2023 PUBLIC HEALTH LAW CONFERENCE

People. Policy. Progress.

Building an Equitable Reproductive Health Future After *Dobbs*

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Equitably Closing the Medicaid Coverage Gap: a Reproductive Justice Imperative

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The reproductive justice framework

Reproductive justice: “the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.” —SisterSong

Three Collaborative Frameworks

Reproductive Health

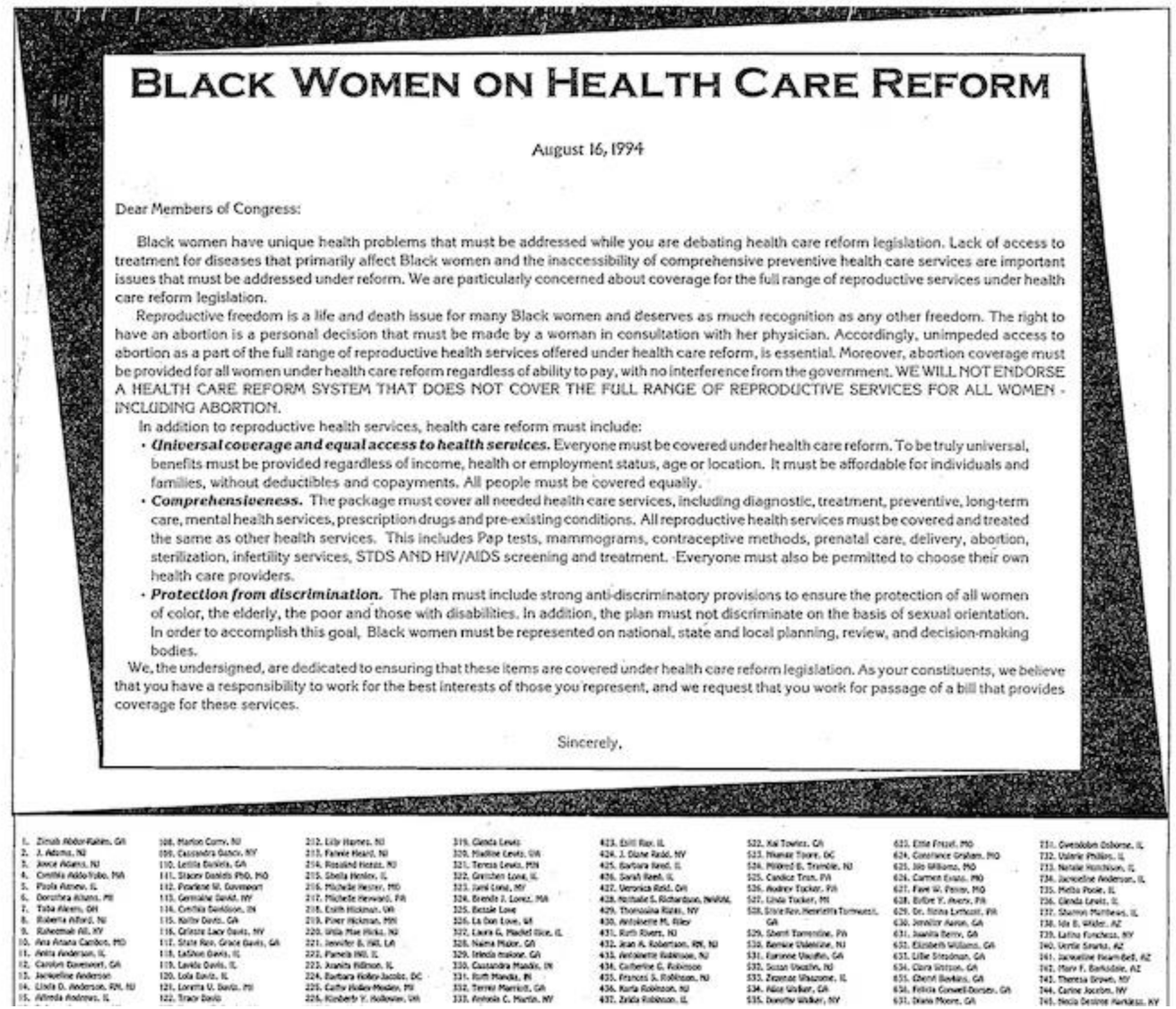
*Service delivery
*Strategize on improving and expanding services, research, and access
*Focuses on providers, medical professionals, community and public health educators, and health service providers

Reproductive Rights

*Legal advocacy
*Strategy is legislative at the state and federal levels
*Key players are advocates, legal experts, policy makers, and elected officials

Reproductive Justice

*Movement building
*Strategies and solutions are intersectional and comprehensive
*Focuses on centering the leadership and power of those most affected by reproductive oppression



BLACK WOMEN ON HEALTH CARE REFORM

August 16, 1994

Dear Members of Congress:

Black women have unique health problems that must be addressed while you are debating health care reform legislation. Lack of access to treatment for diseases that primarily affect Black women and the inaccessibility of comprehensive preventive health care services are important issues that must be addressed under reform. We are particularly concerned about coverage for the full range of reproductive services under health care reform legislation.

Reproductive freedom is a life and death issue for many Black women and deserves as much recognition as any other freedom. The right to have an abortion is a personal decision that must be made by a woman in consultation with her physician. Accordingly, unimpeded access to abortion as a part of the full range of reproductive health services offered under health care reform, is essential. Moreover, abortion coverage must be provided for all women under health care reform regardless of ability to pay, with no interference from the government. WE WILL NOT ENDORSE A HEALTH CARE REFORM SYSTEM THAT DOES NOT COVER THE FULL RANGE OF REPRODUCTIVE SERVICES FOR ALL WOMEN - INCLUDING ABORTION.

In addition to reproductive health services, health care reform must include:

- ***Universal coverage and equal access to health services.*** Everyone must be covered under health care reform. To be truly universal, benefits must be provided regardless of income, health or employment status, age or location. It must be affordable for individuals and families, without deductibles and copayments. All people must be covered equally.
- ***Comprehensiveness.*** The package must cover all needed health care services, including diagnostic, treatment, preventive, long-term care, mental health services, prescription drugs and pre-existing conditions. All reproductive health services must be covered and treated the same as other health services. This includes Pap tests, mammograms, contraceptive methods, prenatal care, delivery, abortion, sterilization, infertility services, STDS AND HIV/AIDS screening and treatment. Everyone must also be permitted to choose their own health care providers.
- ***Protection from discrimination.*** The plan must include strong anti-discriminatory provisions to ensure the protection of all women of color, the elderly, the poor and those with disabilities. In addition, the plan must not discriminate on the basis of sexual orientation. In order to accomplish this goal, Black women must be represented on national, state and local planning, review, and decision-making bodies.

We, the undersigned, are dedicated to ensuring that these items are covered under health care reform legislation. As your constituents, we believe that you have a responsibility to work for the best interests of those you represent, and we request that you work for passage of a bill that provides coverage for these services.

Sincerely,

(Washington Post photo illustration)

Why Medicaid?

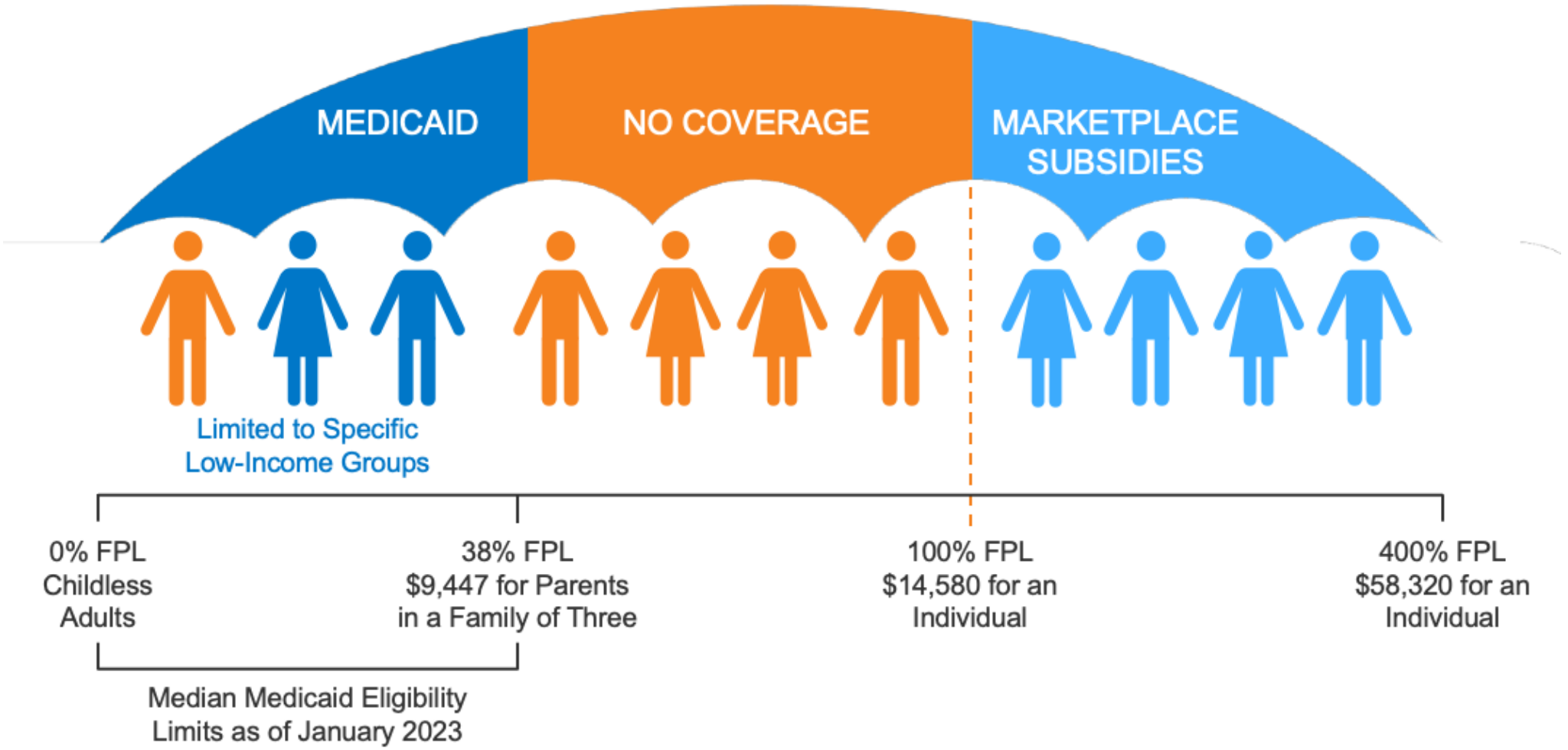
Medicaid's Potential

- Created in 1965 as part of the Civil Rights movement's groundbreaking triad of legislative victories
- As of June 2023, Medicaid covered 92.6M+ people with low incomes
  - Covers more than half of all births in the U.S., 65% of births to Black women
  - Largest source of public funding for contraceptive services
- Public health insurance safety net coverage
  - Pregnancy-related care, contraception, sexual health services, abortions (with severe restrictions under the Hyde Amendment), gender-affirming care, care for chronic conditions and disabilities
- Coverage and benefit restrictions limit potential as a reproductive justice tool
  - White supremacist notion of "worthiness"

Ending the Medicaid expansion coverage gap

KFF

Gap in Coverage for Adults in States that Do Not Expand Medicaid Under the ACA



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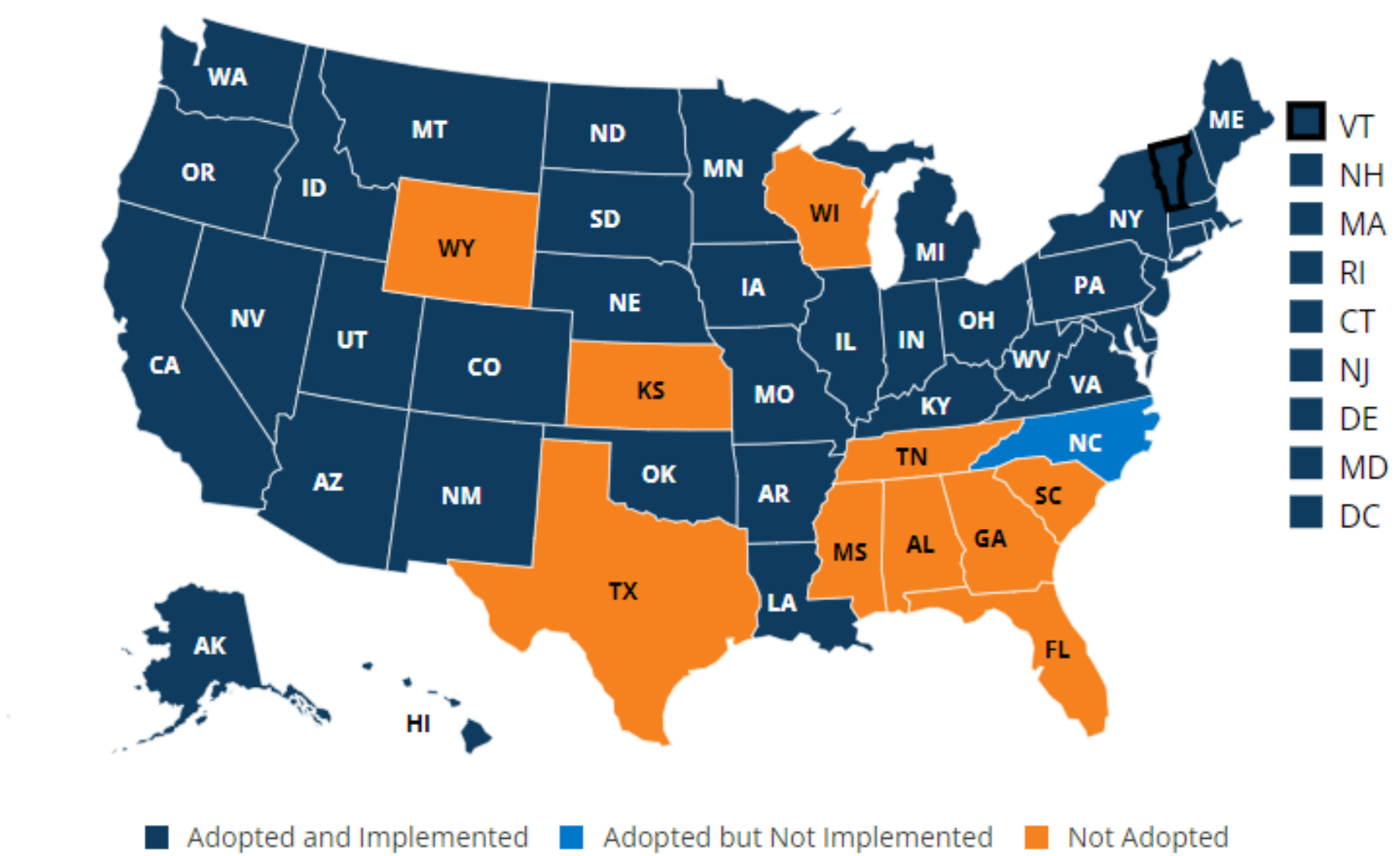
Status of State Action on the Medicaid Expansion Decision



Who are States Hurting When They Refuse to Expand Medicaid?

- As of 2021, ~900K women in expansion coverage gap
  - 2/3 of uninsured women of reproductive age are people of color
    - 29% Black
    - 33% Latina
- Of nonelderly uninsured adults who would be eligible if states expanded, 61% are people of color:
  - 25% Black
  - 32% Hispanic
  - 6% Other people of color
  - 39% white
- One in three people in the coverage gap are parents with children at home

Medicaid Expansion's Effects on Sexual and Reproductive Health

- Increased insurance coverage before conception, post-abortion, at birth, and postpartum
  - Increased access/utilization of prenatal + postpartum care
  - Improved pre-pregnancy health outcomes, maternal outcomes at childbirth, and improved infant outcomes at childbirth
    - People in the coverage gap, and esp. Black women, experience higher rates of severe maternal morbidity and mortality than counterparts in expansion states; higher infant mortality
- Increased use of hormonal contraceptives, LARC, and contraception overall
- Increased coverage among people with or at risk of HIV
  - Increased HIV screening + access to care

Effects on Reproductive Justice Broadly

- Improved access to services and quality of care
  - Narrows racial and ethnic inequities in coverage and access to care for Black and Hispanic populations
  - Non-expansion denies residents preventive, diagnostic, and treatment services for chronic conditions
    - Ramifications for health, fertility, and reproductive futures
  - Trickle-down effect of parental coverage on coverage for children
  - Non-expansion contributes to tens of thousands of preventable deaths each year
- Strengthens financial security of hospitals and community health centers, and thus access to care
- Addresses social determinants of health

Assessing Congressional interventions through a reproductive justice lens

Closing the coverage gap through a RJ lens

- Guaranteeing access to Medicaid's robust protections as the ACA intended
  - Avoiding a separate and unequal system
- Key components:
  - Comprehensive benefits, including specialized services for Medicaid population
  - Affordability: strict limitations on and extensive protections against cost-sharing
  - Enrollment: ensure that individuals navigating emergencies and societal barriers can swiftly enroll in and access critical and lifesaving coverage
  - Due process & consumer protections: notice and hearing rights, Constitutional property interest
  - Nondiscrimination

Red flags

- Separate + unequal standard of coverage for Black, Latine, and other underserved and low-income communities in the coverage gap
  - More SRH service restrictions than for Medicaid expansion population *or* enshrining Hyde amendment in statute
- Expansion state backsliding
- Precedent for weakening Medicaid nationwide

Build Back Better Act of 2022

- Initial proposals:
  - Marketplace
  - New ”Federal Medicaid”
- BBBA bill text: Marketplace only
- RJ analysis:
  - Protection from discrimination? ✅
  - Universal coverage and equal access to health services? ❌
  - Comprehensiveness? ❌

Related Reading

- Vanessa Williams, “Why Black Women Issued a Public Demand for ‘Reproductive Justice’ 25 Years Ago,” Wash. Post (2019)
- Madeline T. Morcelle, “Reforming Medicaid Toward Reproductive Justice,” American Journal of Law and Medicine (2022)
- Madeline T. Morcelle, “Closing the Medicaid Coverage Gap: Preventing a Separate and Unequal Result,” NHeLP (2021)

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State Policy Trends that Impact TMAB

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Expanding & Limiting Modalities of Telehealth

- State policies that allow for a full range of modalities encourage equitable access to telehealth.
  - **Equity Impact**: Limitations on modalities such as audio-only or asynchronous care or medically unnecessary in-person visits can become barriers to access, especially for those in areas with limited bandwidth, or who lack devices or sufficient minutes on cellular plans for telehealth video visits.

Addressing Payment & Coverage Parity in a Post-PHE World

- What is Parity?
  - Coverage Parity
  - Payment Parity
- Parity is important so that patients can receive care and providers receive appropriate reimbursement for services.
  - **Equity Impact**: Providers may be less likely to offer patients access to telehealth services that cannot be reimbursed, creating inequities in accessing care.

Additional Studies on the Impact of Telehealth

- In several states where the temporary parity policies were extended, state health departments will study the impact of telehealth in their states.
  - **Equity Impact**: While telehealth is not new, understanding the impact of telehealth during and after the COVID-19 pandemic will allow for data-informed policymaking that will promote equitable outcomes.

Legislation Explicitly Banning TMAB

- Bans of telehealth for medication abortion (TMAB) prevent patients from using a safe and effective option and limits the reproductive autonomy of individuals seeking care.
  - **Equity Impact**: Prohibiting abortion services via telehealth could lead to reduced access to health care services for individuals who live in rural areas or have limited access to transportation.
  - **Equity Impact**: Without telehealth options, individuals may have to travel further distances to receive care, leading to increased costs for transportation and childcare.

Q&A