



## **Financial Management Professional Interest Section**

*May 9, 2024*

---



## Financial Management Section

---

# **Putting Strategy into Consumer Funds Management: Maintaining Eligibility and Positively Impacting Long term Outcomes**

*Tom Tirney, CFA, CMT, ChSNC*

*President, Arlington Heritage Group*



Thomas Tirney, CFA, CMT, ChSNC  
Arlington Heritage Group, Inc.



# Arlington Heritage Group



## **Thomas G. Tirney, CFA, CMT, ChSNC** **President, Arlington Heritage Group, Inc.**

Tom joined Arlington Heritage Group, Inc. in 2007, bringing years of financial and investment management experience to the executive team. He has grown the company into a national trust administrator serving non-profits and human service providers. Arlington Heritage Group's trustees and providers oversee more than \$30 million in client funds.

Prior to joining in 2007, Tom worked at a variety investment companies including American Century Investments, Neuberger Berman and Standard & Poor's.

Tom has a B.S. in Business Administration from Boston University and holds designations for Chartered Financial Analyst (CFA), Certified Market Technician (CMT) and Charter Special Needs Consultant (ChSNC).

# Arlington Heritage Group



Arlington Heritage Group is a family-owned and operated business. Since 1986, its mission has been to offer convenient no and low-cost financial services to the I/DD Community.

Arlington Heritage Group offers financial planning solutions through The Provider Trust, Special Needs Pooled Trust and its Irrevocable Burial Trust program.



## **The Provider Trust**

The Provider Trust enables non-profit providers to maintain and build an individual's assets without jeopardizing eligibility for benefits.



## **Irrevocable Burial Trust**

The Irrevocable Burial Trust is a Pre-Need planning tool for families and providers.

# Putting Strategy Into Your Consumer Funds Management

# MEDICAID

## “The Great Unwinding”

While the COVID Pandemic Public Health Emergency (PHE) ended in May 2023, Congress put an end to the continuous Medicaid enrollment and allowed states to begin eligibility redeterminations and renewals as of April 1, 2023. This became known as the “Great Unwinding” and with it the prediction that millions of people would lose their Medicaid benefits.

# Medicaid

Data as of May 1, 2024



## Medicaid Disenrollments

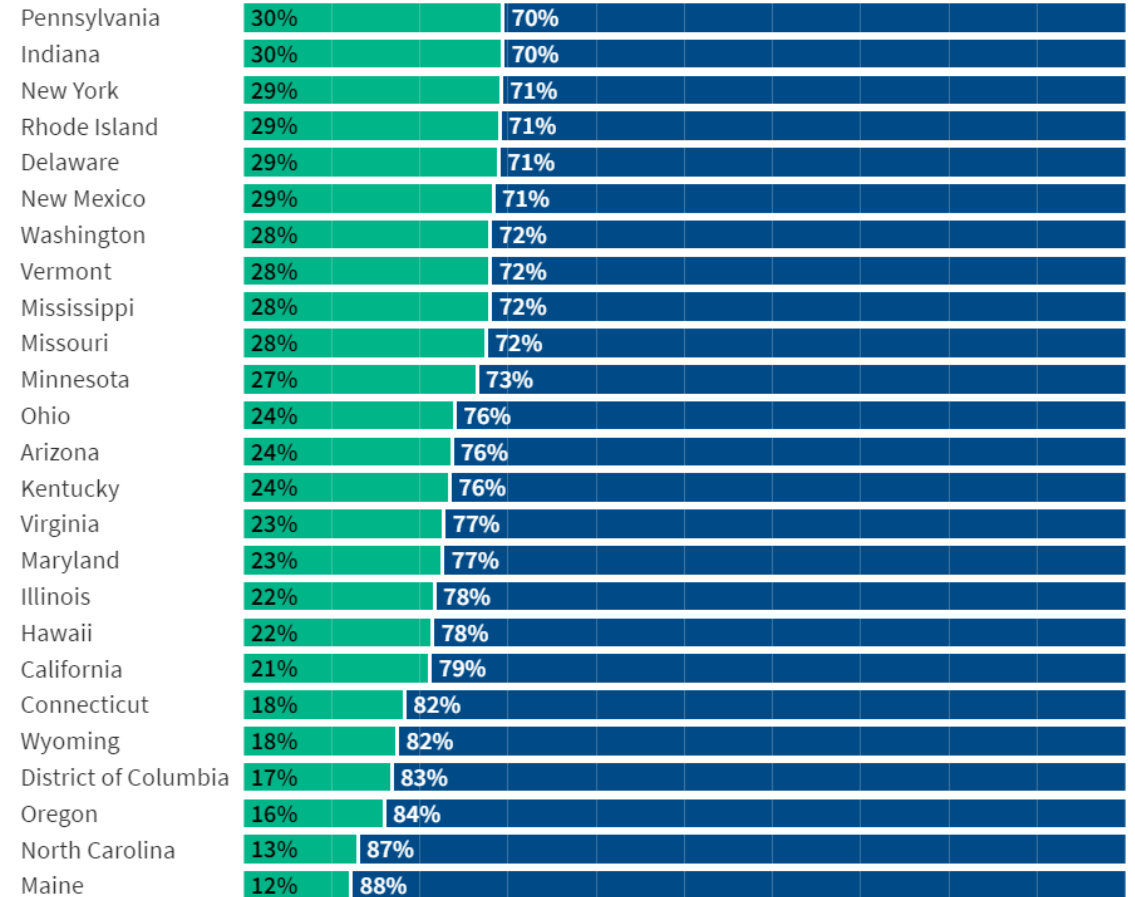
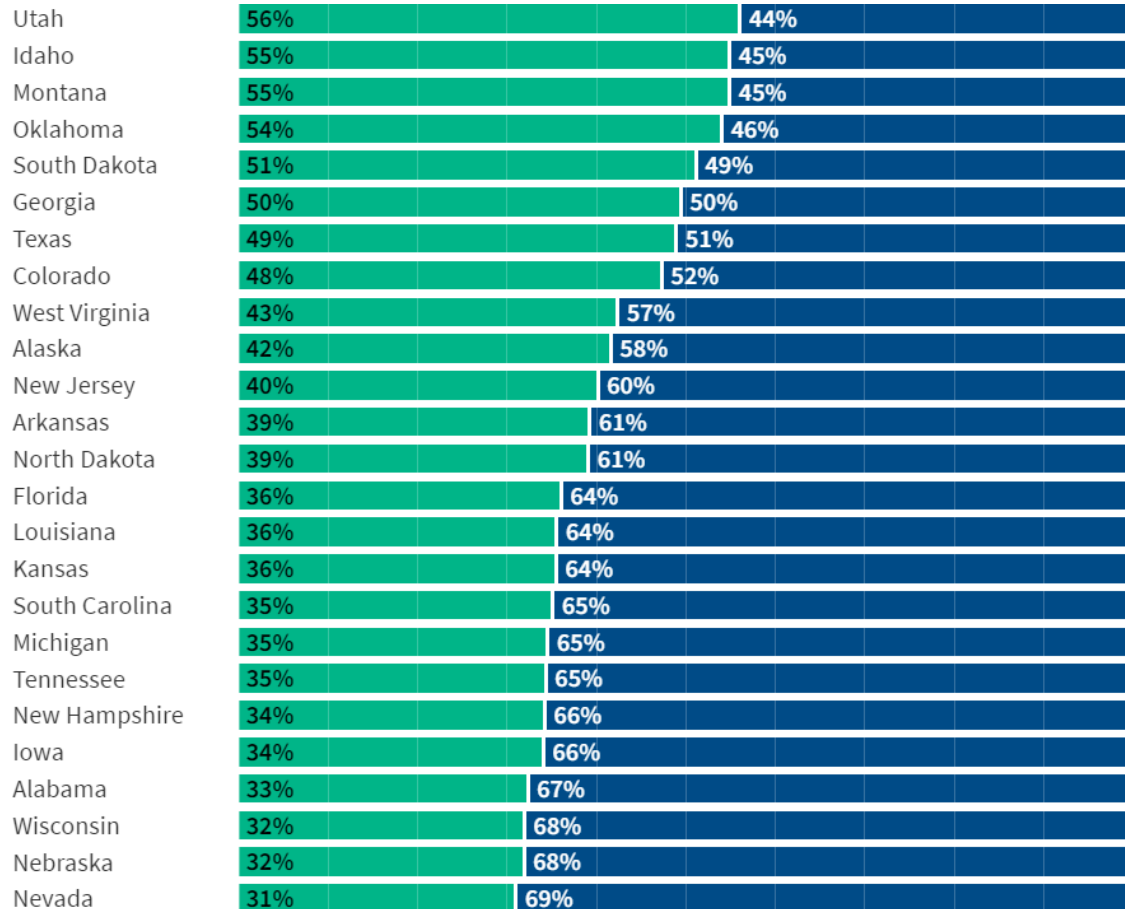
- **At least 21,044,000 Medicaid enrollees have been disenrolled as of May 1, 2024, based on the most current data from all 50 states and the District of Columbia.** Overall, 31% of people with a completed renewal were disenrolled in reporting states while 69%, or 45.6 million enrollees, had their coverage renewed (one reporting state does not include data on renewed enrollees). Due to varying lags for when states report data, the data reported here undercount the actual number of disenrollments to date.
- **There is wide variation in disenrollment rates across reporting states, ranging from 56% in Utah to 12% in Maine**

<https://www.kff.org/report-section/medicaid-enrollment-and-unwinding-tracker-overview/#medicaid-disenrollments>



# Medicaid

■ Disenrollment Rate ■ Renewal Rate

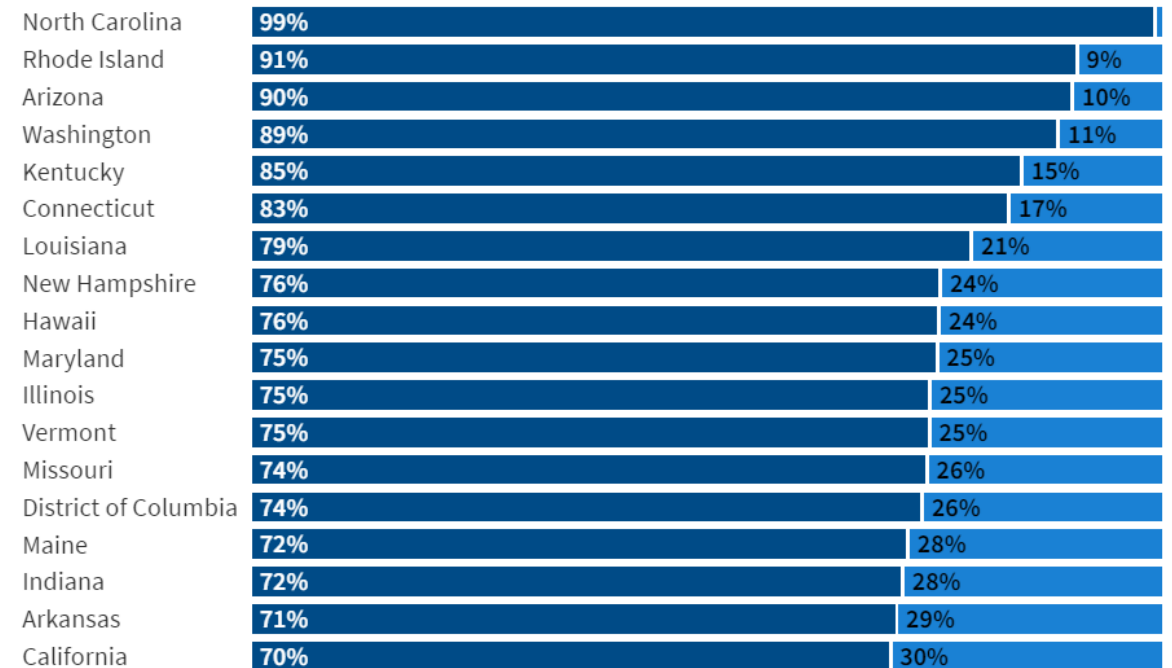


# Medicaid

## Medicaid Renewals

- Of the people whose coverage has been renewed as of May 1, 2024, 60% were renewed on an ex parte basis while 40% were renewed through a renewal form, though rates varied by state. Under federal rules, states are required to first try to complete administrative (or “ex parte”) renewals by verifying ongoing eligibility through available data sources, such as state wage databases, before sending a renewal form or requesting documentation from an enrollee.

■ Renewed on an ex parte basis ■ Renewed via renewal form



# **UNDERSTANDING EXEMPT RESOURCES**

# Exempt Resources Tools



## These Financial Tools **DO NOT COUNT AGAINST A RESOURCE LIMIT**

- **Irrevocable Burial Account** – approximately \$15,000
- **Special Needs Trusts** - no limit on assets
- **Special Needs Pooled Trusts** – no limit on assets
- **ABLE Accounts**– \$18,000 per year, \$100,000 cap before benefits are affected and a lifetime cap which differs by state

≠

**SIMILAR BUT NOT EQUAL**

# Exempt Resources Tools In SSA POMS



• Checking Account	\$800
• Irrevocable Burial Account	\$10,000
• Special Needs Pooled Trust	\$7,500
• ABLE Account	<u>\$1,200</u>
<b>Total</b>	<b>\$19,500</b>

**The consumer's net worth is close to \$20,000 but benefits are safe because all but \$800 are in exempt resource accounts.**

# NEEDS FOR EXEMPT RESOURCE

- Social Security Administration Retro-Pay
- Court Award
- Inheritance
- Family Financial Planning
- Employment / Income
- Minimal Hits to the Resource Limit



# Exempt Resources: Trusts & ABLE

JT typically exceeds his resources limit by an average of \$250+ per month -

## Annual Checking Account Activity

<u>Month</u>	<u>Account Balance</u>	<u>Needed Spend Down</u>
Jan	\$ 2,322	\$ 322
Feb	\$ 2,231	\$ 231
Mar	\$ 1,998	\$ -
Apr	\$ 2,232	\$ 232
May	\$ 2,382	\$ 382
Jun	\$ 2,168	\$ 168
Jul	\$ 2,362	\$ 362
Aug	\$ 2,286	\$ 286
Sep	\$ 2,316	\$ 316
Oct	\$ 2,296	\$ 296
Nov	\$ 1,962	\$ -
Dec	\$ 2,268	\$ 268

Average Trust Balance - \$2,235

Average Spend Down - \$286

## Key Findings

- He lost \$2,863 for the year due to needed spend downs
- A trust administrative & custodial fee of 2.5% would equal \$128 for the year, paid for by consumer
- **JT's potential account balance without needed spend downs would be \$5,131**

## Net Results with Using A Trust or ABLE Account

- **JT has spent \$128 to save \$2,863**
- Now JT can save for goods & services to improve & enrich his life, such as:
  - Computer/iPad
  - Vacation
  - Assistive Technology
- Staff's time was saved from having to make spend downs
- Agency's time saved in not having to reinstate consumer's lost benefits.

# Exempt Resources: Funeral Accounts



## What Does The Social Security Administration Want?

### PREPAID BURIAL ARRANGEMENT

- The trustee is not permitted to pay for an individual's final expenses **before** the State.
- A purchased prepaid burial arrangement while the individual is alive is an appropriate expenditure.
- The arrangement needs to meet certain requirements (i.e., funds irrevocably paid to the funeral director).
- Burial space items are excluded: plots, headstones, etc.
- Be aware that an irrevocable "burial reserve account" will not meet this requirement (i.e., no purchase made) and still counts as a resource for SSI purposes (up to \$1,500 may be excluded).

***"Have a pre-paid funeral and make it irrevocable."***





# Exempt Resources: Trusts & ABLE

- **Similar Instruments**
- **Maintain Eligibility**
- **Flexible**
- **Qualified Distributions**
- **Each Have Their Own Limitations**

# Guidelines



<https://www.ablenrc.org/>

<https://www.ablenrc.org/state-review/indiana/>

- Account holder disabled by Title II or Title XVI SSA
- Disabled before age 26 (this will raise to 46 in 2026)
- One ABLE account per person
- Person, parent, guardian or POA may open account
- \$18K per year; max at \$100K and benefits will be affected; **state account limit for Indiana is \$450,000**
- Upon death of accountholder, funds can be claimed by MA

# Special Needs Trusts and Pooled Trusts

- D(4)a vs D(4)c
- One Trustee, One Account vs. One Trustee, Many Accounts
- Both can be created by parent, grandparent, guardian, court or the individual.
- No max for either.
- D(4)a can be expensive, tends to be for estate planning
- Upon death of accountholder, SNT funds can be claimed by MA for a D(4)a.

# Special Needs Pooled Trusts: Legal Guidelines



- The Trustee must be a non-profit 501(C)(3) entity
- Individual with the trust account must be disabled as per SSI criteria
- Individual trust must be created by a parent, grandparent, guardian, court, or the person him/herself.
- Funds placed into the trust must be irrevocable and therefore do not count as an SSA resource.
- Money in the trust can only be used for the sole benefit of the individual
- Upon death of accountholder, SNPT funds CANNOT be claimed by MA

# Permissible Distributions

## Some Examples of Permissible Distributions That Benefit The Individual

- Appliances (plus maintenance/repairs)
- Dental & Optometry
- Bus Pass/Public Transportation
- Clothing
- Courses & Classes
- Education, Classes, Computers
- Elective Surgery
- Furniture & Home Furnishings
- Musical Instruments/Lessons/Supplies
- Over The Counter Medications (including vitamins and herbs, etc.)
- Pets & Pet Supplies
- Tickets to Concerts & Sporting Events
- Travel, Vacations, Day trips



# Comparisons

	<b>ABLE Accounts</b>	<b>Special Needs Trust (d)(4)(a)</b>	<b>Special Needs Pooled Trust (d)(4)(c)</b>
<b>Beneficiary</b>	Named Person with disability eligible for SSA services	Named Person with disability eligible for SSA Services	Named person with disability eligible for SSA Services
<b>Settlor</b>	Individual, parent, or third party	Parent, grand, guardian or court of law	INDIVIDUAL, parent, grand, guardian or court of law
<b>Trustee</b>	No Trustee; any individual including beneficiary, parent, others that have guardian status or power of attorney	Any individual, corporate, or non-profit institution	Non-profit institution
<b>Legislation</b>	ABLE Act, 2014	OBRA Act 1993	OBRA Act 1993
<b>Source of Funds</b>	Individual's assets, parent's, third-party	Individual's assets, parent's, third-party	Individual's assets, parent's, third-party

# Comparisons

	<b>ABLE Accounts</b>	<b>Special Needs Trust (d)(4)(a)</b>	<b>Special Needs Pooled Trust (d)(4)(c)</b>
<b>Age</b>	Disabled by age 26	No age restriction Except 65+	No age restriction Except 65+
<b>Assets</b>	\$18,000 per year	No max or cap	No max or cap
<b>Distributions</b>	Sole benefit Qualified expenses	Sole benefit Not otherwise reimbursed by SSA or Medicaid	Sole benefit Not otherwise reimbursed by SSA or Medicaid
<b>Impact on Benefits</b>	Not a resource, up to \$100,000	Not a resource 65+ look back for Medicaid in some cases	Not a resource 65+ look back for Medicaid in some cases
<b>Death of Beneficiary</b>	Payback to state for Medicaid funded services	Payback to state for Medicaid funded services	Partial or no payback to state for Medicaid funded services. Remainder funds to be used for other individuals in the trust who are disabled by SSA criteria

# Special Needs Pooled Trusts As Strategy

## When You Use a Special Needs Pooled Trust as a Repository for Excess Consumer Funds:

- Break the cycle of spend downs
- Save staff's time and attention
- Create a pathway for consumers to save money and spend it how and when they choose
- Help to ensure the continuity of benefits

## Creating an Endowment Feature for Future Needs

- The law was especially written for you to do this!
- Special needs pooled trust are not obligated to payback Medicaid
- When a consumer passes away, their funds remain in the trust as "remainder money"
- Remainder money is used at the agency/trustee's discretion, spending on individuals within its I/DD community that are deemed disable via SSI criteria



# Thank You



Tom Tirney, President, CFA, CMT, ChSNC  
Arlington Heritage Group



215-672-1184, ext.1



[tg Tirney@ahgtrusts.com](mailto:tg Tirney@ahgtrusts.com)



[ArlingtonHeritageGroup.com](http://ArlingtonHeritageGroup.com)



## Financial Management Section

---

### **Industry Update**

*Brandi Foreman, Vice President of  
Compliance and Regulatory Affairs, INARF*



# Overview

---

- **5 updated Federal regulations released last week**
  - Minimum Staffing Standards for LTC Facilities and Medicaid Institutional Payment Transparency Reporting
  - CMS Final Access Rule
  - Overtime Exemption Rule
  - FTC Non-Compete Clauses
  - Managed Care Rule
- **Billing Updates**
  - Attendant Care and Pathways



## LTC Staffing Rule

---

- New reporting requirements for States to report annually by facility on the percent or payments for Medicaid-covered services delivered by nursing facilities and ICFs/IID that are spent on compensation for direct care workers and support staff.
  - ICFs would need to build, design, and operationalize an internal system for developing that report for the State
  - Rural facilities have 5 years to comply
  - Non-rural facilities have 3 years to comply



# CMS Final Access Rule

- **HCBS Payment Adequacy Overview**

- **Minimum Performance Level:** States are required to ensure that each provider spends at least 80% of total payments received for specific services (homemaker, home health aide, or personal care services) on total compensation for direct care workers who provide those services (this will affect attendant care services).
  - Direct Care Workers include: Nurses, Certified Nursing Assistant, Direct Support Professional, Personal Care Attendant, Home Health Aide, and other individuals who are paid to provide services to address activities of daily living.
- **Compensation Definition:** Compensation includes salary, wages, benefits (health, dental, life, disability insurance, paid leave, retirement, tuition reimbursement), and employer share of payroll taxes.
- **Excluded Costs:** Excluded from the total payment calculation are costs related to required training, travel expenses, and personal protective equipment for direct care workers.
- **Exceptions:** States have the discretion to set different spending thresholds for providers that meet specific criteria such as small provider status or those facing extraordinary circumstances.
- **Reporting Requirements:** States must annually report the percentage of total payments (excluding the costs outlined above) spent on compensation for direct care workers. They need to report separately for each service type and specify whether services are self-directed or delivered in a provider-operated location.



# Overtime Rule

- **Standard Salary Level:**
  - **Current Amount:** \$684 per week (\$35,568 annually)
  - **July 1, 2024 Amount:** Increases to \$844 per week (\$43,888 annually)
  - **January 1, 2025 Amount:** Increases to \$1,128 per week (\$58,656 annually)
- **Highly Compensated Employees (HCE) Threshold:**
  - **Current Amount:** \$107,432 annually
  - **July 1, 2024 Amount:** Increases to \$132,964 annually
  - **New Amount:** Increases to \$151,164 annually
  - **Effective Date:** January 1, 2025
- **Action Items:**
  - **By July 1, 2024:**
    - Employers should prepare for the initial update of the standard salary level and the HCE total annual compensation threshold.
    - Review and adjust payroll systems to ensure they reflect the updated thresholds starting from January 1, 2025.
    - Begin planning for budget adjustments due to increased salary thresholds for exempt employees.
  - **By January 1, 2025:**
  - Implement the new salary thresholds:
  - Ensure that employee classifications comply with the new thresholds.
  - Adjust employment contracts and compensation packages for affected employees to maintain compliance with the new rule.





# Billing Updates

- **A&D Attendant Care Billing Guidance**
  - Effective March 1, 2024, providers rendering SFC and ATTN services are required to provide the name of the individual providing the service and relationship to the member as a claim note
  - 20% current compliance (as of April 2024)
  - Batch billing still allowed
  - ACTIVITIES NOT ALLOWED (Appendix K unwinding)
    - Structured Family Caregiving service will not be reimbursed when provided by a parent of a minor child participant
    - Personal care services provided to medically unstable or medically complex participants as a substitute for care provided by a registered nurse, licensed practical nurse, licensed nurse or other health professional.
    - Separate payment will not be made for Home and Community Assistance, Transportation, Attendant Care, Assisted Living, or Adult Family Care.
  - <https://www.in.gov/medicaid/providers/files/bulletins/BT202411.pdf>
- **Submission Testing Period for Pathways Program**
  - For the upcoming PathWays program implementation on July 1, 2024, the Indiana Office of Medicaid Policy and Planning, along with selected managed care entities (MCEs) Anthem, Humana, and UnitedHealthcare, announces a claims submission testing period.
  - **Testing Sessions:**
    - First Session: April 29 - May 10, 2024
    - **Second Session: May 20 - May 31, 2024**
  - **Registration:**
    - Providers must register for claims testing with each MCE. (See IHCP bulletin for information on how to participate).
  - **Support:**
    - MCEs will provide support and technical assistance, including webinars to assist providers during the testing period.
    - Next support and technical assistance session is May 15<sup>th</sup> at 2pm EST. (See IHCP bulletin to register).
  - <https://www.in.gov/medicaid/providers/files/bulletins/BT202451.pdf>



# Resources

---

- **INARF Technical Assistance Page:** [https://www.inarf.org/technical\\_assistance.html](https://www.inarf.org/technical_assistance.html)
- **LTC Staffing Fact Sheet (CMS):** <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicaid-0>
- **CMS Final Access Rule Fact Sheet (CMS):** <https://www.cms.gov/newsroom/fact-sheets/ensuring-access-medicaid-services-final-rule-cms-2442-f>
- **Overtime Rule:** <https://www.federalregister.gov/documents/2024/04/26/2024-08038/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>
- **FTC Non-Compete Clause Rule:** [https://www.ftc.gov/system/files/ftc\\_gov/pdf/noncompete-rule.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete-rule.pdf)
- **Managed Care Fact Sheet (CMS):** <https://www.cms.gov/newsroom/fact-sheets/medicaid-and-childrens-health-insurance-program-managed-care-access-finance-and-quality-final-rule>