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COALITION**



**MEDICAID FINANCING AS A DRIVER OF HEALTH EQUITY:
CONSIDERING RECENT POLICY PROPOSALS**

Thursday, August 17, 2023

Troubling Medicaid Policy Proposals

- On May 3, 2023 the Centers for Medicare & Medicaid Services (CMS) published the Medicaid Managed Care Proposed Rule in the Federal Register.
- Proposed changes in the Medicaid Managed Care Proposed Rule present increased and undue risks to underserved communities, particularly black and brown Medicaid beneficiaries, by:
 - Compromising states' ability to fund the non-federal share of states' Medicaid programs by **imposing new restrictions on provider taxes.**
 - **Imposing artificial state expenditure limits** on vital state directed payment (SDP) programs.
 - Marginalizing Medicaid beneficiaries by **restricting access to the courts** and requiring states to exhaust administrative remedies for SDP denials.

Unnecessary Risk for Underserved Communities

- Supporting Medicaid programs and participating providers is essential to maintaining access to high quality care for Medicaid beneficiaries.
 - **KFF Health News** recently observed that any proposal to restrict provider taxes (e.g., increased enforcement of a dubious interpretation of the hold harmless provision) is reducing Medicaid payments to providers serving those communities by limiting state sources of the non-federal share.
 - **The National Minority Quality Forum (NMQF)** raised the alarm that this policy, along with a proposed **state expenditure cap** for state directed payment programs (SDPs), **could devastate at least 20 states that rely on directed payments to support their Medicaid programs.**
 - **Reverend Al Sharpton and the National Action Network (NAN)** pointed out that a CMS proposal to create layers of administrative review for DPP disputes would **deprive states and beneficiaries of speedy access to courts**, making it harder to challenge unintended consequences of these policy changes that would disproportionately burden communities of color.

Myths & Truths of Medicaid Financing

| MYTH | TRUTH |
|---|---|
| <p>Federal law gives CMS the authority to regulate or prohibit wholly private arrangements between providers paying provider taxes.</p> | <p>Federal law only prohibits hold harmless provisions by “the state or other unit of government imposing the tax.”</p> |
| <p>The Biden-Harris Administration has never opined on the policy objections now raised by CMS.</p> | <p>President Biden’s campaign healthcare platform objected to adopting the same policies first set forth in the 2019 Medicaid Fiscal Accountability Proposed Rule (MFAR). The objection was listed on his campaign website. Additionally, Senator Harris joined 27 Senators on a letter objecting to the proposed MFAR policies.</p> |
| <p>Only Texas, Florida, and Missouri providers participate in private redistribution arrangements.</p> | <p>Providers in up to 20 states participate in a variety of private pooling/redistribution arrangements. KFF Health News recently reported on the California Foundation model.</p> |
| <p>Imposing expenditure limits on DPPs will improve program and fiscal protections.</p> | <p>CMS has yet to provide data to support the proposed reforms. Analysis shows that the proposed limits will reduce access to care and offset programs intended to support strained Medicaid programs (i.e., California MCO tax).</p> |
| <p>Arrangements that shift payments from high-Medicaid providers to low-Medicaid providers are harmful to the high-Medicaid providers.</p> | <p>No data has been provided by anyone to support this conclusion. Even if arrangements exist where ‘high-Medicaid’ providers make a payment to a lower volume Medicaid provider, the overall net benefit to the high-Medicaid provider is better than it would be in the absence of a provider tax. This benefits the high-Medicaid provider and the patients served by that high-Medicaid provider.</p> |

Financing Myths and Related Dangerous Data Trends

- The NMQF is a nonprofit, nonpartisan research and educational organization dedicated to ensuring that high-risk racial and ethnic populations and communities receive optimal healthcare.
 - This is a nationwide issue, not just an issue faced by Texas, Florida, and Missouri:
 - ***"[P]olicies in the Proposed Rule regarding provider payments and state directed payments will undermine access to care in vulnerable populations and communities of color across the country."***
 - Without proceeds from provider taxes, preliminary data suggests that communities of color will be disproportionately impacted.
 - ***"While we do not believe the proposed restrictions on provider taxes are intended to create disparate impact, this preliminary analysis suggests a strong likelihood that communities of color will be disproportionately impacted by the loss of federal funding that may be a consequence of these changes."***
 - These effects will be worse in light of ongoing Medicaid redeterminations.
 - ***"Access to care and network adequacy for these patients will suffer if CMS withholds billions of dollars from these Medicaid programs, especially as the continuous enrollment provisions of the pandemic come to an end."***

Medicaid Financing Policies

- Provider taxes are essential to supporting a significant portion of the state non-federal share in 49 states and D.C.
- Provider taxes have been used to support various programs, including Medicaid reimbursement rates, provider reimbursement rate increases, and Medicaid expansion.
- CMS maintains that the provider tax and redistribution arrangement proposals are rooted in longstanding policy. They are not. The proposals were first introduced in the withdrawn MFAR and are inconsistent with law and policy.
- The Proposed Rule would effectively prohibit private redistribution agreements and impose new burdens on governmental entities, even though governmental entities are not party to and do not know of the private agreements.
- MACPAC and other organizations have urged CMS to collect data to better understand the impact of the proposed changes.

States with Potential SDP Losses Over \$1 Billion Due to Expenditure Cap

| RANK | STATE | POTENTIAL IMPACT |
|------|--------------|------------------|
| 1 | Texas | (5,092,000,000) |
| 2 | California | (4,160,000,000) |
| 3 | Tennessee | (3,373,000,000) |
| 4 | Louisiana | (2,553,000,000) |
| 5 | Florida | (2,345,000,000) |
| 6 | Indiana | (2,139,000,000) |
| 7 | Michigan | (1,896,000,000) |
| 8 | Virginia | (1,339,000,000) |
| 9 | Rhode Island | (1,019,000,000) |

States with Potential SDP Losses Under \$1 Billion Due to Expenditure Cap

| RANK | STATE | POTENTIAL IMPACT |
|------|----------------|------------------|
| 1 | Arizona | (908,000,000) |
| 2 | Oregon | (570,000,000) |
| 3 | North Carolina | (542,000,000) |
| 4 | Illinois | (463,000,000) |
| 5 | Ohio | (403,000,000) |
| 6 | Wisconsin | (283,000,000) |
| 7 | Mississippi | (257,000,000) |
| 8 | Utah | (178,000,000) |
| 9 | Kentucky | (81,000,000) |
| 10 | Hawaii | (55,000,000) |
| 11 | Iowa | (39,000,000) |

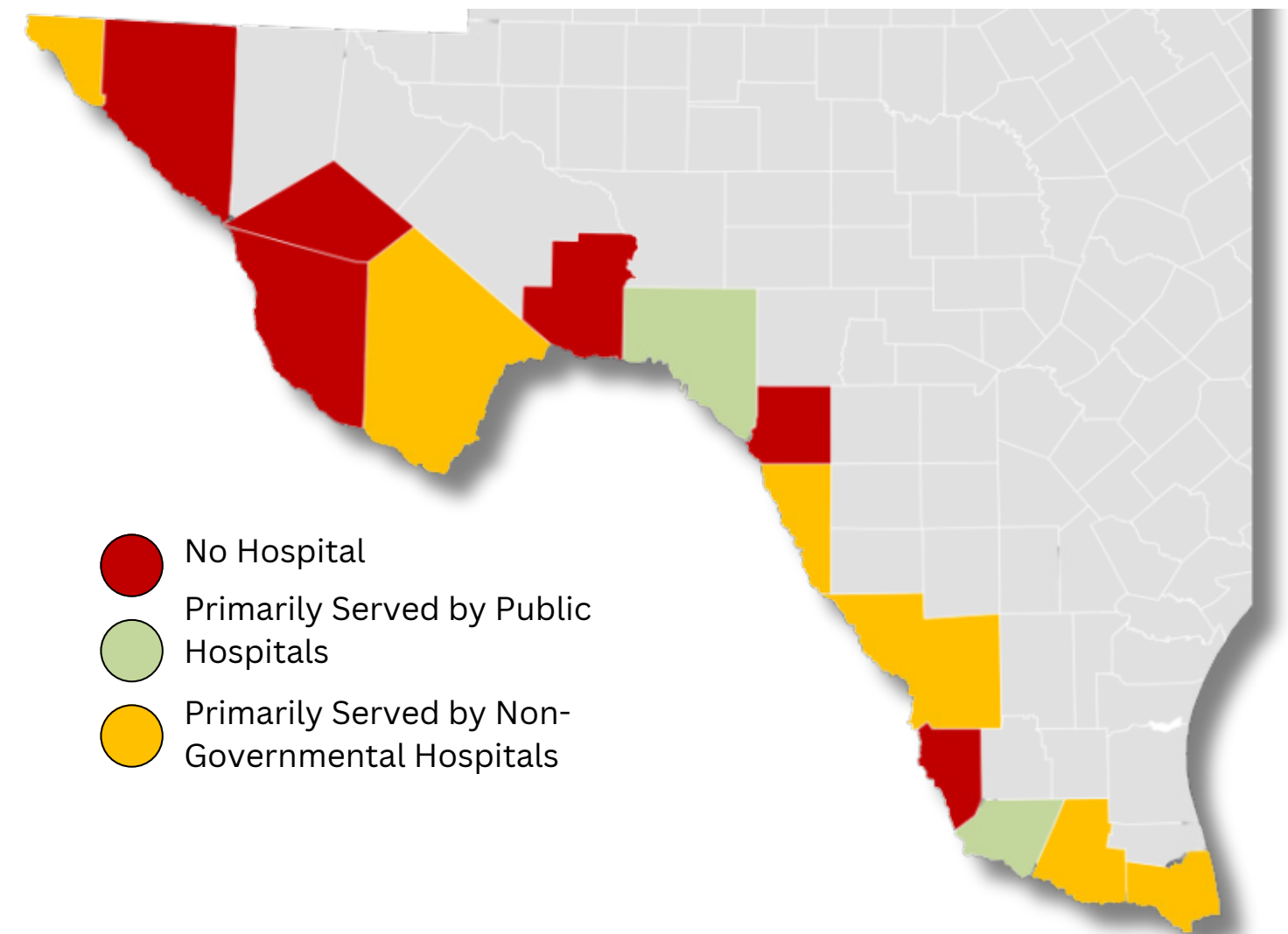
Proposals Exacerbate Existing Inequalities

- The federal government must not punish Texas' most vulnerable communities by implementing the proposed policies.
 - Limited resources and low property values disadvantage poor communities.
 - 72 counties in Texas have no hospitals.
 - Even counties with a hospital do not have large, comprehensive health systems.
 - Many communities do not have the tax base necessary to support a public healthcare system, and the entire Texas-Mexico border. The entire Texas Mexico border only has one major public hospital.
 - Provider taxes are essential to keeping hospital doors open.
- Supporting partnerships at the state and local level is essential to maintaining access to high quality care.
 - Local indigent care programs are all the more important in light of redeterminations.
 - Texas would still have 4 million uninsured persons even with expansion.
 - Limiting expenditures and eliminating local provider taxes will only set the state back.

Impact to Texas-Mexico Border

| IMPACT RANKING | BORDER COUNTY | POPULATION | MCD DEPENDENT | NUMBER OF HOSP. | POTENTIAL SDP LOSS |
|----------------|---------------|------------------|----------------|-----------------|----------------------|
| 1 | El Paso | 865,657 | 209,000 | 16 | (274,745,000) |
| 2 | Hidalgo | 870,781 | 297,000 | 8 | (236,670,000) |
| 3 | Cameron | 421,017 | 138,000 | 8 | (121,099,000) |
| 4 | Webb | 267,114 | 90,000 | 5 | (69,781,000) |
| 5 | Maverick | 57,887 | 21,000 | 2 | (8,925,000) |
| 6 | Val Verde | 47,586 | 13,000 | 2 | (8,812,000) |
| 7 | Brewster | 9,546 | 1,100 | 1 | (1,882,000) |
| 8 | Starr | 65,920 | 27,000 | 1 | (1,765,000) |
| TOTAL | | 2,605,508 | 796,100 | 43 | (723,679,000) |

THE TEXAS BORDER SAFETY NET DEPENDS ON NON-GOVERNMENTAL HOSPITALS



- No Hospital
- Primarily Served by Public Hospitals
- Primarily Served by Non-Governmental Hospitals

Top 10 Impacted Congressional Districts in Texas

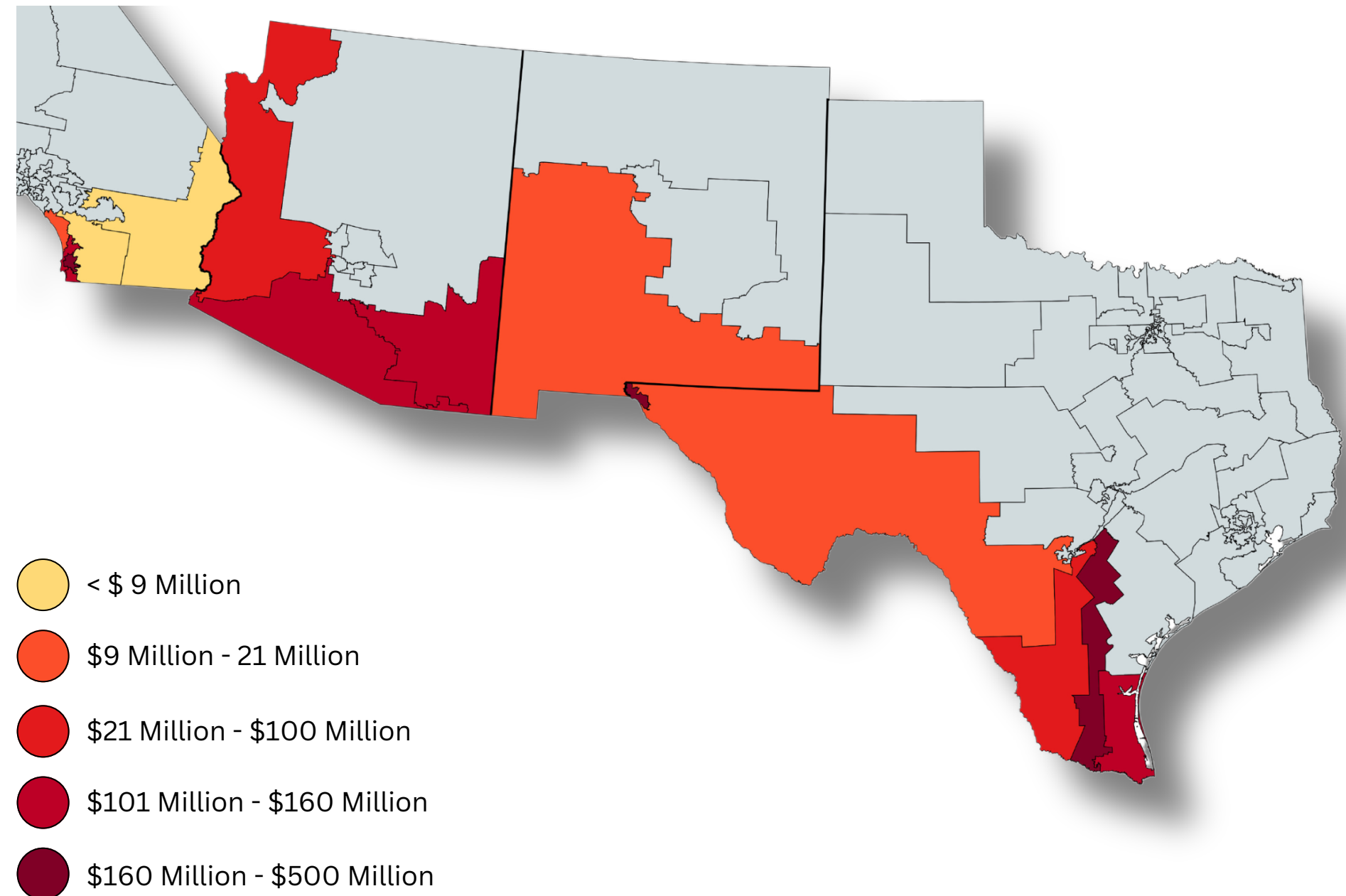
| IMPACT RANKING | U.S. CONGRESSIONAL DISTRICT | U.S. CONGRESSIONAL REPRESENTATIVE | PARTY AFFILIATION | URBAN AREA | SUPPLEMENTAL PAYMENTS AT RISK |
|----------------|-----------------------------|-----------------------------------|-------------------|-------------------|-------------------------------|
| 1 | 9 | Al Green | Democrat | Houston | (1,619,920,000) |
| 2 | 30 | Jasmine Crockett | Democrat | Dallas | (984,790,000) |
| 3 | 12 | Kay Granger | Republican | Fort Worth | (486,580,000) |
| 4 | 20 | Joaquin Castro | Democrat | San Antonio | (448,140,000) |
| 5 | 37 | Lloyd Doggett | Democrat | Austin | (422,810,000) |
| 6 | 27 | Michael Cloud | Republican | Corpus Christi | (291,410,000) |
| 7 | 36 | Brian Babin | Republican | Houston | (284,290,000) |
| 8 | 16 | Veronica Escobar | Democrat | El Paso | (274,740,000) |
| 9 | 1 | Nathaniel Moran | Republican | Longview | (271,070,000) |
| 10 | 33 | Marc Veasey | Democrat | Dallas-Fort Worth | (259,760,000) |

Top 10 Impacted Congressional Districts in Florida

| IMPACT RANKING | U.S. CONGRESSIONAL DISTRICT | U.S. CONGRESSIONAL REPRESENTATIVE | PARTY AFFILIATION | URBAN AREA | SUPPLEMENTAL PAYMENTS AT RISK |
|----------------|-----------------------------|-----------------------------------|-------------------|----------------|-------------------------------|
| 1 | 10 | Maxwell Frost | Democrat | Orlando | (542,930,000) |
| 2 | 14 | Kathy Castor | Democrat | Tampa | (280,010,000) |
| 3 | 26 | Mario Díaz-Balart | Republican | Miami | (230,090,000) |
| 4 | 27 | Maria Elvira Salazar | Republican | Miami | (206,080,000) |
| 5 | 25 | Debbie Wasserman Schultz | Democrat | Pembroke Pines | (135,340,000) |
| 6 | 3 | Kat Cammack | Republican | Gainesville | (116,540,000) |
| 7 | 9 | Darren Soto | Democrat | Orlando | (103,810,000) |
| 8 | 23 | Jared Moskowitz | Democrat | Ft. Lauderdale | (90,840,000) |
| 9 | 18 | Scott Franklin | Republican | Lakeland | (80,940,000) |
| 10 | 5 | John Rutherford | Republican | Jacksonville | (79,900,000) |

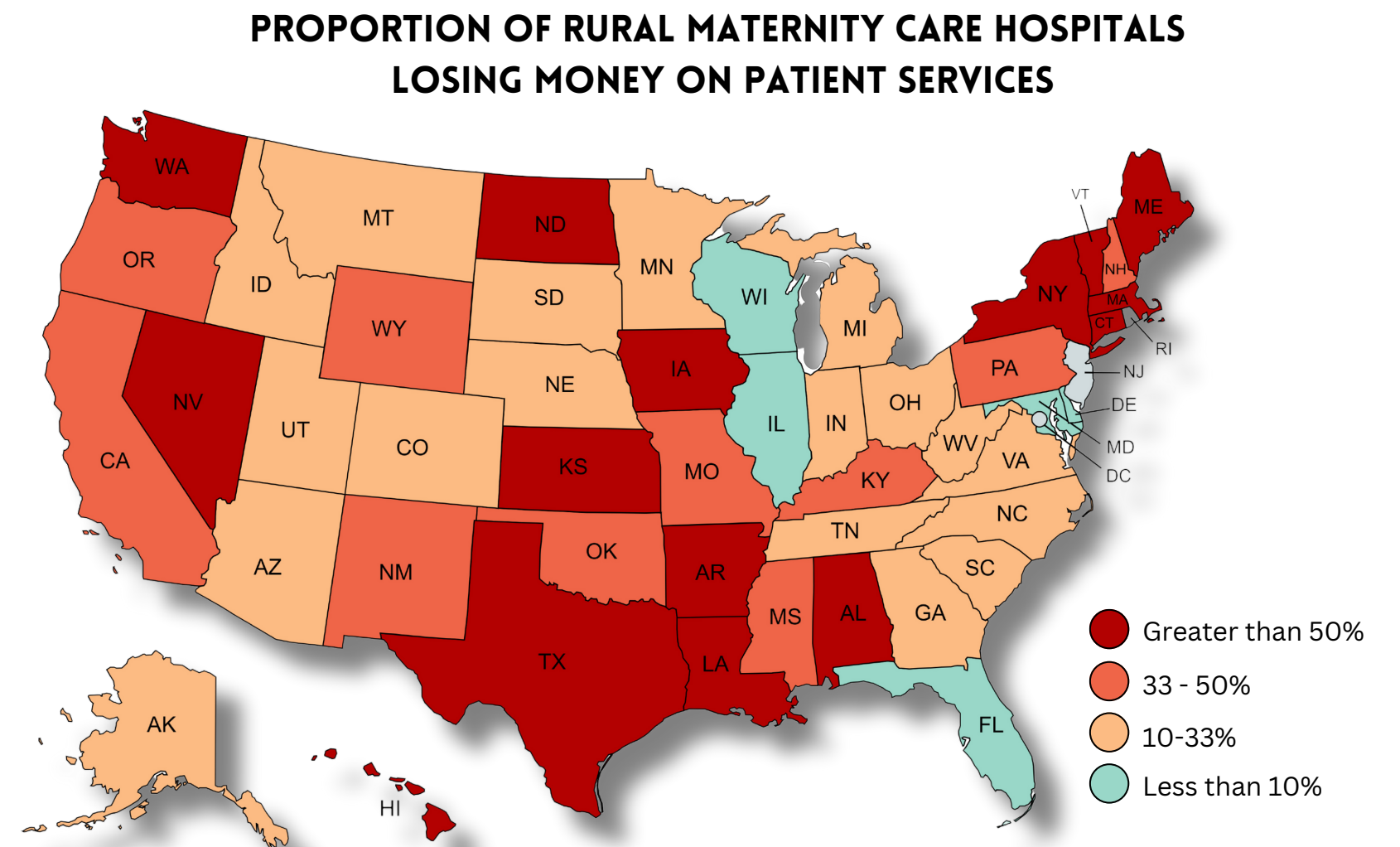
Impact to U.S. - Mexico Border by Congressional District

| IMPACT RANKING | BORDER DISTRICT | MEMBER NAME | POTENTIAL SDP LOSS |
|----------------|-----------------|-------------------|------------------------|
| 1 | CA51 | Sara Jacobs | (496,913,000) |
| 2 | TX16 | Veronica Escobar | (274,745,000) |
| 3 | TX15 | Monica De La Cruz | (219,673,000) |
| 4 | AZ7 | Raul M. Grijalva | (158,469,000) |
| 5 | CA50 | Scott H. Peters | (157,633,000) |
| 6 | TX34 | Vicente Gonzalez | (138,096,000) |
| 7 | AZ9 | Paul A. Gosar | (124,877,000) |
| 8 | AZ6 | Juan Ciscomani | (108,491,000) |
| 9 | CA52 | Juan Vargas | (71,546,000) |
| 10 | TX28 | Henry Cuellar | (58,093,000) |
| 11 | CA25 | Raul Ruiz | (19,618,000) |
| 12 | TX23 | Tony Gonzales | (16,470,000) |
| 13 | CA48 | Darrell Issa | (9,781,000) |
| TOTAL | | | (2,125,070,000) |



Human Impact

- Medicaid is the lifeline for basic healthcare for rural, border, and inner-city populations. Undermining Medicaid financing will result in hospital closures, aggravating existing inequities and barriers to care:
 - Studies of Black cardiac patients have shown **ambulance diversion to be responsible for elevated numbers of deaths** when compared to White patients over the same duration of time.
 - The **maternal mortality rate for Black women was 69.9 deaths per 100,000 live births, 2 - 6 times the rate for White women.**
 - The Black infant mortality rate is **twice the rate for White infants.**



State Comments on Proposed Rule

| COMMENTING STATE | OPPOSE EXPANDED HOLD HARMLESS | OPPOSE CAP ON STATE EXPENDITURES | OPPOSE CHANGES TO COURT ACCESS |
|------------------|-------------------------------|----------------------------------|--------------------------------|
| Arizona | X | X | |
| California | X | X | X |
| Delaware | | X | |
| Illinois | X | X | |
| Indiana | | | X |
| Louisiana | X | X | X |
| Massachusetts | X | X | |
| Michigan | X | | X |
| Missouri | X | X | X |
| New Hampshire | X | X | X |

State Comments on Proposed Rule

| COMMENTING STATE | OPPOSE EXPANDED HOLD HARMLESS | OPPOSE CAP ON STATE EXPENDITURES | OPPOSE CHANGES TO COURT ACCESS |
|------------------|-------------------------------|----------------------------------|--------------------------------|
| North Carolina | | X | |
| New Mexico | X | X | |
| Oregon | X | X | |
| Pennsylvania | | X | X |
| South Carolina | | X | |
| Tennessee | X | X | X |
| Texas | X | X | X |
| Vermont | X | X | X |
| Wisconsin | | X | |

Potential for Political Consequences

- Data from NMQF analysis suggests that CMS' proposed policies are counter to the administration's commitment to the Medicaid program and health equity, particularly as states are starting to disenroll beneficiaries in Medicaid redeterminations.
- The President campaigned against these policies and as President, Biden oversaw finalization of the withdrawal of the MFAR proposal, ensuring the integrity of the network of Medicaid providers and care for the vulnerable populations they serve.
- As a US Senator, Vice President Harris joined 27 Senators on a letter opposing the Medicaid financing policies set forth in MFAR.
- Medicaid beneficiaries cannot be held hostage over policies that will result in additional losses in coverage.

Outcome

- 1 Refrain from finalizing disruptive Medicaid financing policies that threaten access to care.**
- 2 Work with local officials and providers to find policy solutions that protect the integrity of the Medicaid program while avoiding unintended consequences for Medicaid beneficiaries.**
- 3 Engage NMQF and other patient-centered advocacy organizations to assess the impact of CMS' proposed Medicaid financing policies on communities of color.**