

Financial Management

Recent DOL Exemption Changes

Eileen Maguire, Attorney, Gilliland, Maguire and Harper, P.C.

NEW MINIMUM SALARY

NEW “OVERTIME” FINAL RULE TAKES EFFECT 1/1/20

Presented to INARF November 14, 2019

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- In all cases, legal advice applicable to your state and your organization's own specific circumstances should be sought.
- The information for this presentation was compiled in October 2019 and subject to change based on changes in statutes, regulations and/or court decisions.

WHAT THIS WEBINAR COVERS

- What is the “Overtime” Final Rule?
- What does it change?
- What stays the same?
- How to prepare for compliance by January 1, 2020

WHAT IS THE “OVERTIME” FINAL RULE?

- DOL refers to the Final Rule as the “Overtime” Final Rule on its FAQ page. It has also been called the “Overtime Exemption” Final Rule.
- The US Department of Labor issued a Final Rule in September 2019 that **updates the salary level test for white collar exemptions from overtime pay**. The new requirements take effect January 1, 2020.
- Unless specifically exempted, the FLSA requires that your employees receive overtime pay for all hours worked in excess of 40 in a workweek at a rate not less than one and one-half times their regular rate.

WHICH EXEMPTIONS ARE AFFECTED?

- Executive
- Administrative
- Professional

(The Computer Employee Exemption and Highly Compensated Employee Exemption are also affected but not covered in detail in this webinar.)

WHAT CHANGES?

- Minimum salary level test increases to **\$684 per week** (equal to \$35,568 per year), **starting January 1, 2020**.
 - Current minimum salary level test is \$455 per week (equal to \$23,660 per year).
 - New salary level test is less than 2016's salary level test of \$913 per week (equal to \$47,476). A court invalidated this salary level test; DOL intends to repeal it.

WHAT CHANGES?

- The required minimum salary amount of \$684 per week may be translated into equivalent amounts for periods longer than one week.
- For example:
 - Biweekly = \$1,368
 - Semimonthly = \$1,482
 - Monthly = \$2,964 (Indiana law does not allow you to pay monthly)

WHAT CHANGES?

- Employers may use nondiscretionary bonuses and incentive pay (including commissions) to satisfy up to 10 percent of the new minimum salary level amount, with certain restrictions.

EMPLOYERS MAY NOT USE...

- Employers may not use to satisfy the minimum salary level test:
 - discretionary bonuses;
 - fringe benefits, which include health plan contributions, retirement plan contributions, life insurance payments, monthly phone or travel stipends, or the cost of other fringe benefits; and
 - the value of “board, lodging or other facilities,” which include the value of meals, uniforms, housing, transportation, etc.

WHAT STAYS THE SAME?

- Duties Test stays the same.
- Salary Basis Test stays the same, with the exception of bonus payments.
- Exempt employee must still meet ALL three tests:
 - The Salary Level Test
 - The Salary Basis Test
 - The Duties Test

WHAT STAYS THE SAME?

- Merely paying an employee \$684 per week starting January 1, 2020 is not enough to claim exemption from overtime pay requirements.
- The employee must also meet Salary Basis Test and Job Duties Test!

WHAT STAYS THE SAME?

- The minimum salary amount must be paid without regard to quality or quantity of work.
- If you pay hourly, the employee will not likely be exempted from overtime pay.

WILL SALARY INCREASES BE AUTOMATIC IN THE FUTURE?

- No!
- But increases will be more frequent than in the past.
- DOL will use the rule making process, with notice and comment periods.

WHERE DID **\$684** PER WEEK COME FROM?

- No statutory requirements for how to set the salary level
- 2016 = \$913 per week was based on 40th percentile from the lowest-wage census region (the South)
- 2019 = \$684 per week is based on 20th percentile from the lowest-wage census region (the South), and/or in the retail industry nationally using current data (similar to the 2004 methodology)
- Difference: 4.2 million employees estimated to lose exempt status in 2016 versus 1.2 million employees estimated to lose exempt status in 2020

NONDISCRETIONARY BONUSES & INCENTIVE PAY

- Employers may use “non-discretionary bonuses and incentive pay (including commissions)” ...
- ... To satisfy up to 10 percent of the salary level test..
- ... If paid annually or more frequently.
- Credit equals up to \$68.40 per week/\$3,556.80 per year.
- **Exempt employees must still receive at least \$615.60 per week (90%) when using incentive pay to meet minimum salary level test!**

WHAT ARE NONDISCRETIONARY BONUSES?

- “Such bonuses include, for example, nondiscretionary incentive bonuses **tied to productivity or profitability** (e.g., a bonus based on the specified percentage of the profits generated by a business in the prior year). The Department recognizes that some businesses pay significantly larger bonuses; where larger bonuses are paid, however, the amount attributable toward the EAP standard salary level is capped at 10 percent of the required salary amount.”

https://www.dol.gov/whd/overtime2019/overtime_FAQ.htm

WHAT ARE NONDISCRETIONARY BONUSES?

- Nondiscretionary bonuses are promised in advance to employees, typically to induce them to work more efficiently or to remain with the company.
- Discretionary bonuses are not promised or announced in advance of payment, and are merely paid at the sole discretion of the employer.
- Discretionary bonuses cannot count toward satisfying the salary level test.
- What about end-of-year holiday bonuses?

EMPLOYERS MAY NOT COUNT TOWARD THE MINIMUM SALARY AMOUNT:

- Discretionary bonuses;
- health or medical plan contributions;
- retirement plan contributions;
- life insurance payments;
- monthly phone or travel stipends; and
- the value of meals, uniforms, housing, transportation (i.e., company car), etc.

ON-CALL PAY

- There is no law requiring agencies pay exempt employees extra compensation for performing on-call duties.
- Common practice, nonetheless, is to pay extra (i.e., a stipend) to perform nonexempt on-call duties outside of normal work hours on top of guaranteed weekly salary. (29 CFR 541.604(a))

ON-CALL PAY AS “EXTRA” COMPENSATION

- “...the exemption is not lost if an exempt employee who is guaranteed at least \$684 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one half or any other basis) and may include paid time off.”
(Effective 1/1/20 with respect to \$684 each week.)

29 CFR 541.604(a)

52-WEEK PAYMENT PERIOD

- Employer has one year (52 weeks) to pay up to \$3,556.80 in non-discretionary bonuses and incentive payments.
- Employer decides the 52-week period for determining an exempt employee's 52-week payment period.
- If employer fails to designate a 52-week period, DOL will use the calendar year.

NEW HIRES AND TERMINATED EMPLOYEES

- New hires receive a pro-rated amount of incentive pay in the first year of employment.
- Terminated employees (involuntary or resignation) receive a pro-rated amount of incentive pay in the final year of employment.
- Pro-rated amount:
 - Up to \$68.40 per week (depending on what incentive pay equals) x the number of weeks the employee worked within the 52-week period.

EXAMPLE I: PRO-RATED INCENTIVE PAY

- Newly hired employee starts March 1 earning \$615.60 per week with incentive pay potential. She quits two weeks later. What should be in her final paycheck?
 - Promised \$615.60 per week for salary (\$1,231.20)
 - Not less than \$68.40 per week for incentive pay – even though she did not earn it! (\$136.80)
 - $\$1,231.20 + \$136.80 = \$1,368$
 - $\$684 \times 2 \text{ weeks} = \$1,368$

EXAMPLE 2: PRO-RATED INCENTIVE PAY

- Newly hired employee starts March 1 earning \$660 per week with incentive pay potential. She quits two weeks later. What should be in her final paycheck?
 - Promised \$660 per week for salary (\$1,320)
 - \$24 per week for incentive pay – even though she did not earn it! (\$48)
 - $\$1,320 + \$48 = \$1,368$
 - $\$684 \times 2 \text{ weeks} = \$1,368$

FINAL “CATCH-UP” PAYMENT FOR CREDIT

- If the employee does not earn the full 10 percent incentive pay amount (up to \$3,556.80 per year) by the end of the 52-week period, the employer must still pay the employee the difference ...
- ... Within 1 pay period after the end of each 52-week period ...
- ... To bring the employee's compensation up to the required level (i.e., not less than \$35,568 per year)

Employers cannot use or count the “catch-up” payment twice!

HIGHLY COMPENSATED EMPLOYEES

- Total annual compensation starting January 1 2020 = **\$107,432.**
- Currently, total annual compensation = \$100,000.
- Where the annual period covers both prior to and after Jan. 1, 2020, the amount of total annual compensation due will be determined on a proportional basis.

HIGHLY COMPENSATED EMPLOYEES

- “Total annual compensation” must include at least \$684 per week paid on a salary basis...”
- Employers cannot credit 10% of the \$684 per week with nondiscretionary bonuses, incentive pay or commissions.
- Highly compensated employees have a “catch-up” payment period of one month after the year ends.

COMPUTER EMPLOYEES

- Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals...
- **Salary Test** – Compensated on a salary basis ... at a rate of not less than \$684 per week (effective January 1, 2020);
- Hourly test – Compensated on an hourly basis at a rate of not less than \$27.63 an hour.

BUSINESS OWNERS

- **Equity Interest.** The business owner must own at least a “bona fide 20-percent equity interest” in your agency; and
- **Engaged in Management.** The business owner must be actively engaged in management.
 - If the above requirements are met, there is no need under the business owner exemption for the owner/employee to be paid any specific salary amount per week or to be paid on a salary basis.

DOL'S FINAL RULE TAKES EFFECT JANUARY 1, 2020

- DOL issued it's Final Rule on September 24, 2019.
- Employers have until January 1, 2020 before new Salary Level Test takes effect.
- DOL says it will make a formal rescission of the 2016 Final Rule.
- It's possible, but unlikely, that litigation could bar 2019 Final Rule (\$684) from taking effect January 1st.
- If litigation ensues, \$455 per week will likely be used again until the matter resolves.

WHAT TO DO?

- Take steps toward compliance.

STEP ONE TOWARD COMPLIANCE

- Evaluate your current exempt employees to determine if they will meet the new minimum salary level test by January 1, 2020:
 - Do they currently receive \$684 per week in salary?
 - If not, do you pay nondiscretionary bonuses, incentive pay or commissions that may help cover the new salary level (up to 10%) on an annual basis?
 - If not, can you afford to increase their salary to \$684 per week?

EXAMPLE #1:

Exempt employee earns \$660 per week in 2019.

- Continue paying \$660 per week starting first workweek with January 1, 2020;
- Pay a total of \$1,247 as incentive pay by end of 2020, or pay the difference in the next payroll period thereafter.
 - $\$684 - \$660 = \$24 \times 52 \text{ weeks} = \$1,247$ for incentive pay.
 - $\$660 \times 52 \text{ weeks} = \$34,320 + \$1,247 = \$35,568$
 - $\$684 \times 52 \text{ weeks} = \$35,568$

EXAMPLE #2:

Exempt employee earns \$500 per week in 2019.

- You may not continue paying \$500 per week and pay incentive pay to make up the difference.
- The exempt employee must receive at least \$615.60 per week and at least \$3,556 in incentive pay within 52 weeks; OR
- The employee must receive at least \$684 per week to maintain the exemption from overtime pay in 2020.

STEP TWO TOWARD COMPLIANCE

- Audit each exempt employee's job duties to determine:
 - Do they actually perform the exempt job duties for claiming their exemption?
 - Does their job description support claiming their exemption?

STEP THREE TOWARD COMPLIANCE

- Audit your pay practices and handbook policies to ensure you are paying exempt employees on a salary basis.
- Questions to ask include, without limitation:
 - Are you paying hourly?
 - Do you deduct from salary for partial day absences?
 - Do you deduct from salary for weather closures or holidays?

IF YOU NEED TO INCREASE SALARIES TO MAINTAIN EXEMPT STATUS:

- Establish the correct date for when you will need to start paying the new minimum salary amount starting January 1, 2020.

JANUARY 1ST IS A WEDNESDAY

- Exempt employees are entitled to receive \$684 for the workweek in which they perform any work for you, starting January 1, 2020.
- If your workweek is Sunday through Sunday or Monday through Monday, you will need to pay \$684 for the workweek starting December 29th or December 30th.
- You may not pay a prorated minimum salary amount for the first week of January 1, 2020, nor start paying \$684 the first full workweek in January (i.e., January 5th or 6th).

CONVERTING AN EXEMPT EMPLOYEE TO NONEXEMPT STATUS

- If you decide you cannot afford to pay a currently exempt employee \$684 per week, you will likely need to:
 - Revise the employee's job description from "exempt" to "nonexempt."
 - Identify all hours the employee typically works and implement policies and training to ensure compliance with nonexempt wage and hour rules.
 - For example, you may need to train your newly classified nonexempt employee on how to track actual hours worked and to avoid performing "off-the-clock" work or working overtime hours without authorization.

CONVERTING AN EXEMPT EMPLOYEE TO NONEXEMPT STATUS

You will also likely need to:

- Provide advance notice regarding the pay change (i.e., changing from a salary pay rate to an hourly pay rate).
- If you decide to continue paying a salary, you will likely need to explain and document the number of hours the employee is required to work for that weekly salary amount. Clarifying the hourly rate for salary pay will help avoid overtime pay disputes.

CONVERTING AN EXEMPT EMPLOYEE TO NONEXEMPT STATUS

- If a newly classified nonexempt employee works variable hours each week, avoid any overt or covert guarantees or promises to pay a set weekly amount of pay each week. These types of payment plans may be scrutinized as “schemes” to avoid paying overtime pay.
- Include all nondiscretionary bonuses, incentive pay, and on-call pay (if applicable) in overtime pay calculations.
- Start tracking and paying for overtime, effective January 1, 2020

JANUARY 1ST IS A WEDNESDAY

- Your newly classified nonexempt employees will be entitled to receive overtime pay for any workweek in which they work more than 40 hours.
- If your workweek is Sunday through Sunday or Monday through Monday, you will need to start tracking and paying overtime for the workweek starting December 29th or December 30th.
- You may not pay a prorated minimum salary amount for the first week of January 1, 2020, nor start tracking and paying overtime the first full workweek in January (i.e., January 5th or 6th).

Q & A

Thank you!

Eileen Maguire
Gilliland, Maguire & Harper, PC
Emaguire@gillilandlawfirm.com

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Financial Management

Industry Update

Sarah Chestnut, Director of Public Policy and
Technical Assistance, INARF



Industry Update

November 14, 2019

Industry Update

Medicaid Provider Enrollment Revalidation

- Every five years
- Providers receive notification letters 90 and 60 days in advance of their revalidation due date at the mail-to address indicated on the provider's service location profile. Providers also see a reminder on the home page of their Provider Account in the IHCP [Provider Healthcare Portal](#)
- Providers with multiple service locations must revalidate the enrollment of each service location and will receive notification for each separately
- Providers that fail to revalidate in a timely manner **will be disenrolled** from participation in the IHCP and must re-enroll with the IHCP
 - Disenrollment with subsequent re-enrollment may result in a gap in the provider's eligibility
- Providers with upcoming revalidation due dates are listed [here](#)
- Information about revalidation is available [here](#)

Industry Update

DSP wage questions

- The 5% increase in waiver service rates remains in place
- Continue comparing your calculations to the base period FY 17 and/or June 2017
- In theory, FSSA can continue to audit to ensure your average hourly rate has the 75% passed through from additional revenue
- Unless the rates are cut, FSSA will always have the ability to come back and review the base period

Industry Update

Electronic Visit Verification

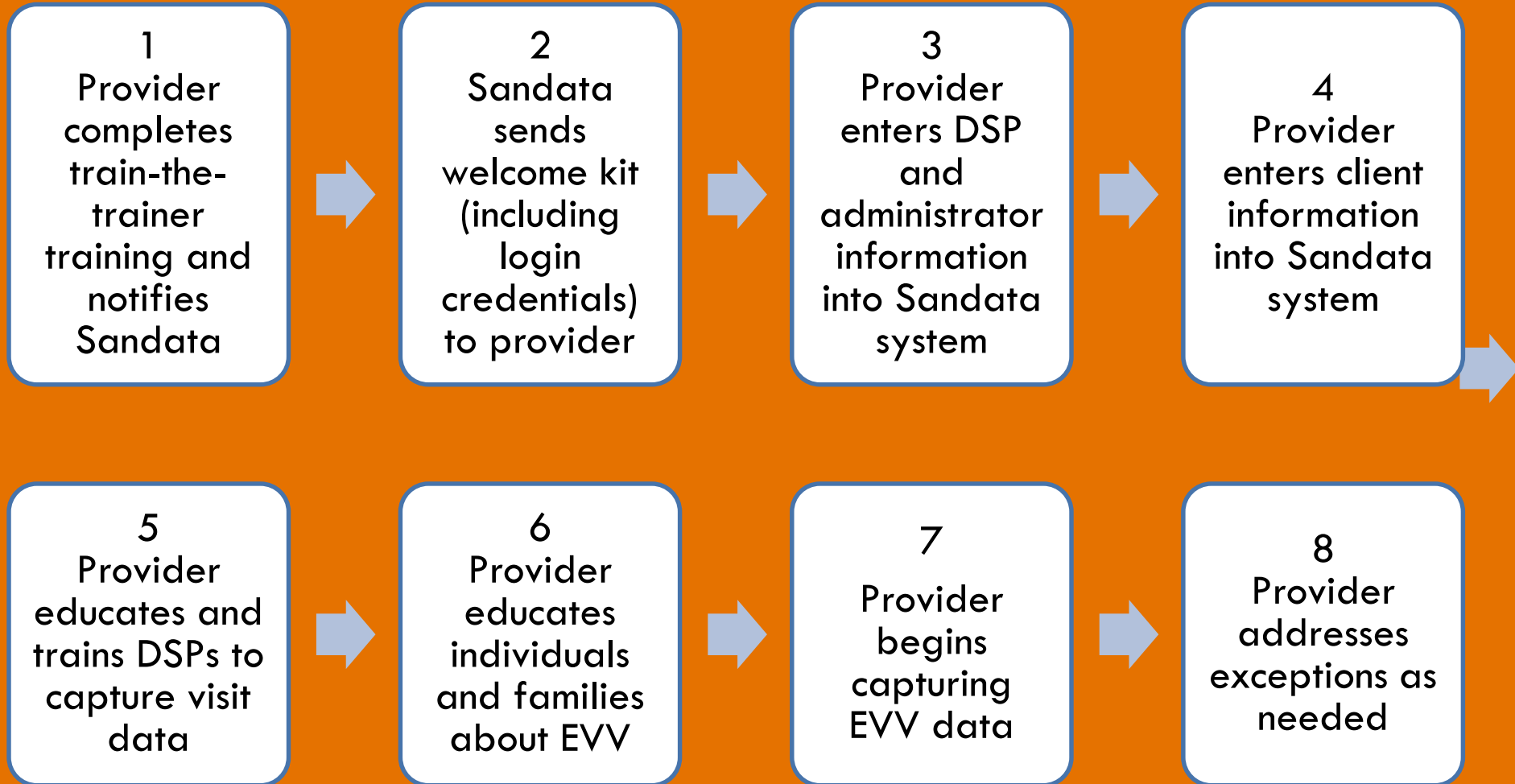
- Good faith effort exemption request submitted to CMS on October 4
- Recently, CMS has responded in approximately 1.5 months
- November 18: IDD providers participating in EVV Stakeholder Group will convene to discuss implementation issues specific to our population
 - Potential exclusion of RHS Hourly, Respite, PAC
 - EVV for services provided in the home versus in the community
 - EVV for services delivered by live-in caregivers
 - Client signature/voice verification requirement

Industry Update

Electronic Visit Verification

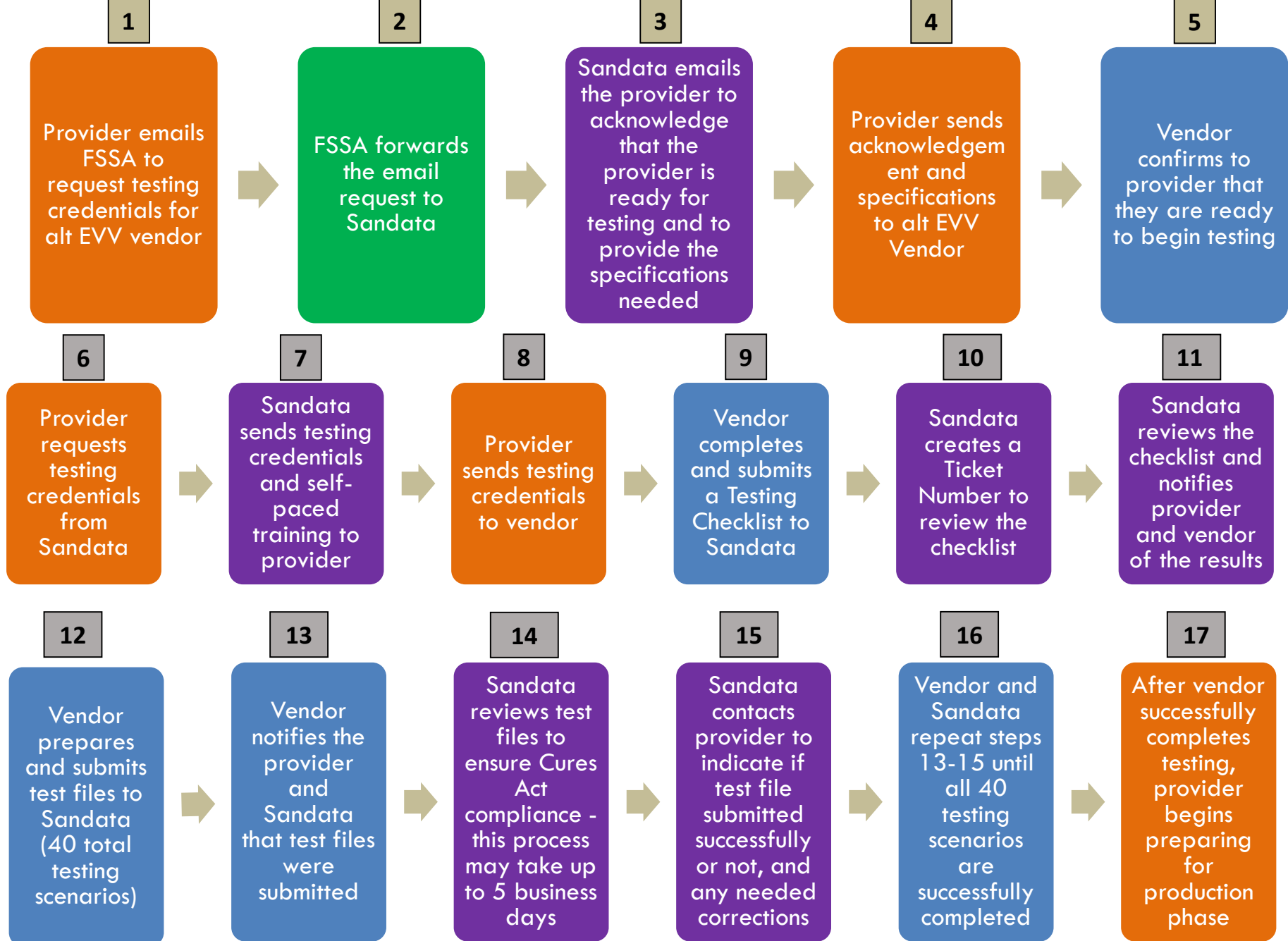
- Indiana EVV Testing Update
 - Two INARF members have begun production phase of EVV – one using alt EVV, the other using the Sandata solution
 - Preliminary data from these providers shows:
 - For Provider 1: In 10 days, they recorded 192 EVV visits
 - Of those 192 visits, 42 (21.8%) had exceptions
 - » 4 exceptions (10% of exceptions) were a GPS error for the same client for which they have a ticket in because the feature is not functioning properly
 - » The other 38 exceptions (20% of all visits, 90% of all exceptions) were ALL client signature exceptions
 - For Provider 2, between 14% and 17% of their exceptions were client signature exceptions

Process for Sandata users

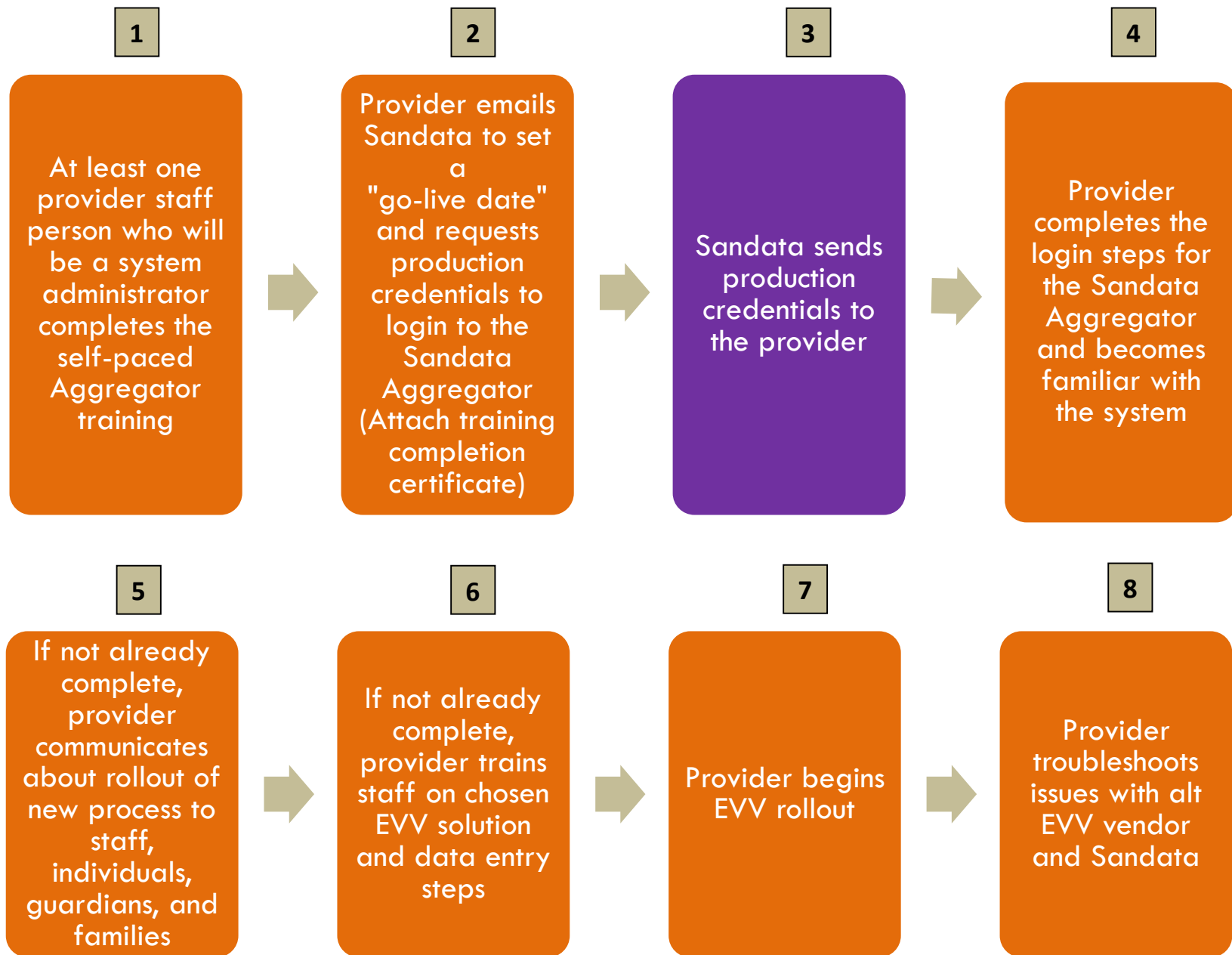


Alt EVV Users

- Two Phases
 - Phase 1: Alt EVV Testing Phase –
to integrate Alt EVV vendor system with
Sandata Aggregator
 - Phase 2: Production Phase – to access the
Sandata Aggregator



Phase 1: Alt EVV Testing Phase



Phase 2: Production Phase

Industry Update

EVV Next Steps

- Decide if you are using the Sandata solution or an alt EVV vendor **ASAP**
- If you are undecided, attend a [Sandata EVV provider train-the-trainer session](#) to preview the Sandata solution
- Determine whose devices will be used to capture the EVV records (staff devices or provider-owned devices)
- Identify who in your organization will be responsible for leading implementation – implementation, troubleshooting, and monitoring can require a significant staff time commitment
- Identify who in your organization will be responsible for reviewing and addressing exceptions (program managers or admin staff?)– also requires a significant time commitment
- Communication with individuals supported and families is key

EVV Next Steps

- Begin implementation and “soft launch” sooner rather than later
 - Generally, implementation is taking longer than providers originally anticipate, especially when using alt EVV (refer back to 25 steps to implement)
 - Time to integrate with the Aggregator can be lengthy
 - CMS may grant an extra year, but we may need that full year to work through glitches and implementation issues
 - Remember, claims and EVV data must match for provider to be paid

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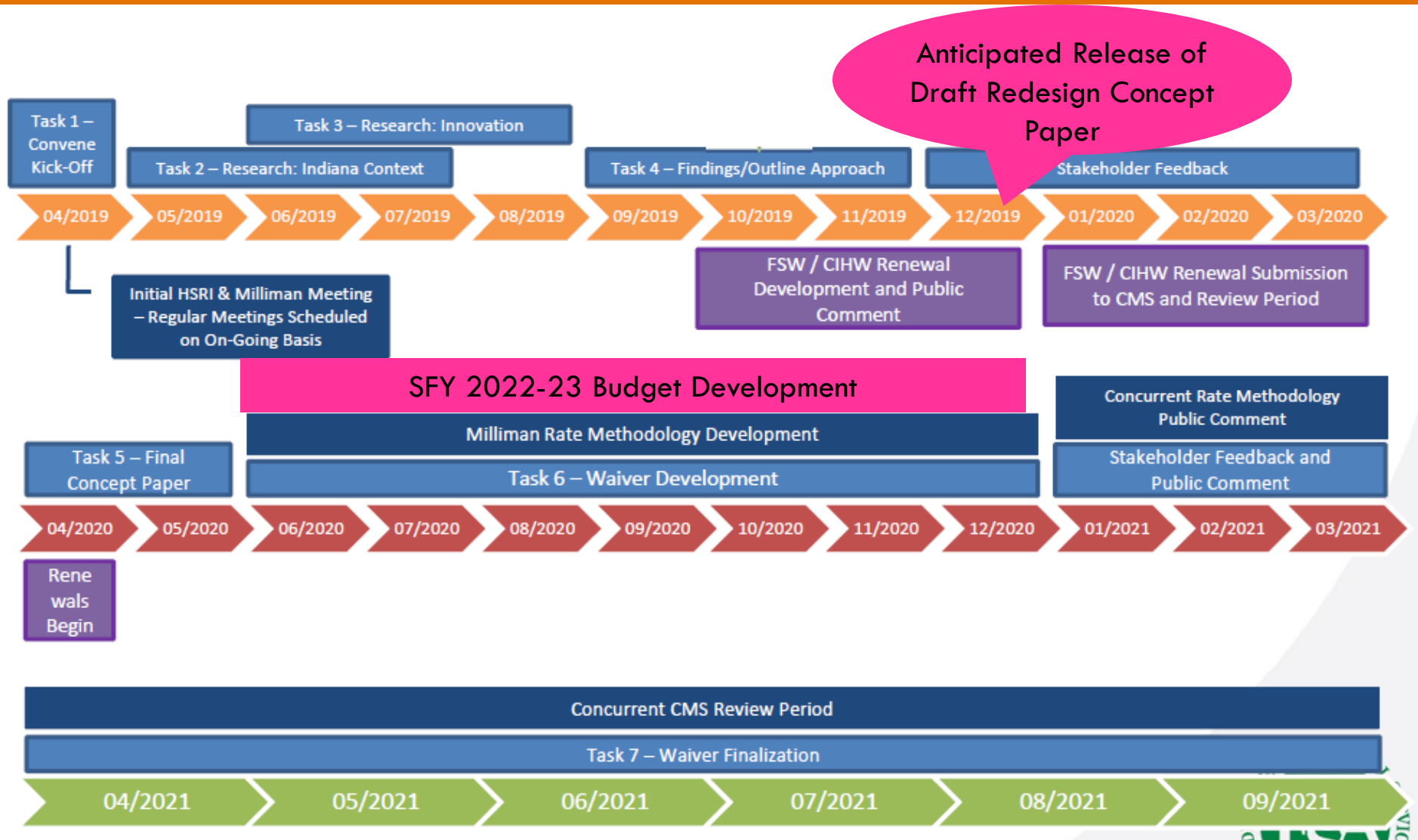
EVV Next Steps

If you act on only one thing from this presentation, it should be to start EVV implementation **now**!

Days remaining until January 1, 2020: **48**

Days remaining until January 1, 2021: **414**

CIH & FS Waiver Renewals and Waiver Redesign Timeline



CIH and FS Waiver Renewals

- Renewal applications posted
- Anticipated Effective Date: April 17, 2020
- Service definition “tweaks”
 - Combined Community Habilitation and Facility Habilitation services into a single Day Habilitation service - Allows services to be provided in a variety of settings in the community or in a facility owned or operated by a DDRS-approved provider
 - Specifies that the large group ratio size of 11:1 to 16:1 applies only to a facility setting
 - Added Remote Supports (previously) Electronic Monitoring) & Environmental Modifications to FSW
 - Family and caregiver training: Increased reimbursement limit to \$5000/year and added reimbursable activities and two activities that are not allowed
 - Community transition – increased the one time set-up expenses limit to \$2,500
- Additional analysis is forthcoming – stay tuned!
- INARF will draft comments and share with the membership
- Public comment due by December 13, 2019

Industry Update

Waiver Redesign

- Anticipate draft concept papers will be released mid to late December
- DDRS is beginning to suggest likely fiscal impact of redesigned waivers
 - We are encouraging DDRS to begin discussing this with legislators now
 - If you speak to DDRS leadership, please encourage them to do this

Industry Update

1 1 02 Institutional Modernization Workgroup

- October 7: Focused on data concerning institutional settings in Indiana and the number of individuals with IDD served in each setting
- November 4: Focused on the ISDH survey process and ICF/IID eligibility and admissions

	Basic Develop- mental (10.0)	Develop- mental Training (8.0)	Intensive Training (6.0)	CRMNF	Extensive Support Needs	Extensive Medical Needs	Nursing Facility
<u>Females</u>	656	362	105	19	20	39	748
<u>Males</u>	1078	496	163	30	62	44	664
Total	1734	858	268	49	82	83	1412

*Count of individuals in each type of ICF/IID
 as of 10/1/2019

Industry Update

1102 Institutional Modernization Workgroup

Who is entering SGL?

*data taken from Dart for July/August SGL admissions

	6.0	8.0	10.0	CRMNF	ESN	EMN	CHILD
14 -18		1	3	1			1
19 -21	4	4	6	1			
22 - 30	2	2	8		1		
31 - 45	3	2	2		1		
46 - 65	2	7	3			1	
65+			1				
	11	16	23	2	2	1	1

Industry Update

Vocational Rehabilitation

- As of January 1, 2020, VR will begin to enforce the 60 day rule for submittal of claims
- Updating information in the VR-CPS will not update the VR picklist and vice versa
- Making certain changes to your organization's profile in VR-CPS will take your organization out of approved status until VR approves the change
- VR is urging providers to use VR-CPS reports to monitor the performance of your program – contact Virginia Bates for assistance with understanding how to use reports

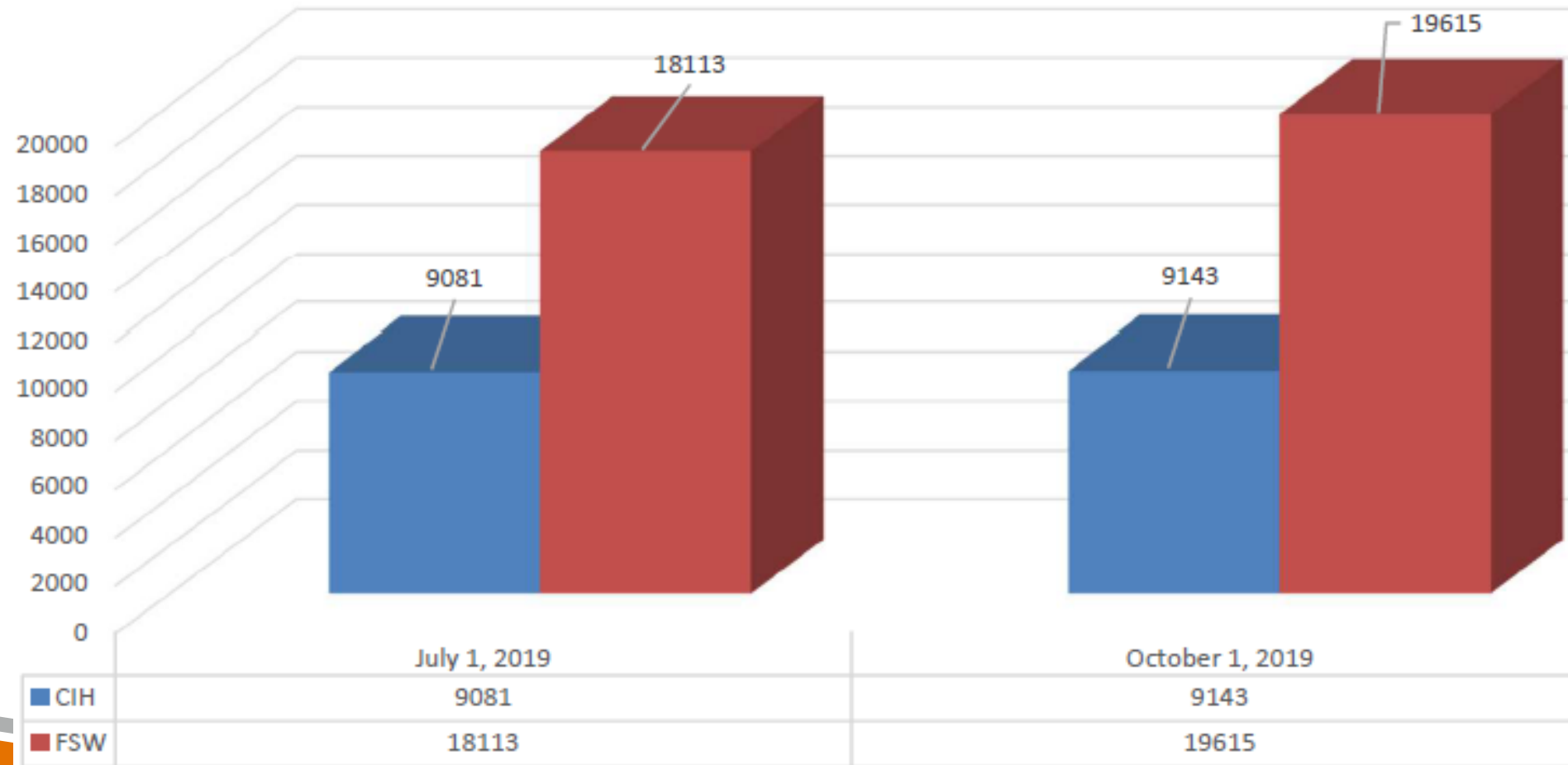
DDRS Advisory Council – October 16

- BDDS Quarterly Data Report
 - Indiana Code 12-15-1.3-15 requires DDRS to report the following on a quarterly basis to the DDRS Advisory Council:
 - Number of applications for emergency placement priority
 - Number of individuals served on the waiver
 - Number of individuals on the waitlist for the waiver
 - Note: Data reported at the October 16 meeting is a one day count of application, enrollment, and waitlist numbers as of October 1, 2019. Data was retrieved from the BDDS Portal.

Industry Update

DDRS Advisory Council – October 16

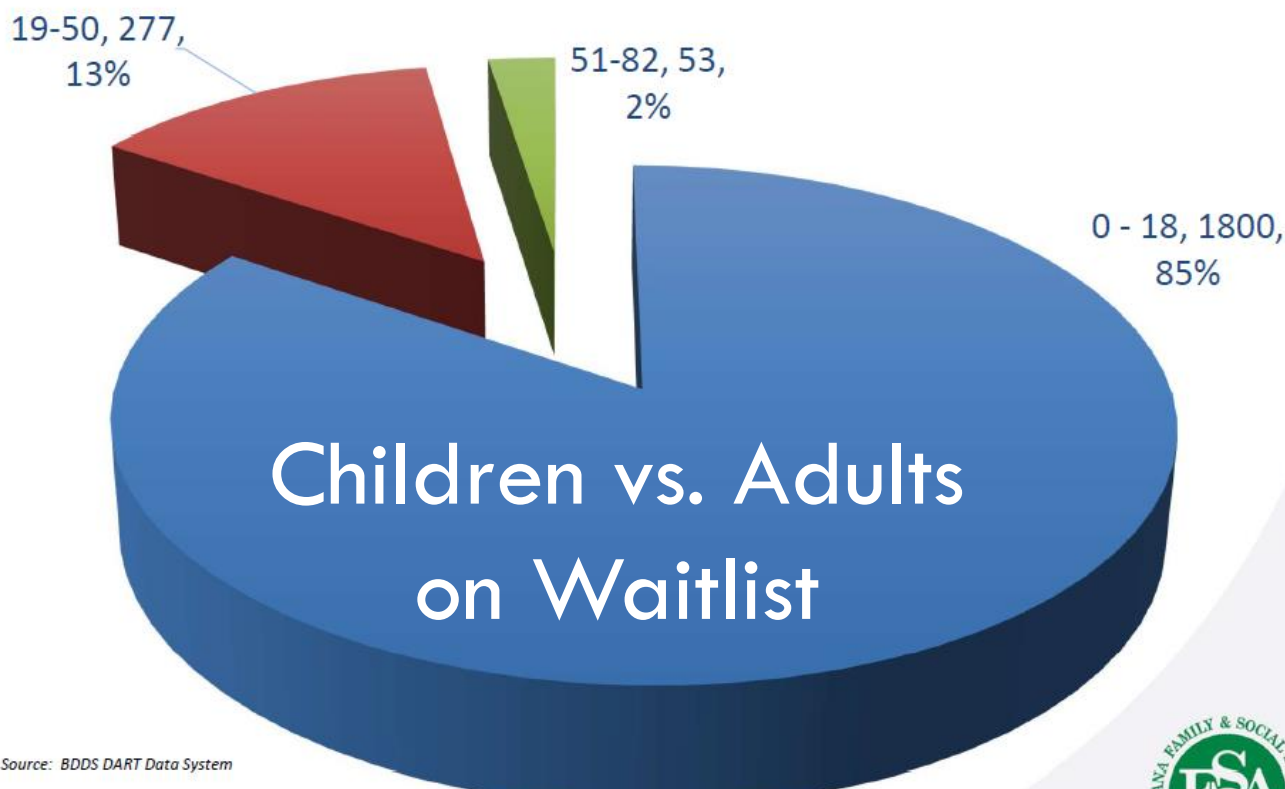
- Number of individuals on BDDS waivers: Q1 & Q2 2019



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DDRS Advisory Council – October 16

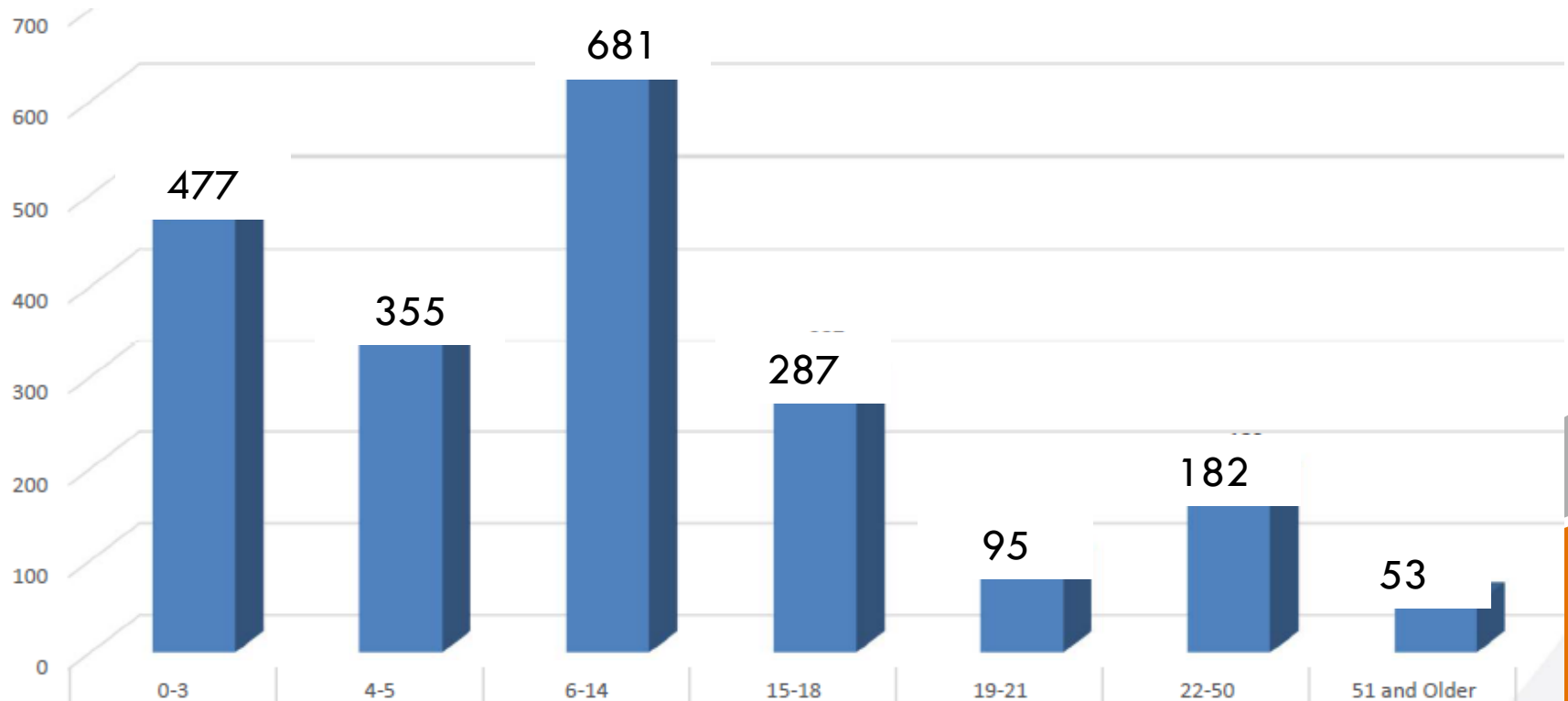
- Number on FSW waitlist
 - Total: 2130
 - Average wait time: 9 months



Industry Update

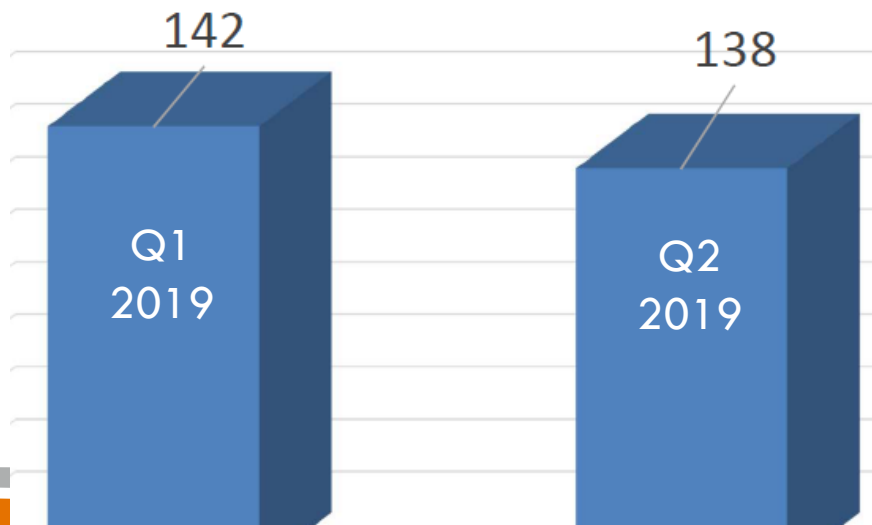
DDRS Advisory Council – October 16

- Number on FSW waitlist by age range
 - Total: 2130
 - Average wait time: 9 months



DDRS Advisory Council – October 16

- BDDS Quarterly Data Report
 - Emergency placement priorities from IC 12-15-1.3-15
 - Death of a primary caregiver
 - Primary caregiver is at least 80
 - Evidence of abuse neglect in current placement
 - Other health and safety risks as determined by the Director
 - Applications for emergency placement



Industry Update

Quiz Time

What is the top thing you should do based on this presentation?

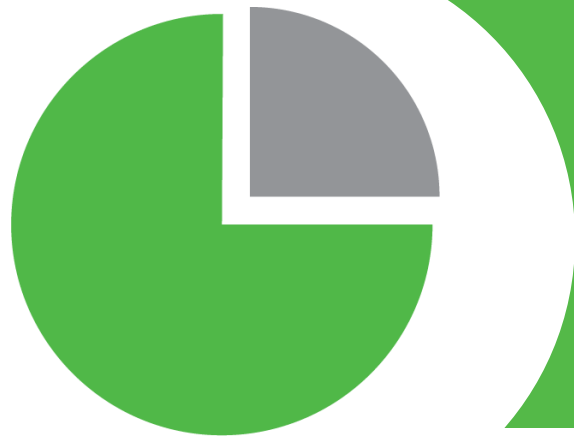


Thank you!

615 N. Alabama St., Ste. 410, Indianapolis, IN 46204

(t) 317-634-4957 / (f) 317-634-3221

info@inarf.org / www.inarf.org



Financial Management

Section Discussion

Tom Franke, Developmental Services, Inc.

Kay Louth, Jay-Randolph Developmental Services, Inc.



Thank you!

615 N. Alabama St., Ste. 410, Indianapolis, IN 46204

(t) 317-634-4957 / (f) 317-634-3221

info@inarf.org / www.inarf.org

