

State Coverage Reform: Differential Challenges

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National Institute of Health Policy
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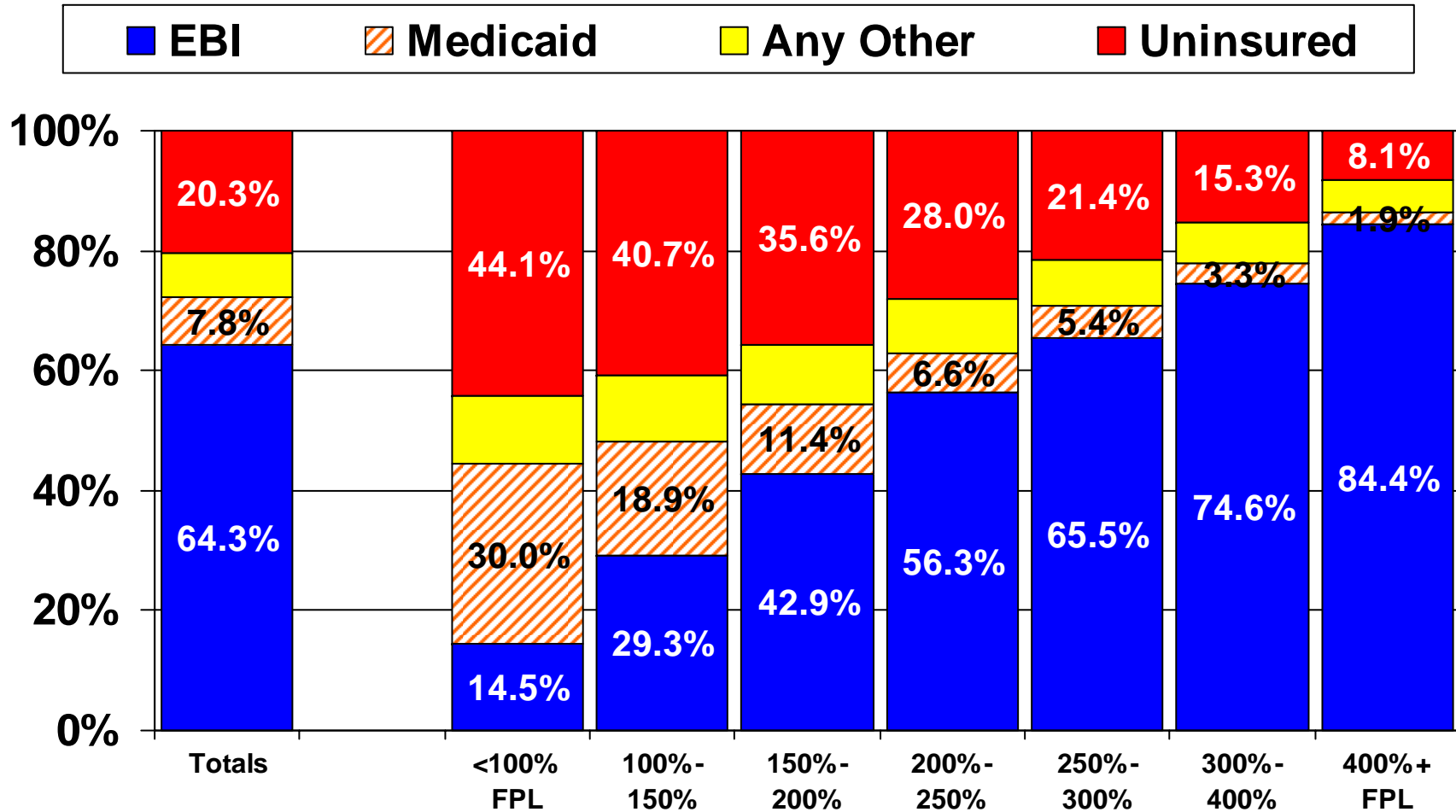
April 13, 2008



“Broad Coverage Expansion” (e.g. with individual responsibility) is a Sea-Change.

- Subsidy costs involved vary dramatically across states
- Exposure to cost shift from employer coverage / contributions is greater than under incremental expansions.
(This is not necessarily bad for economy, but *state* budget-wise . . .)
- Much greater risk than, e.g., Medicaid expansions, because subsidized coverage is:
 - available to higher income groups & childless;
 - very visible, known to all.
- Especially in this context, eligibility “firewalls” alone not a long-term solution.
 - Individuals can switch jobs to increase pay and access state-subsidies.
 - Employers can shift arrangements for low-wage workers; those who don’t will have higher costs and/or lower paid workers than competitors who do

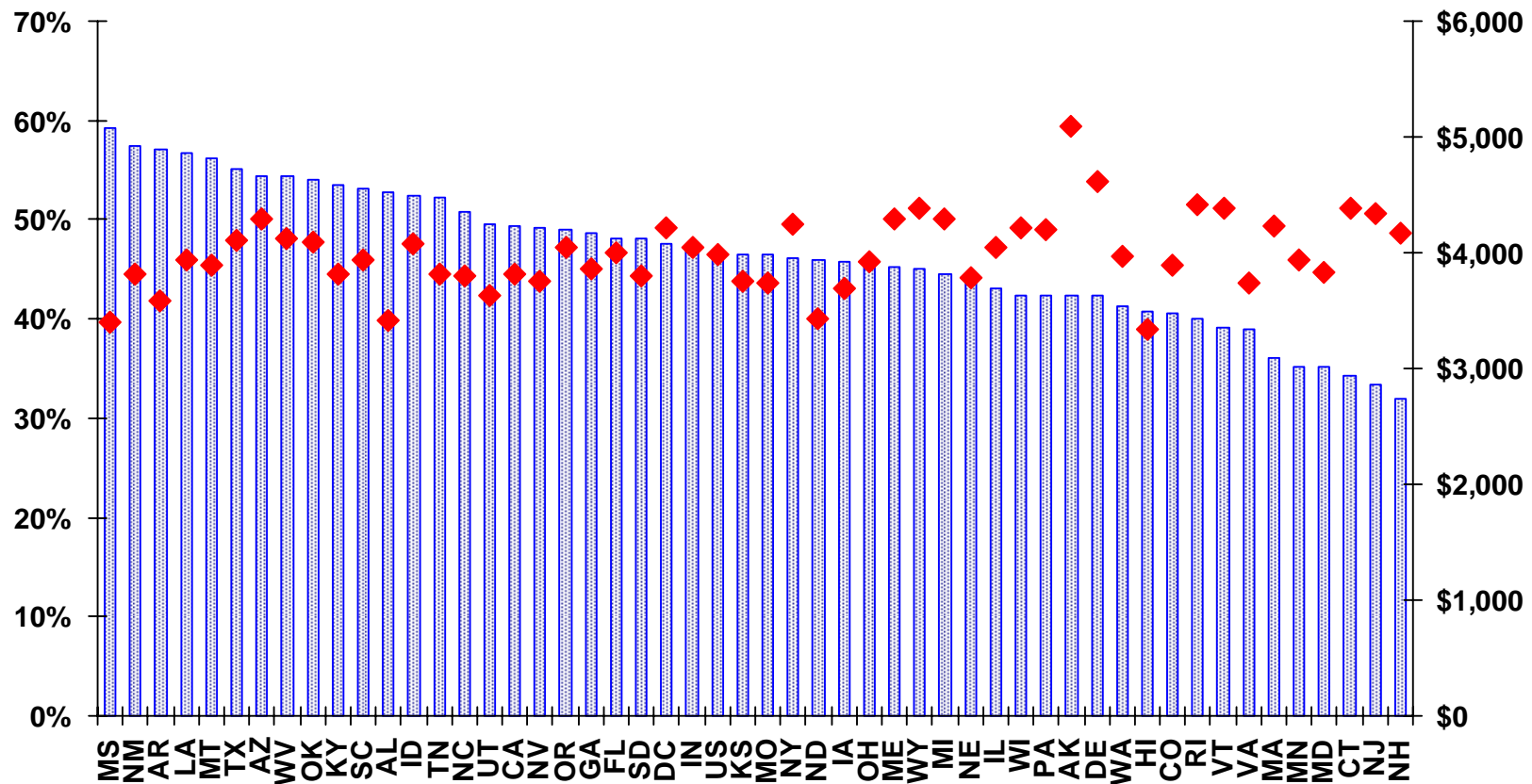
Coverage Type by Income Relative to Poverty for Adults (19-64), U.S., 2006



CPS– Coverage and Income Data for 2006. Persons in Poverty Universe, Age 19-64.
 Source: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2007.

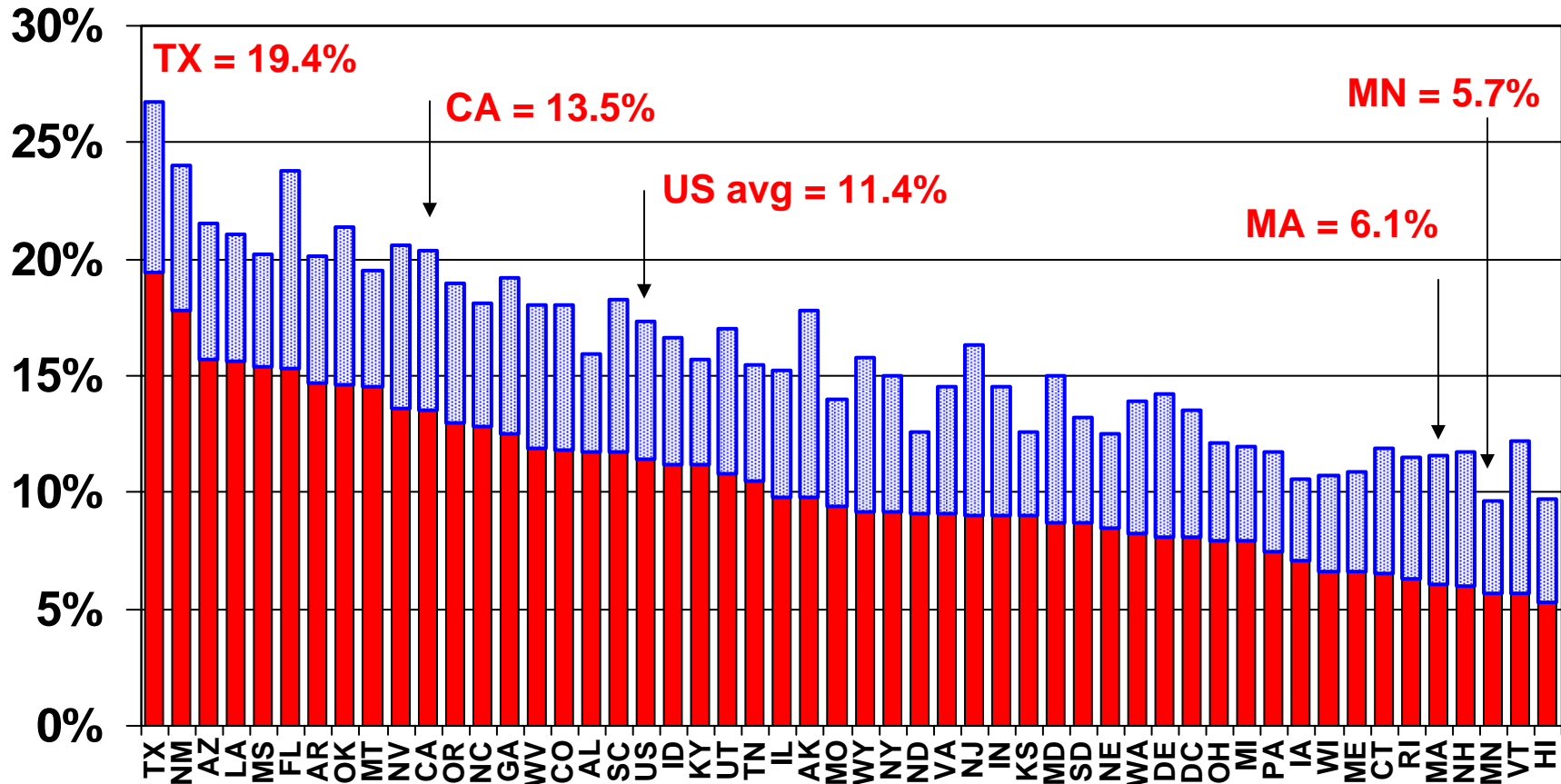
Percent of Nonelderly Population <300% FPL and

◆ Average Annual Premium for Worker-Only Coverage, 2005



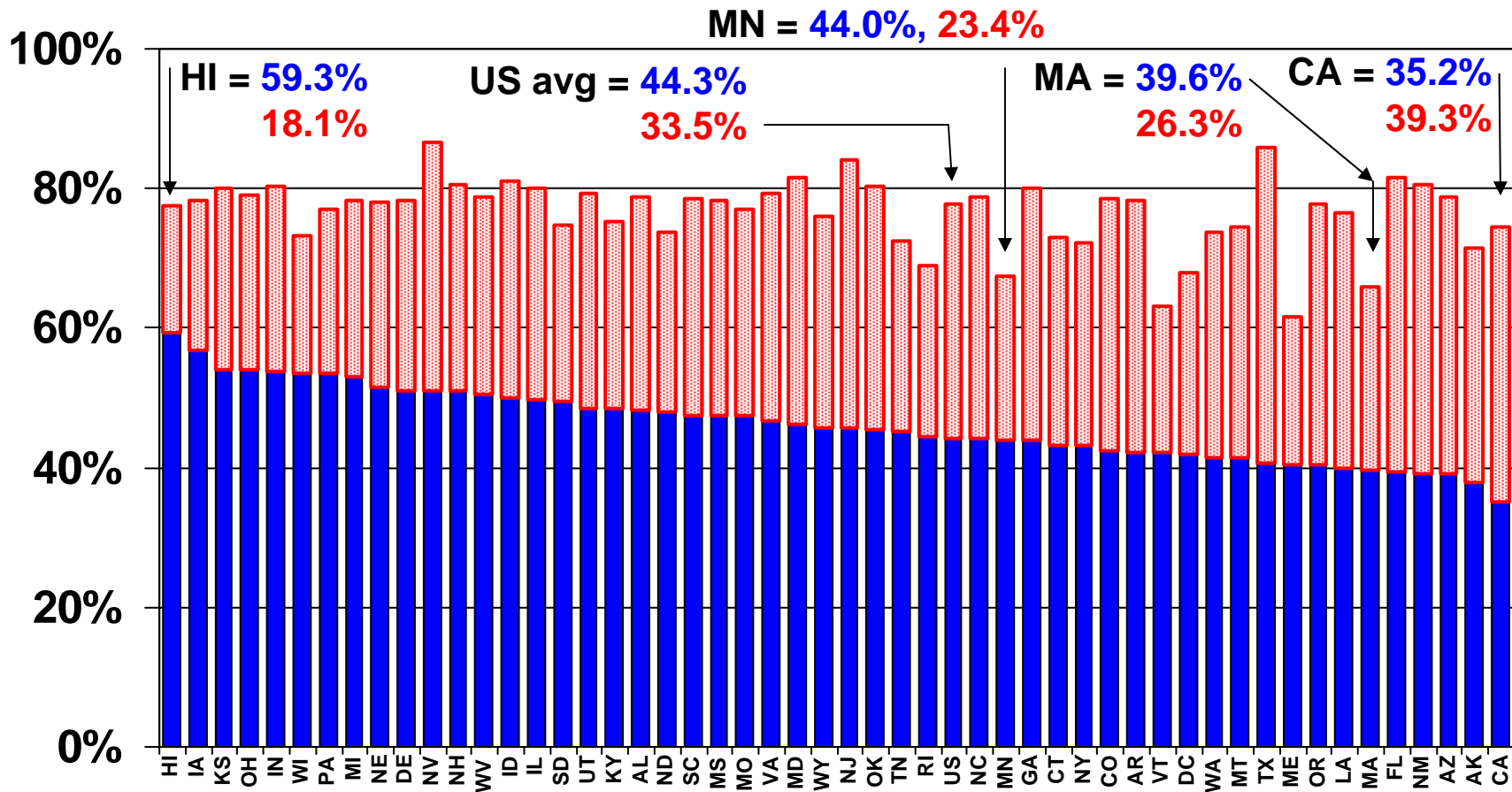
CPS 3-year average – Income Data for 2004 to 2006. Persons in Poverty Universe, Age 0-64. Sources: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2005 through 2007. U.S. Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey – Insurance Component.

Relative State Coverage Cost Indicator: % of Nonelderly Who Are **Both Uninsured and Low-Income** (<250% FPL), and **Total Uninsured**



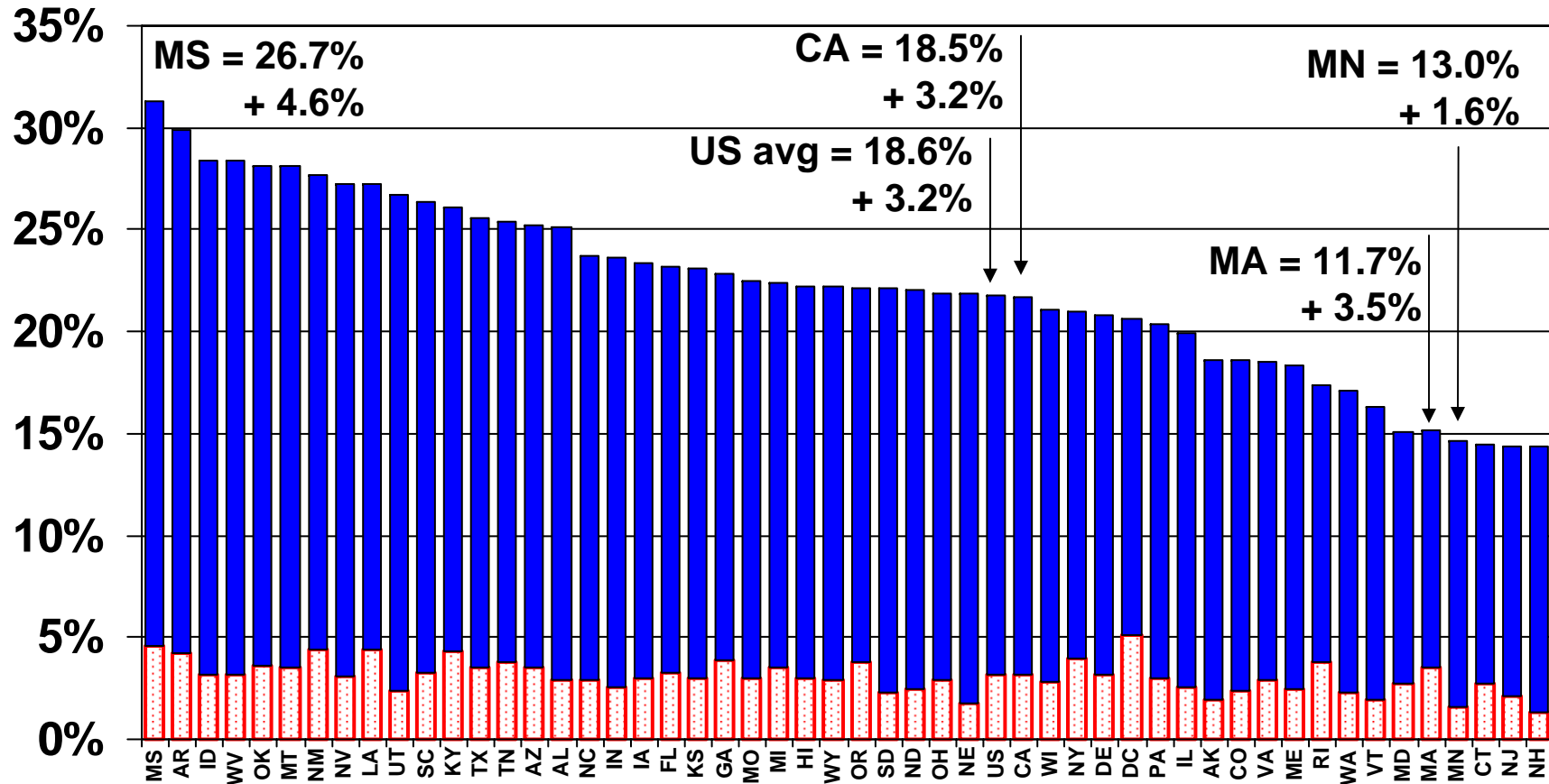
CPS 3-year average – Coverage and Income Data for 2004 to 2006. Persons in Poverty Universe, Age 0-64. Source: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2005 through 2007.

Percent of Adults 19-64 with Income 100%-250% FPL Who **Have EBI** or **Are Uninsured**



CPS 3-year average – Coverage and Income Data for 2004 to 2006. Persons in Poverty Universe, Age 0-64. Source: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2005 through 2007

Percent of Nonelderly Population with ESI That Has Income Under 250% FPL (<100% FPL and 100%-250% FPL)



CPS 3-year average – Coverage and Income Data for 2004 to 2006. Persons in Poverty Universe, Age 0-64. Source: U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2005 through 2007

Affordability Concerns

- Affordability is (different) issue for:
 - Lower income workers/families eligible for employer coverage (e.g. w/Firewall)
 - Middle income individuals (not eligible for employer coverage) who cannot afford premiums—e.g. older self-employed or non-employed in state with age rating

Access/Affordability Reforms & Individual Mandate Synergies

- If effectively implemented, Individual Mandate Can Mean
 - Everyone is in the “insurance” Pool including e.g., low-risk “immortals”
 - This can allow guaranteed access without cost shift to employers

Mandate far more palatable if simultaneous with access/affordability measures

- Those who now pay more (e.g., w/o tax benefits)
- Those who have been unable to find affordable coverage, &
- those suffering under “job lock”

Some Individual Market Rule Considerations

- Where a state would require individuals to have health insurance,
 - health plans should be available to all, and people should not have to pay more when they're sick
- Whether and when to combine with the small employer market? Considerations:
 - Size of the individual market relative to the employer market:
 - Massachusetts ranks about 48th.
 - E.g., California ranks 4th by the same measure.

Employer Responsibility Pay Requirement Minimum

- Considerations for an employer pay-or-play approach include:
 - Reduce cost-shift among employers
 - Protection against “crowd-out” of employer contributions
 - Revenues toward state coverage of lower income workers where employer doesn’t contribute
 - But it’s really, really hard for states
 - ERISA

ERISA Pre-emption of State Purview

Insights from Patricia A. Butler, J.D., Dr.P.H.

- What is ERISA?
 - Employee Retirement Income Security Act of 1974
 - Federal law governing pension, other benefits offered by private-sector employers.
- How might ERISA affect state law?
 - “Pre-emption” clause supersedes state laws that “relate to” employee benefit programs.
- Courts have held that ERISA prohibits states from:
 - Mandating that employers offer or pay for workplace health coverage;
 - Regulating the content of health coverage for employers choosing to offer it;
 - Coordinating health coverage with non-ERISA programs;
 - Taxing ERISA plans themselves

ERISA Pre-emption of State Purview (cont'd)

- States can regulate insurance and can tax insurers, reinsurers and health care providers, among other entities, that might impose costs on ERISA plans.
- ERISA implications for state laws requiring employers to “pay or play” (i.e., requirements that employers either pay a fee/tax or participate in financing health care):
 - Opponents argue that such approaches mandate employers to offer health coverage (in violation of ERISA).
 - Proponents argue such approaches:
 - Require employer spending, but not necessarily coverage, thus providing a choice consistent with the Sup.Ct.’s guidance
 - Differ from Maryland, Suffolk County and Hawaii laws because objective is to raise revenue by requiring employers not to mandate employers to cover workers, and because they apply to large number of employers.

Difficult Issues: Need for more State Innovation and Experience

Are low- income adults eligible for employer coverage also eligible for subsidies (cost & equity considerations)

- If not, are they subject to mandate? Always? Sometimes? Depending on cost, other conditions?
- Should uninsured people who declined employer coverage be treated differently than those who enrolled?
- And are subsidies restricted, e.g., to premium assistance towards employer coverage? Or a new approach, e.g.:
- Access to state program only if employer contribution “comes with” other approaches via state insurance regulation

➤ **More efficient and fair approaches with federal relief from constraints?**