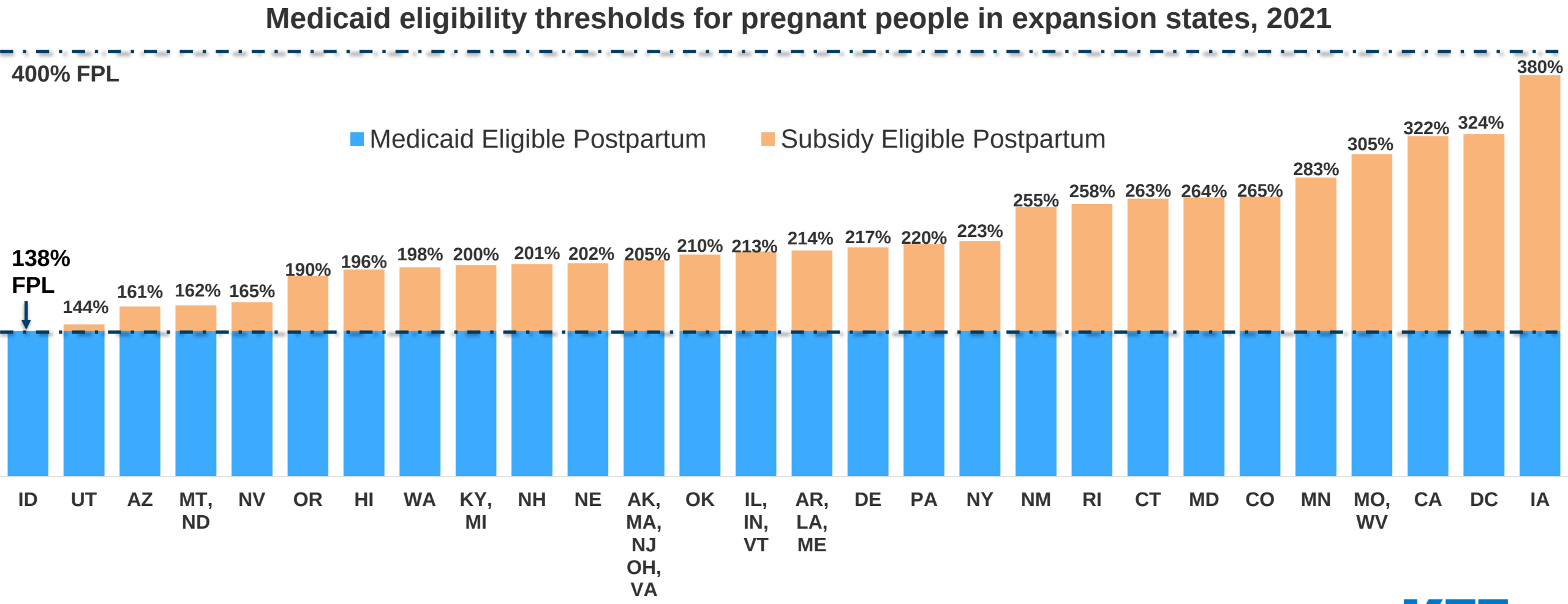
In Expansion States, Most Postpartum Beneficiaries Qualify for Medicaid or Subsidies on Individual Market



NOTE: Reflects highest eligibility limit for pregnancy under Medicaid, CHIP, or the "unborn child" option. In 2021, the FPL was $21,960 for a family of three. Thresholds include the standard five percentage point of the FPL disregard.

SOURCE: KFF, Medicaid and CHIP Eligibility and Enrollment Policies as of January 2021: Findings from a 50-State Survey, March 2021. Based on a national survey conducted by the Kaiser Program on Medicaid and the Uninsured with the Georgetown University Center for Children and Families, 2021.

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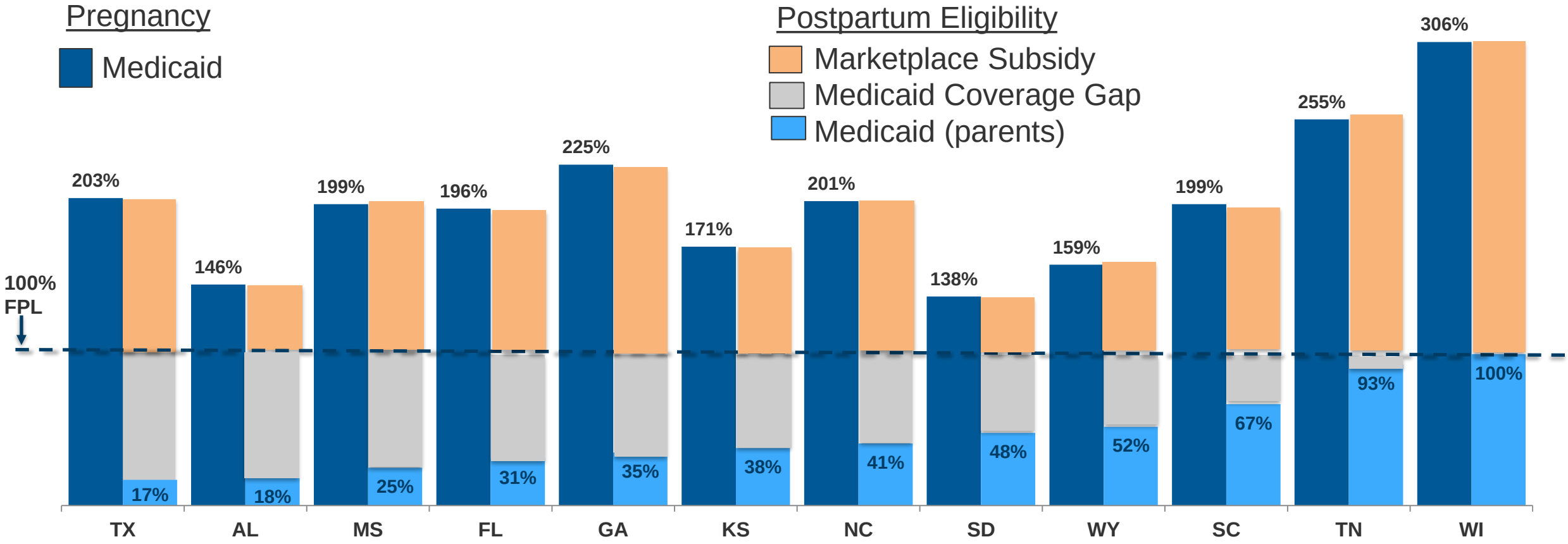
In Non-Expansion States, Some Postpartum Beneficiaries Fall in the “Coverage Gap": Ineligible for Medicaid or Marketplace Subsidies

Income Eligibility Thresholds for Pregnant and Postpartum People in Non-expansion States, 2021



NOTE: For pregnancy, reflects highest eligibility limit under Medicaid, CHIP, or the "unborn child" option. For “Parents,” eligibility limits calculated as a percent of the Federal Poverty Level (FPL) & are calculated based on a family of three for parents. In 2021, the FPL was $21,960 for a family of three. Thresholds include the standard five percentage point of the FPL disregard.
SOURCE: Medicaid and CHIP Eligibility and Enrollment Policies as of January 2021: Findings from a 50-State Survey, Kaiser Family Foundation, March 2021. Based on a national survey conducted by the Kaiser Program on Medicaid and the Uninsured with the Georgetown University Center for Children and Families, 2021.

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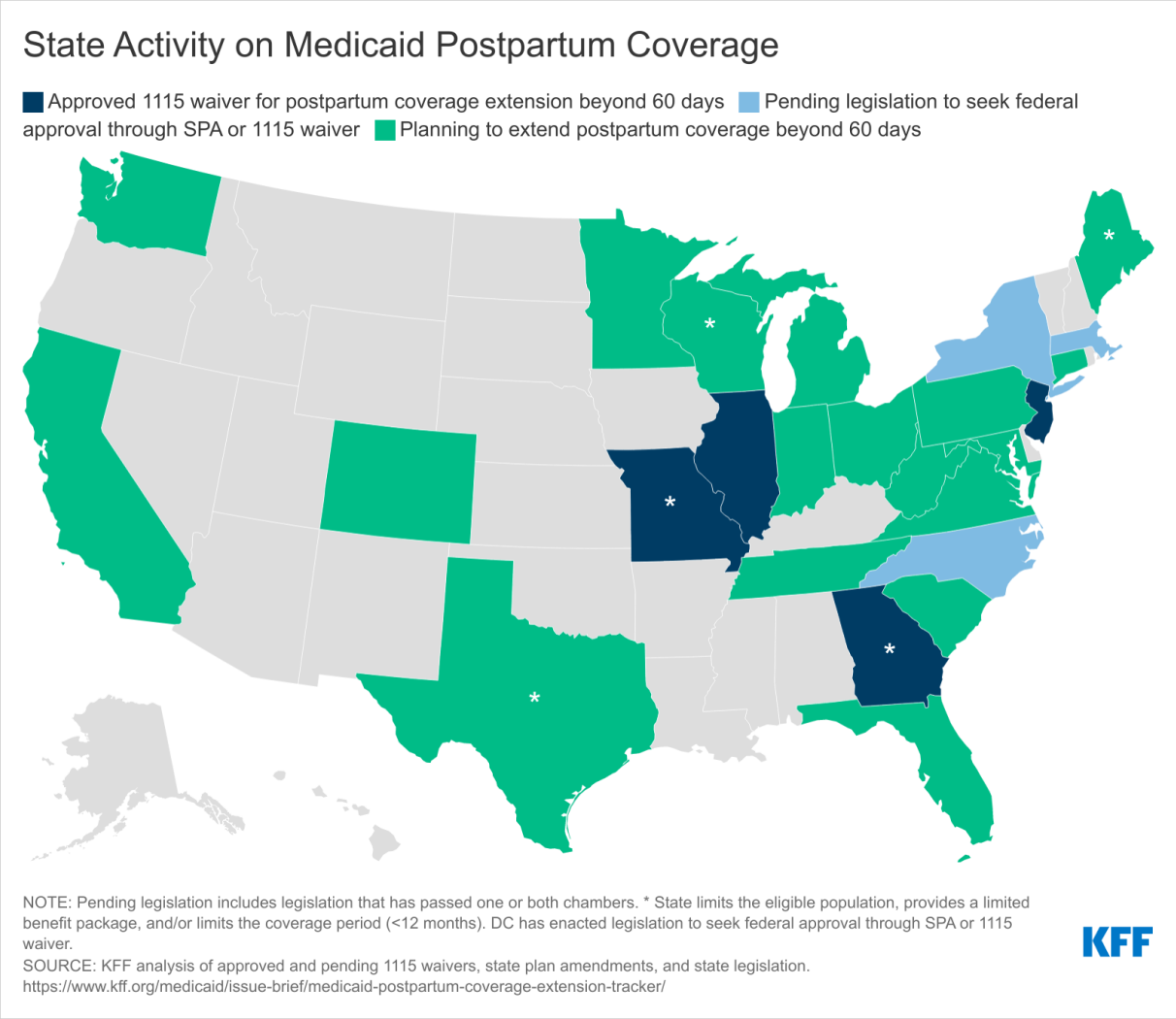
New Federal Option Available to Extend Postpartum Coverage to One Year



- American Rescue Plan Act of 2021 gave states the **option** to extend postpartum coverage from 60 days to 12 months via a state plan amendment effective April 2022
- To date, at least half of states have sought Medicaid postpartum coverage extensions through mix of state actions
- No activity in some non-expansion states though; without state or federal action, Medicaid postpartum coverage ends at 60 days in these states (after PHE ends)

SOURCE: KFF. Medicaid Postpartum Coverage Extension Tracker. As of November 8, 2021.

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Build Back Better Legislation

- **Would require all states to extend Medicaid postpartum coverage to 12 months starting 2023**

- **Incentives for maternal health home models under Medicaid**

- **New option for Medicaid expansion**

- **Coverage is only one aspect to strengthening maternity care. Legislation currently includes funds to support other policies from MOMNIBUS:**
  - Community groups addressing intersection of maternity care with broader social determinants of health
  - Diversifying provider workforce (e.g., doulas, nursing, mental health, substance use)
  - Enhanced data, surveillance, and research on maternal health outcomes and equity
  - Access to technologies that promote maternal health equity
  - Training for providers on anti-discrimination and bias

- **Paid parental leave???**

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Paid Family Leave: Implications for Families and Future Directions

Michelle Long, MPH

Senior Policy Analyst, Women's Health Policy

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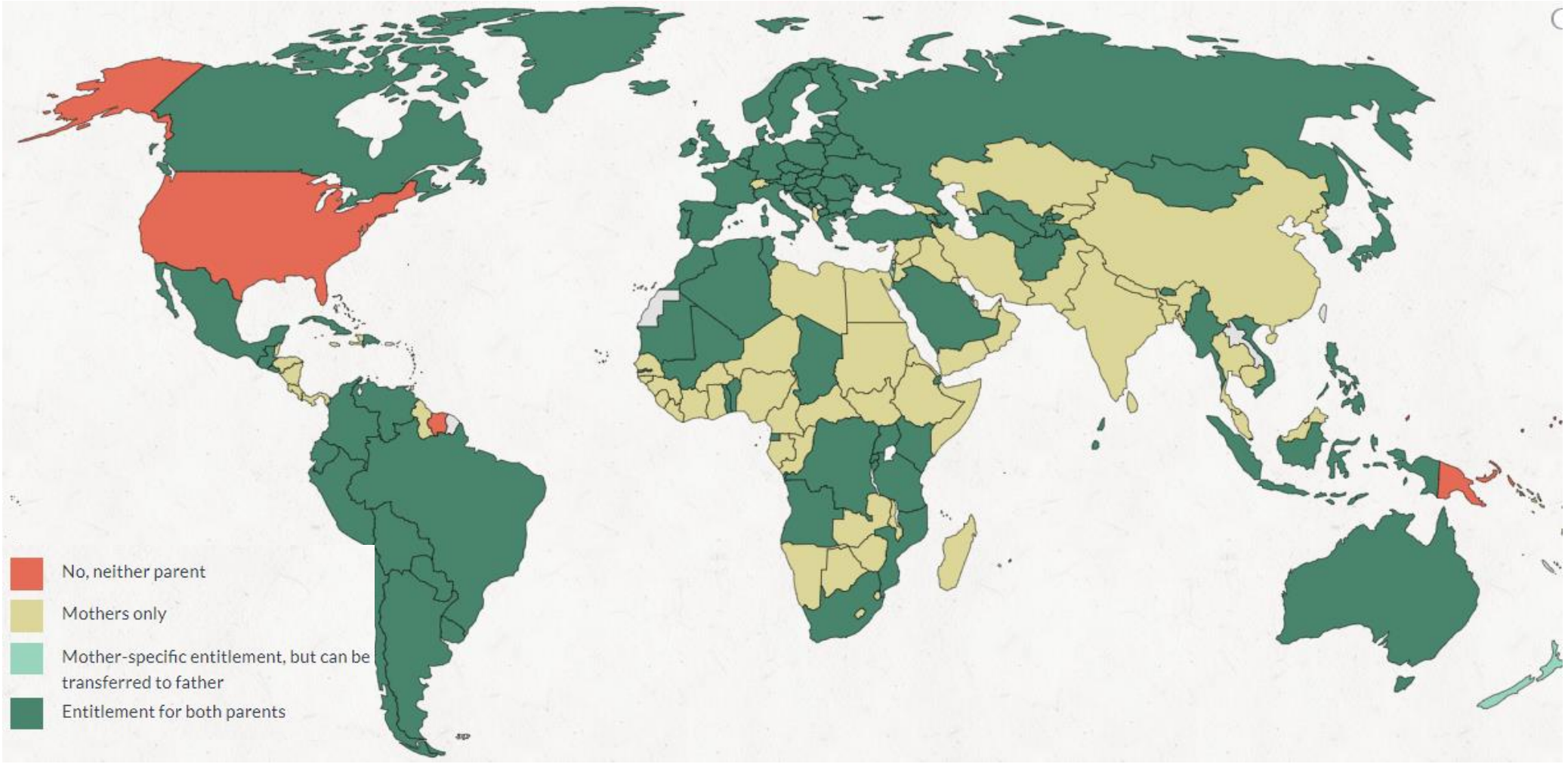
Entitlement to Paid Parental Leave Varies by Gender in Many Countries



NOTES: Map reflects a systematic review of laws in place as of April 2015 supplemented with detailed data on OECD countries as of September 2016 and other known policy changes that have occurred since then. Paid leave may be fully or partially paid.
SOURCE: WORLD Policy Analysis Center

In OECD Countries, Women are Entitled to About One Year of Paid Parental Leave on Average, With Variation in Benefit Amounts

	New Mothers		New Fathers	
Country	**Duration (Weeks)**	**Average Pay Replacement**	**Duration (Weeks)**	**Average Pay Replacement**
Norway	86	46%	15	96%
Korea	65	43%	54	42%
Germany	58	73%	9	65%
OECD average	**52**	**--**	**9**	**--**
Canada	51	51%	5	0%
Chile	30	100%	1	100%
Australia	18	42%	2	42%
Mexico	12	100%	1	100%
United States	0	NA	0	NA

NOTE: Duration of paid leave includes maternity or paternity leave plus parental and home care leave (if applicable). Data not available for OECD average pay replacement.
SOURCE: OECD Family Database. 2020.

Access to Paid Family Leave Has Health and Economic Benefits for Workers and Families

Parents

- Improved mental and physical health for new mothers[1,2]
- Increased likelihood of breastfeeding[1,3]
- Helps women remain in workforce[4,5]
- Balances caregiving responsibilities and improves mental health when taken by both parents[6,7]

Infants

- Reduced infant mortality[1,8]
- Improved child health and access to preventive care[9,10]

Caregivers

- Helps maintain connection to workforce[11,12]
- Provides economic security in short- and long-term[12,13]

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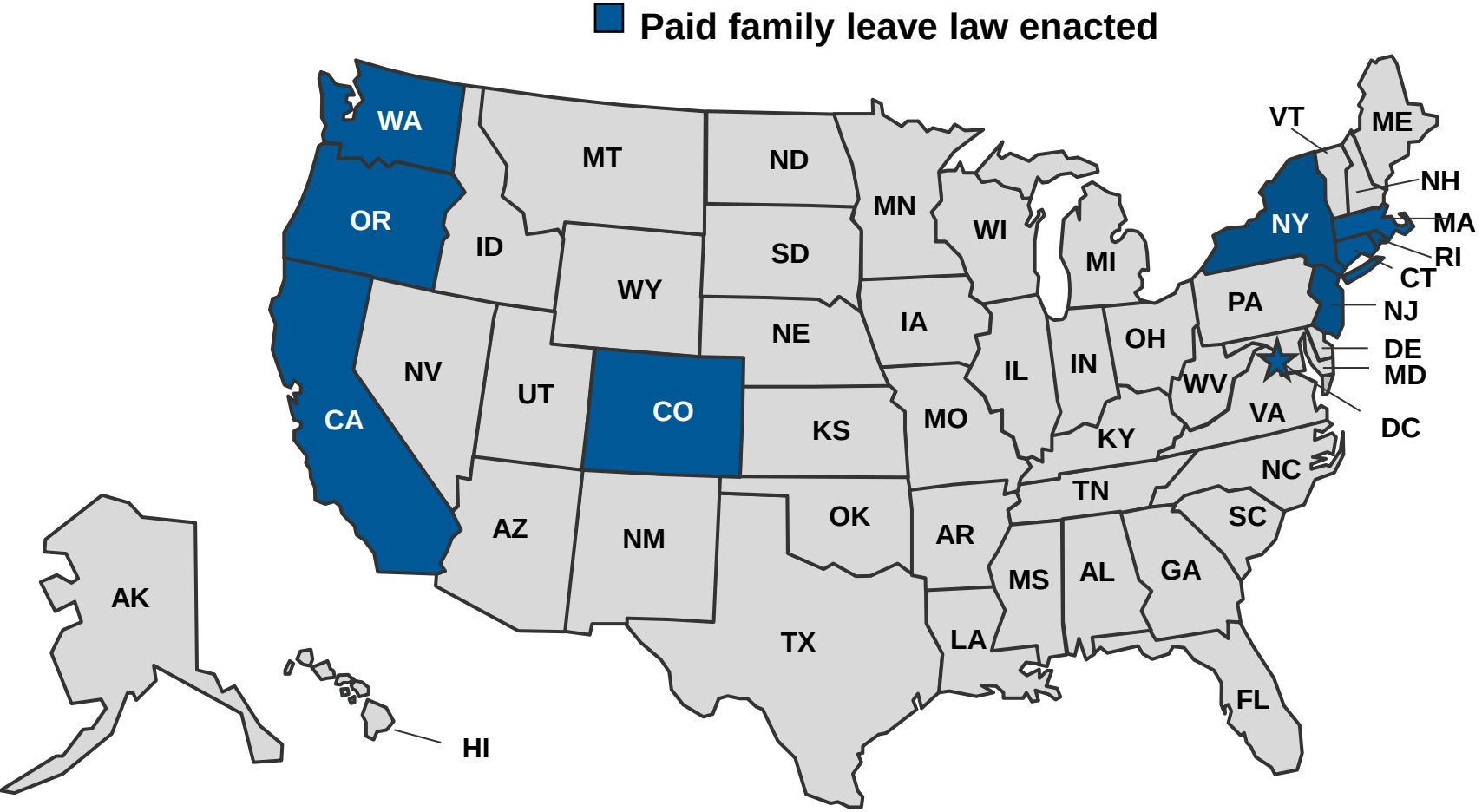
SOURCES: [1]Van Niel et al., 2020; Mason et al., (2021); [2]Steenland et al., 2021; [3]Mirkovic et al., 2016; [4]Jones et al., 2020; [5]Byker, 2016; [6]National Partnership for Women and Families, 2019; [7]Bartell et al., 2017; [8]Montoya-Williams et al., 2020; [9]Bullinger, 2019; [10]Choudhury et al., 2021; [11]U.S. Department of Labor, 2015; [12]Grant et al., 2017; [13]Arno et al., 2011

9 States and DC Have Paid Family Leave Laws

State Paid Family Leave Laws as of 2021



State Paid Leave Characteristics

Duration: 4 – 12 weeks

Average Pay Replacement[1]:
60% - 100%

Payroll Contributions Made By:
Worker only: 7 states
Employer and Worker: 2 states
Employer only: 1 state

NOTE: Law effective dates: CT: Jan. 2021 (premiums)/Jan. 2022 (benefits); OR: Jan. 2022 (premiums)/Jan. 2023 (benefits); CO; Jan. 2023 (premiums)/Jan. 2024 (benefits). [1]Many states provide benefits on a sliding scale based on income, with a higher percentage of wage replacement for lower-wages. All states have weekly caps on benefits.

SOURCE: KFF analysis of state paid family and medical leave laws; A Better Balance: Overview of Paid Family & Medical Leave Laws in the United States.

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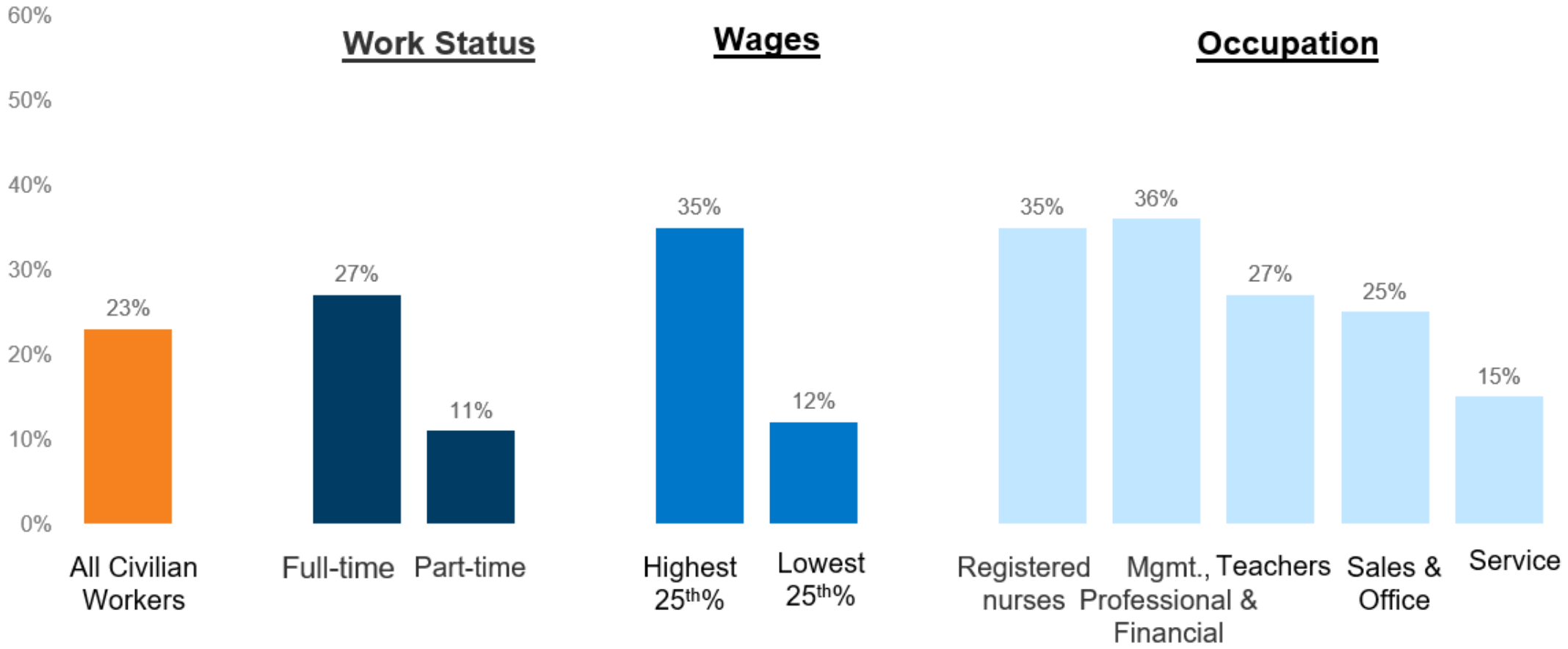
About 1/4 of Workers Have Access to Paid Family Leave Through Their Employer

Share of Workers Whose Employer Reports Providing Paid Family Leave, by Worker Characteristics, 2021



NOTE: Includes private industry and state and local government workers.

SOURCE: Employee Benefits in the United States, March 2021. National Compensation Survey. U.S. Bureau of Labor Statistics.

Paid Leave in the Build Back Better Act

- 4 weeks of paid family and medical leave
- Qualified leave:
  - Welcoming a new child by birth, adoption, or foster care
  - Recovering from a serious illness
  - Caring for a seriously ill family member (by blood or affinity)
- Pay replacement provided on a sliding scale – lower-wage workers receive higher percentage
- Funded by general tax revenue, different from state paid leave programs, which are funded by payroll taxes on employers, workers, or a combination of both

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SOURCE: H.R. 5376, Build Back Better Act. Title XIII. Committee on Ways and Means. Subtitle A—Comprehensive Paid Leave. Nov. 3, 2021.

Submit Questions for Q&A

Attendee audio and video is turned off, so if you would like to submit a question for the panelists, please click on the Q&A button at the bottom of your screen:

You can submit questions for the Q&A session at any time during the web briefing; we will answer as many as we can after the presentation.

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Keeping an Eye on the Policy Horizon

- Congress
  - Reconciliation: Addressing the Medicaid coverage gap? 12-month Medicaid postpartum coverage? Paid leave?
  - The Hyde Amendment?
  - Women's Health Protection Act?
- The Administration – Rebuilding Title X? Improving maternal health outcomes? Defending abortion rights?
- The States – Medicaid expansion/Postpartum extension? Contraceptive and abortion access? Paid leave?
- The Courts – SCOTUS and the future of abortion? Title X?

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Contact Information and Additional Resources

Emma Anderson
Communications Associate
Email: emmaa@kff.org

An archived version of the webinar will be posted online later today. We will notify attendees by email when it is available.

For more analysis on women's health, visit our website:

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