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# How Congress and States Can Rein in Biden Bureaucrats While Protecting Taxpayers' Money and Medicaid Program Integrity

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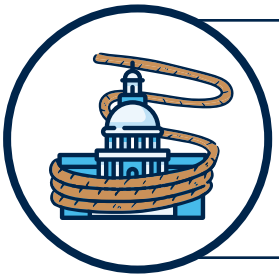
# KEY FINDINGS

**CONGRESS HANDCUFFED STATES FROM REMOVING INELIGIBLE MEDICAID ENROLLEES BY DANGLING ADDITIONAL FEDERAL FUNDING DURING THE PUBLIC HEALTH EMERGENCY (PHE).**

**MILLIONS OF INELIGIBLE PEOPLE WERE LOCKED INTO MEDICAID BY THE HANDCUFFS, COSTING STATES BILLIONS.**

**STATES SHOULD MAKE PLANS TO QUICKLY BEGIN THE REDETERMINATION PROCESS AND REMOVAL PROCEEDINGS AS SOON AS POSSIBLE.**



**CONGRESS SHOULD PASS THE REINS ACT TO PROMOTE OVERSIGHT OF FEDERAL AGENCIES AND PROTECT TAXPAYER DOLLARS.**

## THE BOTTOM LINE:

**CONGRESS SHOULD REASSERT ITS AUTHORITY OVER IMPORTANT DECISIONS AND HOLD BUREAUCRATS ACCOUNTABLE BY ENSURING THAT COSTLY CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS) GUIDANCE GOES THROUGH CONGRESS.**

# Overview

Medicaid enrollment is at an all-time high, with an estimated 98 million individuals now enrolled in the program.[1] A program designed to serve the truly needy now covers nearly one in three Americans, including millions of people who are not even eligible.[2] Medicaid enrollment is likely to hit more than 100 million in early 2023, an increase of nearly 35 percent in just three years.[3]

The cause: Congress passed legislation handcuffing states by barring them from removing virtually anyone on Medicaid during the PHE.[4] In exchange for a small increase in federal Medicaid funding, states were forbidden from removing ineligible enrollees, ballooning the size of the program to record highs—including an estimated 22 million ineligible enrollees.[5] Not only does this stick taxpayers with the bill for billions of dollars in new costs, but it also crowds out limited resources for the truly needy.

**CONGRESS PASSED LEGISLATION HANDCUFFING STATES BY BARRING THEM FROM REMOVING VIRTUALLY ANYONE ON MEDICAID DURING THE PHE.**

The Biden administration has issued sub-regulatory guidance suggesting that states should move slowly in removing ineligible enrollees.[6] But states will soon be able to restart eligibility checks and will have the option to begin the removal process starting April 1, 2023.[7] States should do everything they can to restore program integrity, including aggressively removing all ineligible enrollees as soon as possible.

Congress has a role to play in restoring program integrity and public trust in Medicaid. Enrollment has soared to new heights over the last three years and if unelected, unaccountable bureaucrats have their way it will remain elevated even longer. Congress should reassert its authority over important policy decisions. It can do this by ensuring that all major rules and agency guidance are voted on and approved before they are implemented. This will help restore proper oversight and create more accountability.

# Medicaid enrollment skyrocketed to 98 million because of the handcuffs

In response to COVID-19, Congress passed the Families First Coronavirus Response Act (FFCRA). Promoted as a way to help states manage the pandemic, FFCRA provided a 6.2 percent increase in federal Medicaid matching funds, shifting some costs from state taxpayers to federal taxpayers.[8] But the new funding also came with massive strings attached.

In return for the additional funding, states were barred from removing any enrollee from Medicaid, even those that the state knows are ineligible or those who have committed fraud, unless the individual voluntarily opts out of the program or leaves the state.[9] By accepting the small funding bump, the states also forfeited their ability to strengthen eligibility standards, methodologies, or procedures and cannot raise premiums.[10]

As a result of these handcuffs, an estimated 98 million individuals were enrolled in Medicaid by December 2022—a record high.[11] **If the numbers continue at their trajectory, enrollees could rise above 100 million in early 2023**.[12]

Ineligible enrollees—an estimated 22 million individuals—continue to drain Medicaid funds and are responsible for more than 90 percent of the recent growth.[13-15] Even CMS acknowledges that the enrollment uptick can be largely attributed to the continuous enrollment requirement.[16-18] Ineligible enrollees siphon resources away from those in true need and put the entire program at financial risk.

**INELIGIBLE ENROLLEES SIPHON RESOURCES AWAY FROM THOSE IN TRUE NEED AND PUT THE ENTIRE PROGRAM AT FINANCIAL RISK.**

The cost of paying for these ineligible enrollees is immense. Taxpayers are on the hook for $18 billion a month in costs related to the Medicaid handcuffs and ineligible enrollees.[19] Most states are paying more to cover ineligible enrollees than they are receiving from the 6.2 percent federal boost.[20] The estimated net cost to states for accepting the federal boost is almost $2 billion a month.[21] In effect, states are going broke with all the money they are saving.

## States should aggressively remove ineligible enrollees through the redetermination process

Federal guidance urges states to take their time with the redetermination process that is required to remove ineligible individuals from Medicaid.[22] These Biden bureaucrats are encouraging states to take up to 14 months to finish the process.[23] They also suggest that states should not initiate eligibility reviews on more than about 11 percent of their total caseload in any given month, meaning the Biden administration is pressuring states to take a minimum of nine months to even conduct the initial eligibility reviews.[24] This ultimately means that an ineligible enrollee could wait nearly a year before the process to verify their eligibility even begins. This after they may have been on Medicaid while ineligible for nearly three years. This would diminish program integrity even further.

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With the goal of universal coverage, even if it comes through Medicaid for All, it is unsurprising that Biden bureaucrats are encouraging states to slowly and reluctantly remove ineligible individuals.[25] But states should move with urgency to remove ineligible enrollees and restore some semblance of program integrity. States should not be seen as wasting more hard-earned tax dollars on individuals that are not eligible to be part of the program.

States should look at risk factors and start the redetermination process with those most likely to be ineligible first. Officials can provide notice to these enrollees and then begin removal proceedings based on current information or a lack of response to a request for information. This should not take a year or more to complete and taxpayers and the truly needy on the program deserve better.

**STATES SHOULD LOOK AT RISK FACTORS AND START THE REDETERMINATION PROCESS WITH THOSE MOST LIKELY TO BE INELIGIBLE FIRST.**

## Congress should require that costly agency rules and guidance receive its approval first

Congress created the handcuffs that are preventing states from removing ineligible individuals from Medicaid. It should now rein in the agency that is issuing guidance encouraging states to delay the removal of ineligible enrollees even after states are legally able to begin removal proceedings.[26]

Decisions with tremendous costs, like increasing Medicaid expenses by $18 billion per month, need oversight from elected officials who are accountable to the public. The REINS Act would require congressional approval of major rules, those with a price tag of $100 million or more.[27] The Supreme Court in West Virginia v. EPA reiterated that major questions require clear guidance from Congress before being implemented by agencies.[28]

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Congress should take a lesson from what has happened with Medicaid handcuffs. When bureaucrats have free rein to issue rules and guidance without cost controls, they will take that opportunity to expand the government at the taxpayers' expense. Congress should pass the REINS Act to help ensure proper oversight of agency action and maintain some semblance of control over federal spending.

## **THE BOTTOM LINE:** Congress should reassert its authority over important decisions and hold bureaucrats accountable by ensuring that costly CMS guidance goes through Congress.

Biden bureaucrats are warning states to move slowly when they start the Medicaid redetermination process and begin removing ineligible enrollees. CMS has issued guidance asking states not to initiate reviews on more than 1/9 of their caseload in any given month and to take up to 14 months to complete all reviews.[29] But beginning February 1, 2023, states may restart Medicaid eligibility checks and should move aggressively to remove ineligible enrollees beginning on April 1, 2023.[30]

Congress should also pass legislation to require its approval before costly bureaucratic actions take effect. This should include both major rules and costly agency guidance.

These two actions taken together will help enhance program integrity, protect taxpayers, and ensure Medicaid funds are available for those in true need.

**Congress should also pass legislation to require its approval before costly bureaucratic actions take effect. This should include both major rules and costly agency guidance.**

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