



# **BDDS Provider & Case Manager Monthly Webinar**

**February 3, 2022**

# Welcome & Agenda

- COVID Update
- Special Guest: Melissa Keyes, Indiana Disability Rights
- HCBS Stabilization Grant
- EKV Update
- 60 Day Notice Requirements



# Goals for COVID-19 Efforts



**H**elp prevent the spread of COVID-19 and keep people alive

**O**perationalize flexibilities

**P**rovider network maintained

**E**mpower person-centered decision-making for self-advocates, families, case managers, and providers



## **COVID-19 Data:**

### **Total Number of BDDS COVID Positive Cases**

**CIH: 2487**

**FSW: 2409**

**SGL: 1258**

Data as of 1/31/2022

Total Cases: 6154

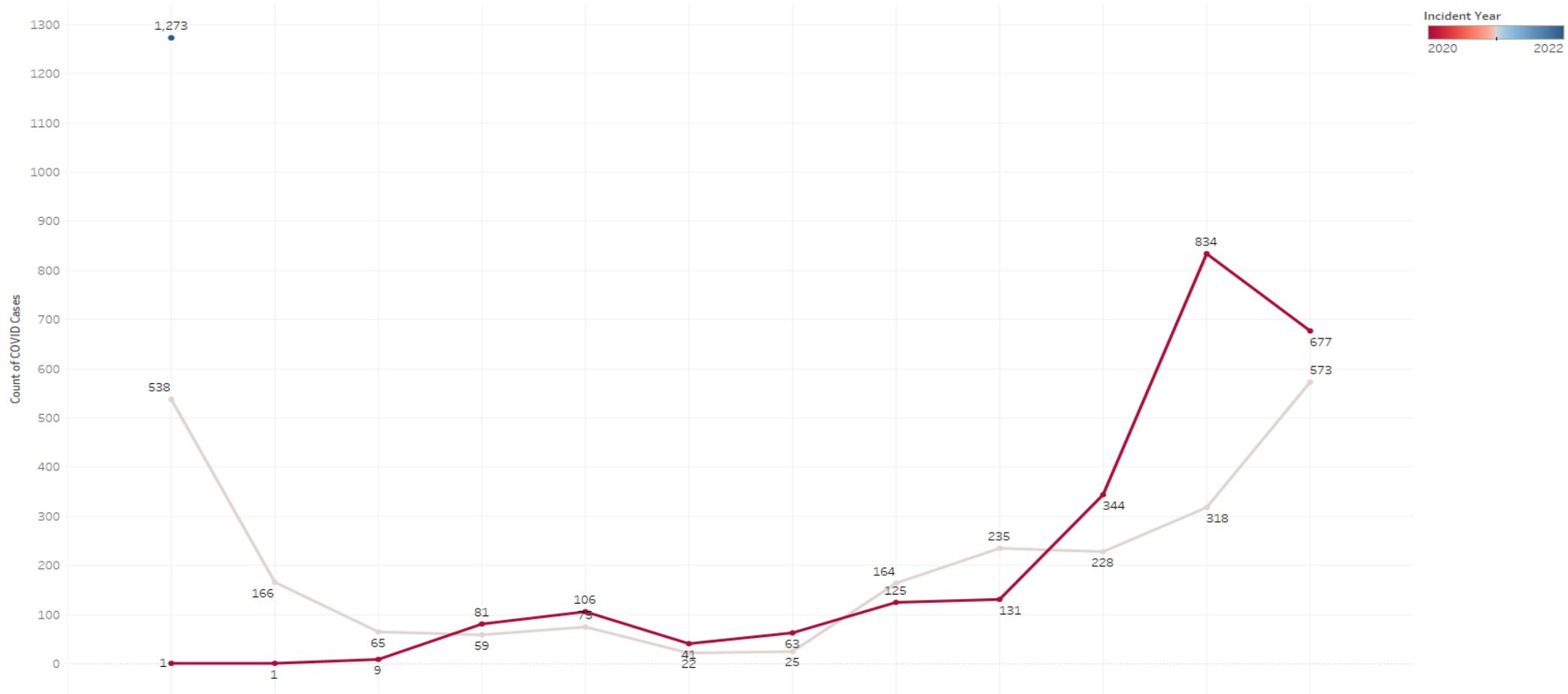
Total COVID-Related Deaths: 111

# COVID-19 DATA: Individual COVID Cases by Month



Individual COVID Cases by Month

Last Updated: 2/1/2022 9:46:34 AM



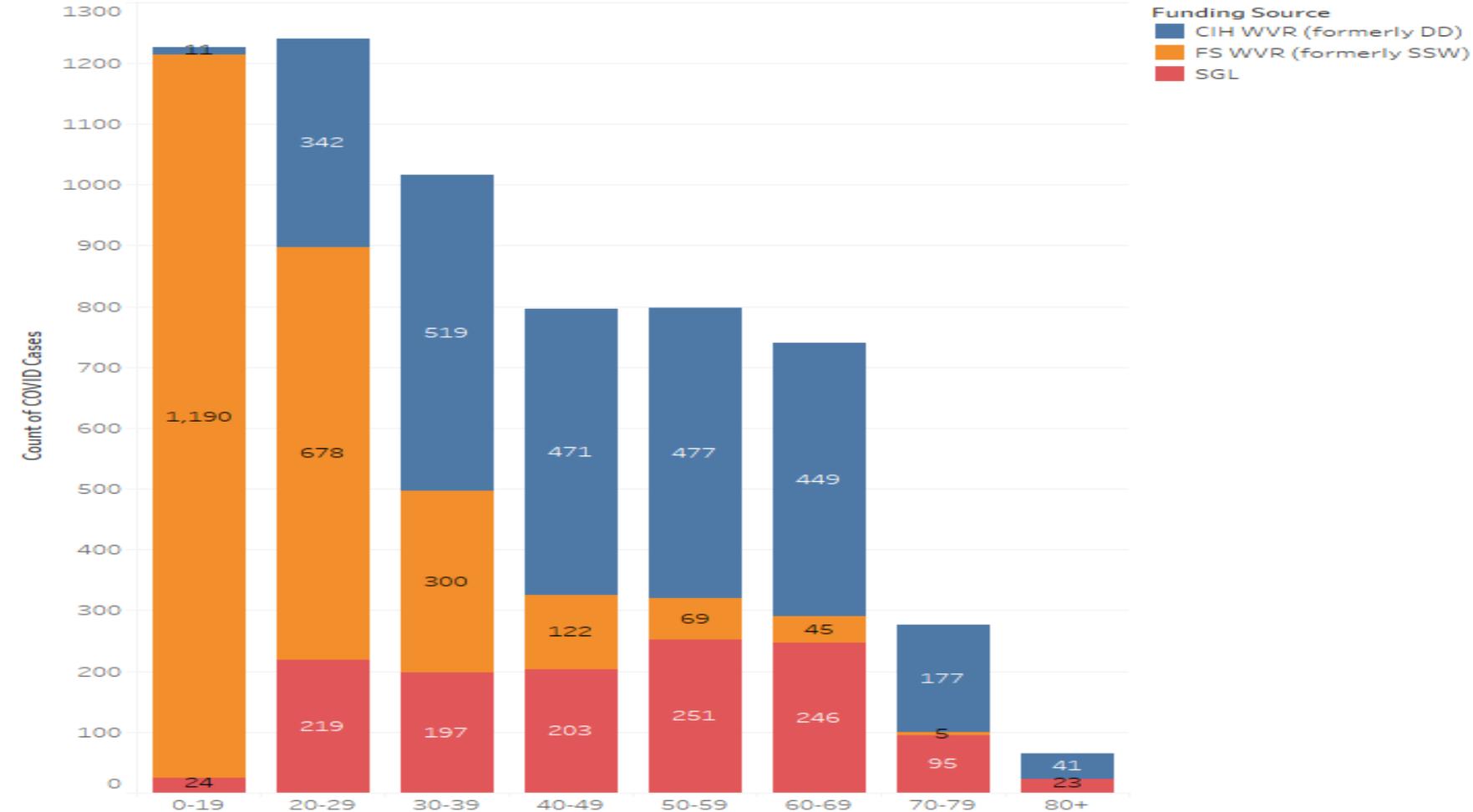
The trend of count of Incident Report ID for Incident Month. Color shows details about Incident Year. The view is filtered on Incident Year, which ranges from 2020 to 2022.

# COVID-19 Data: Age Among Unique COVID Positive Cases



Individual COVID Cases by Age and Funding Type

Last Updated: 2/1/2022 9:46:34 AM

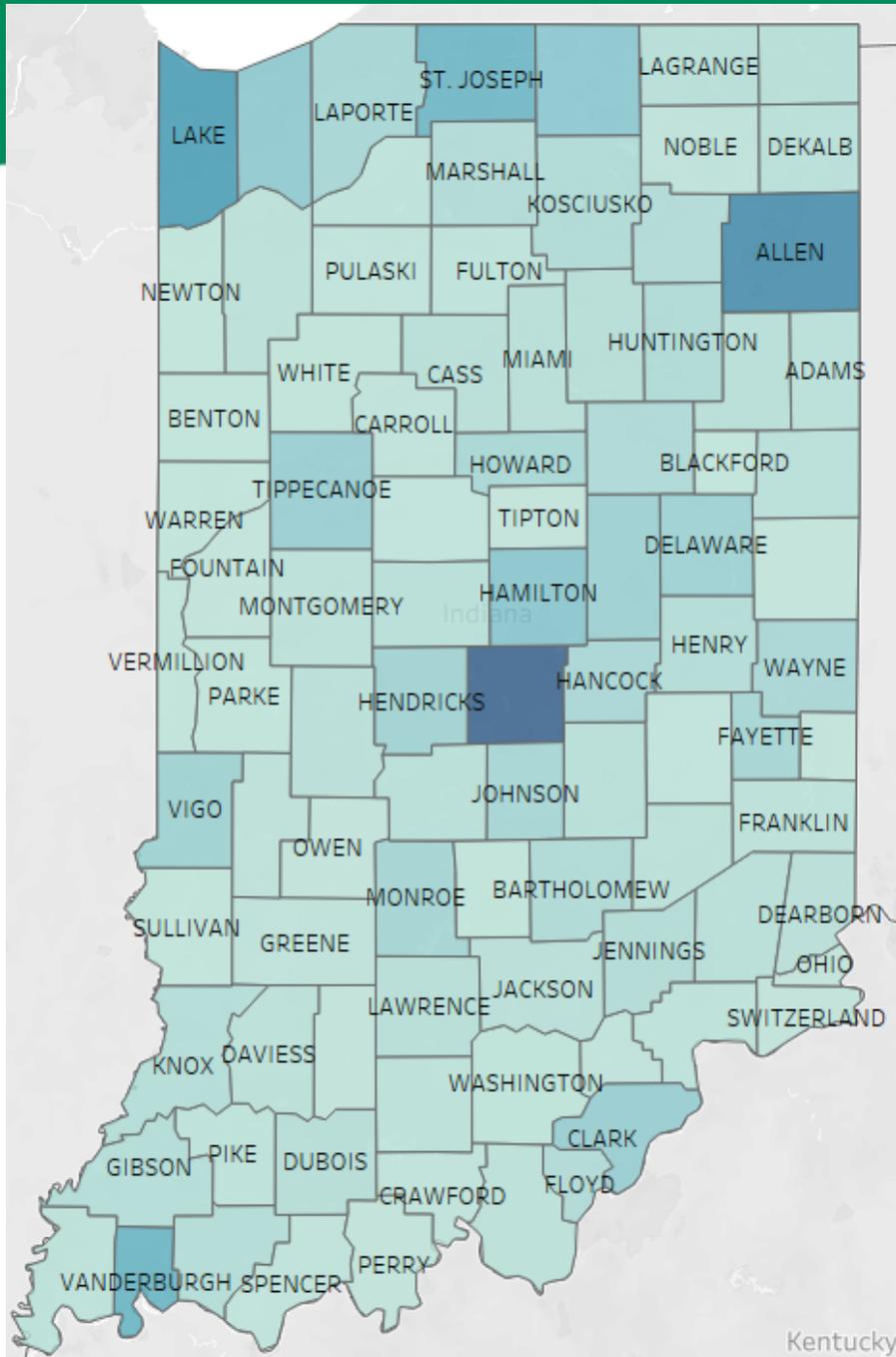


Count of Incident Report ID for each Age Group. Color shows details about Funding Source.

Data as of 1/31/2022

# COVID Positive Cases by County

Data as of 1/31/2022

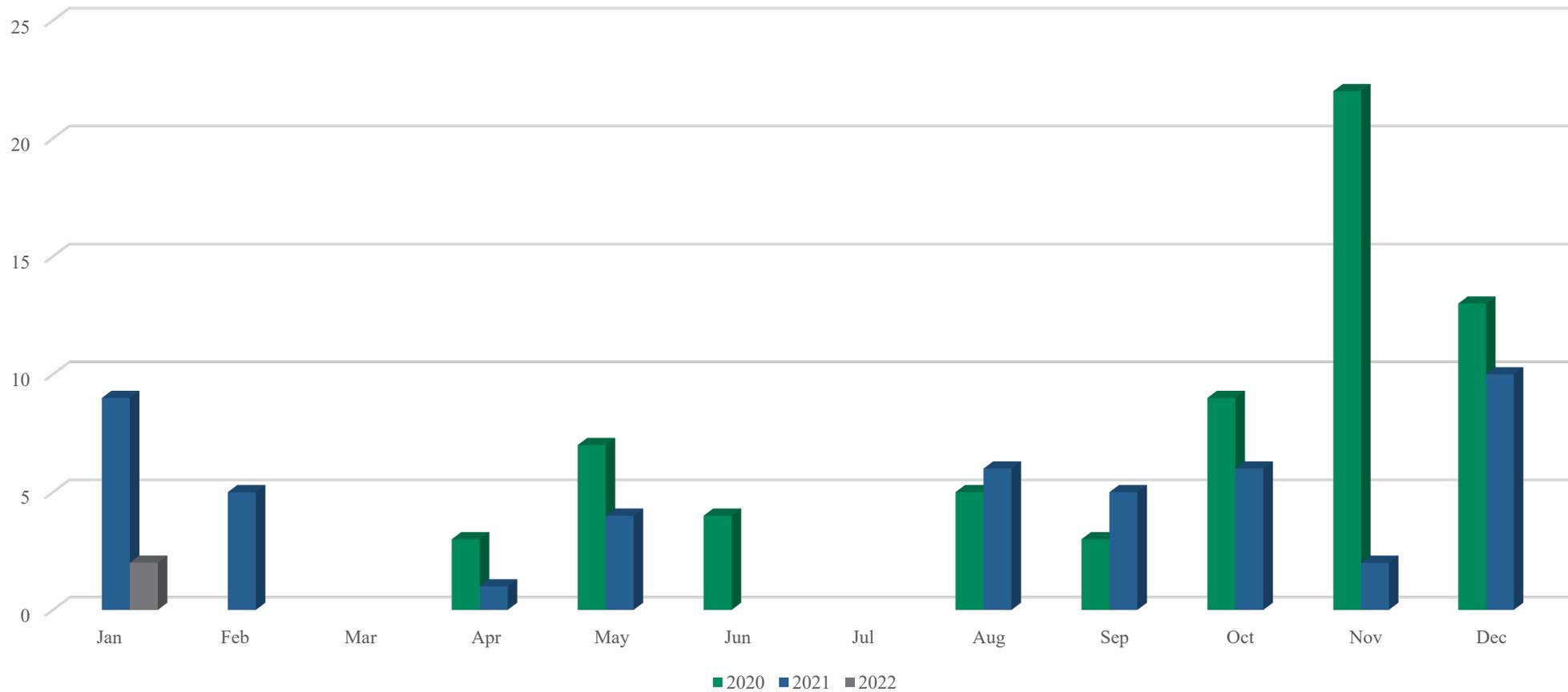


**Total COVID-related deaths = 111**

# COVID-19 Data: Individual Deaths Due to COVID by Month



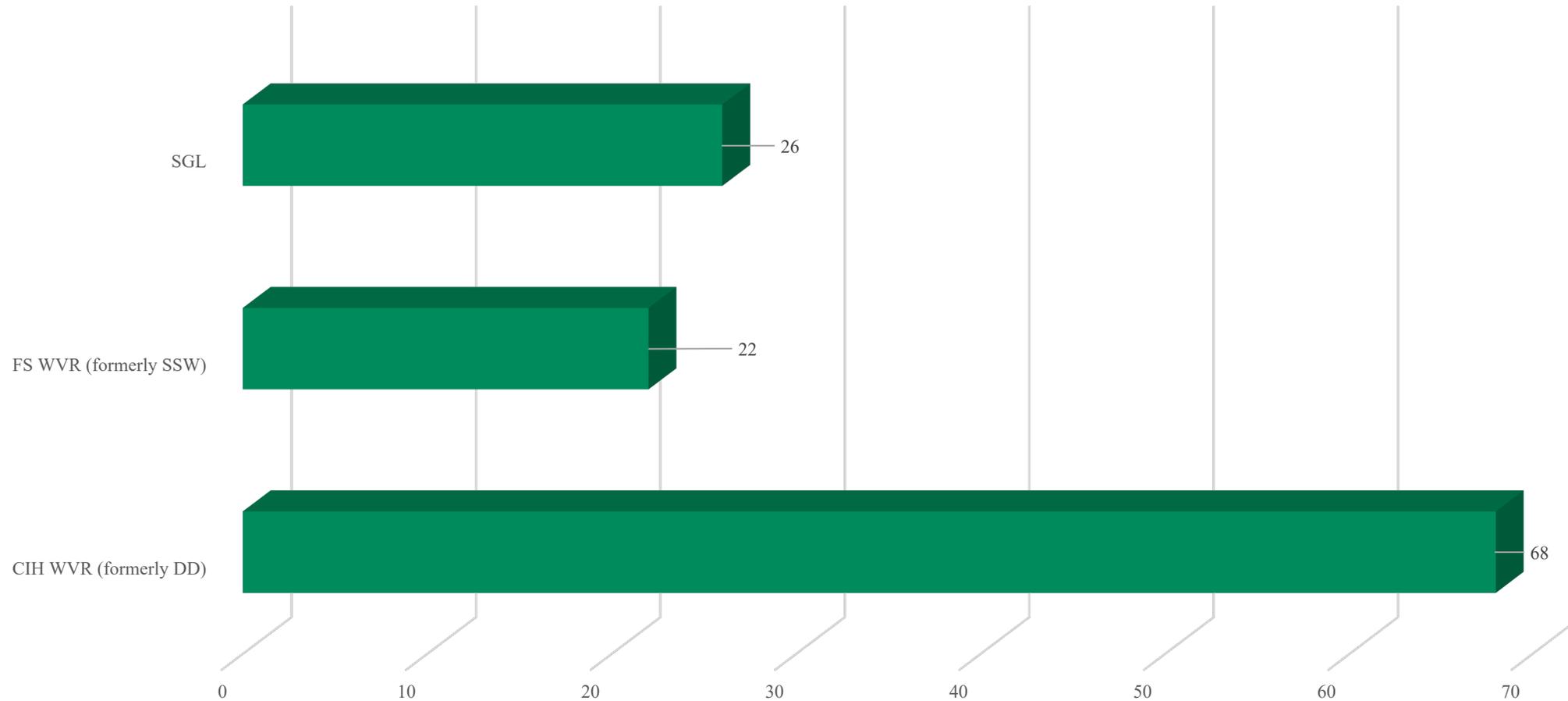
Deaths Due to COVID by Month  
Data as of 1/31/2022



# COVID-19 Data: Deaths Due to COVID by Funding Type



Deaths Due to COVID by Funding Type  
Data as of 1/31/2022





# COVID-19 Data: Total Number of Staff COVID Positive Cases

Waiver: 2447  
**SGL: 1096**

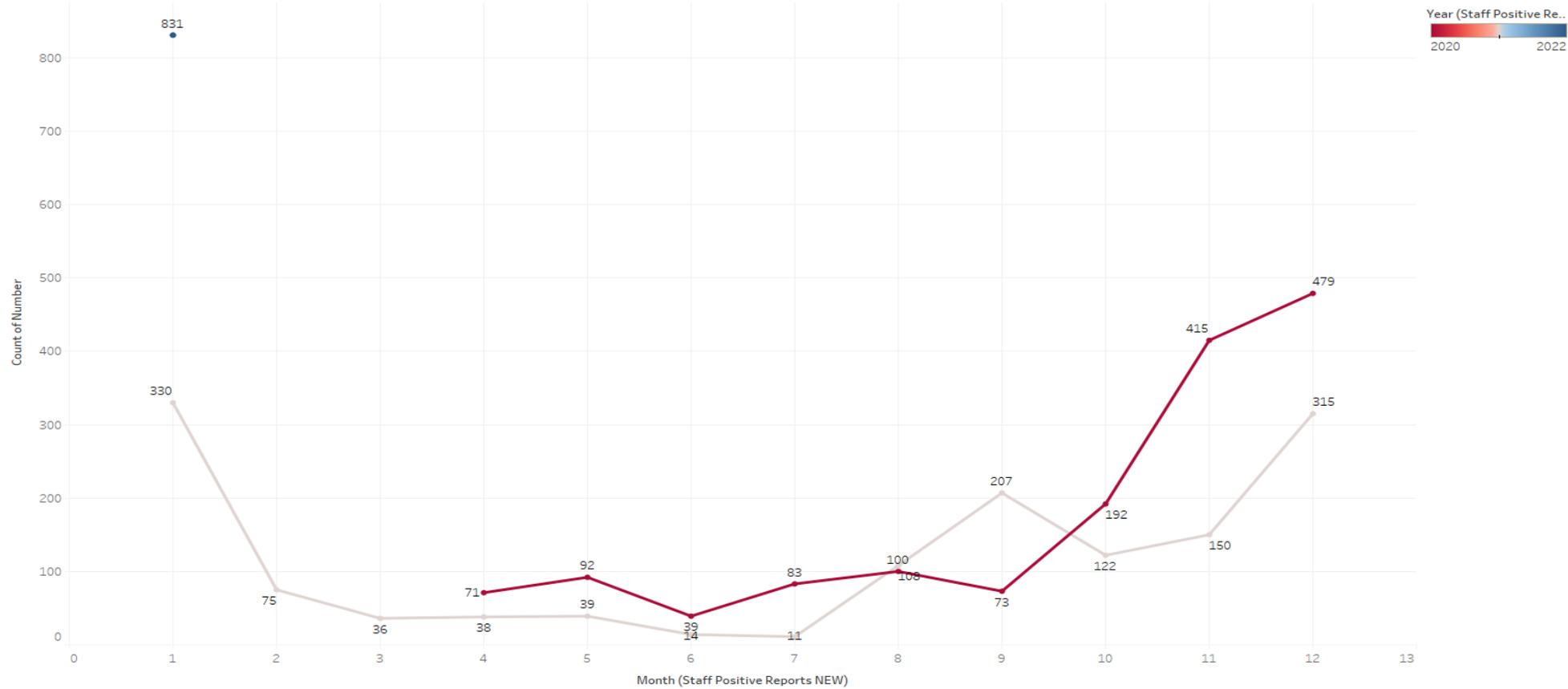
Data as of 1/31/2022  
Total Cases: 3820  
Total COVID-Related Deaths: 10

# COVID-19 Data: Staff COVID Cases by Month



Staff COVID Cases by Month

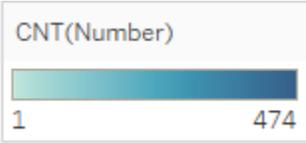
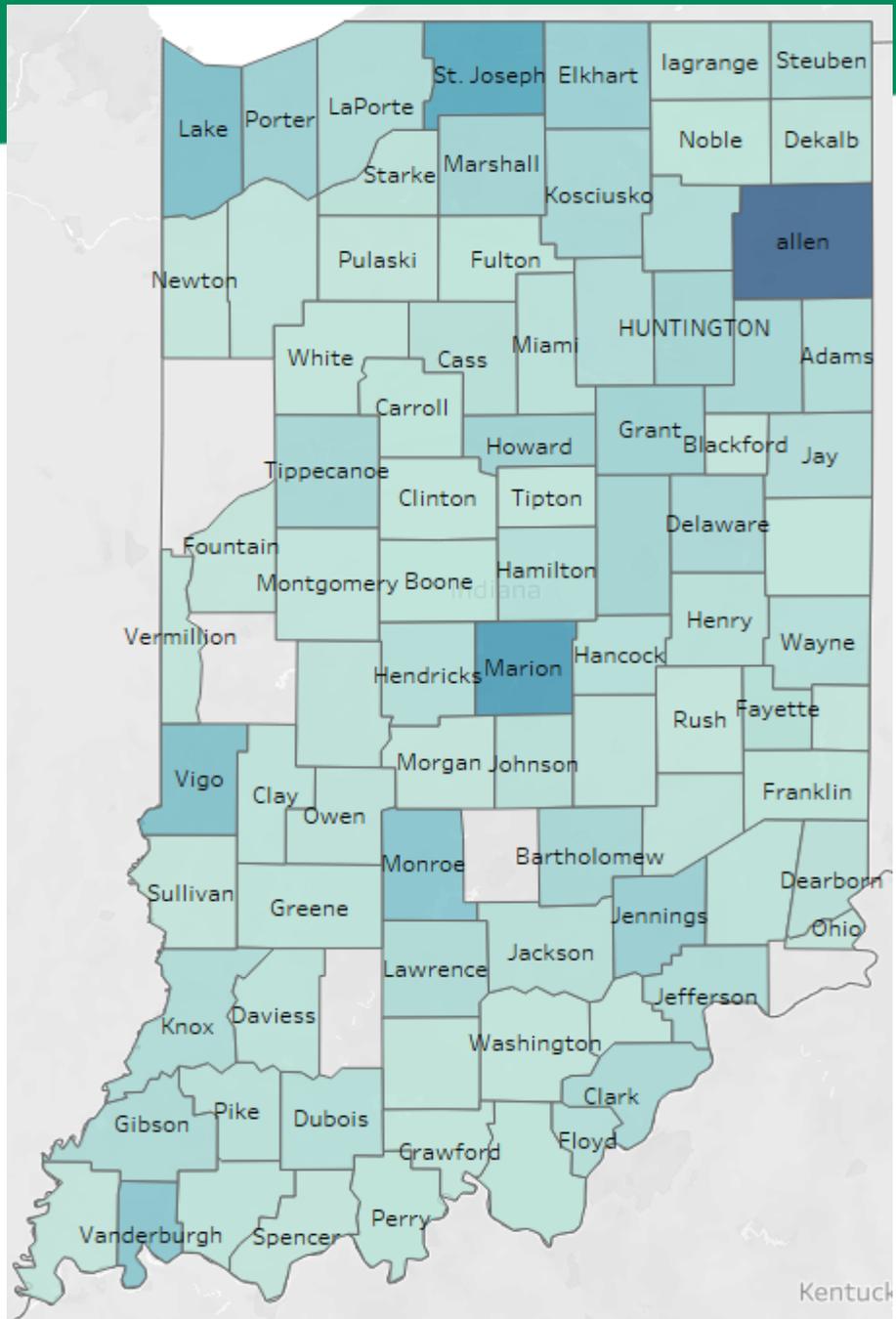
Last Updated: 2/1/2022 9:46:34 AM



The trend of count of Number for Month (Staff Positive Reports NEW). Color shows details about Year (Staff Positive Reports NEW). The view is filtered on Year (Staff Positive Reports NEW), which ranges from 2020 to 2022.

# COVID Positive Staff Cases by County

Data as of 1/31/2022



Total COVID-related deaths- 10

# Guardianship Basics for Providers and Case Managers

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Melissa L. Keyes, Executive Director  
Indiana Disability Rights



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# What We Will Cover...

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- Guardianship role and responsibilities
- Guardians and HCBS
- Addressing disagreements
- Frequently Asked Questions



# What is a Guardian?

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“Guardian” means a person who is a fiduciary and is appointed by a court...[to be] responsible as the court may direct for the person or the property of an incapacitated person...

Ind. Code § 29-3-1-6

- What does that mean in plain language?



# What is a Guardian?

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- Person of trust, stands in the legal shoes of the protected person (PP)
- Responsible for person's care and preservation of their property to the extent ordered by the court. Ind. Code § 29-3-8-1
- Guardian is NOT automatically a Representative Payee



# What MUST a Guardian do?

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- Act in good faith with sound discretion
- Protect and preserve property
- Encourage self-reliance and independence
- Consider recommendations relating to the appropriate standard of support, care, education, and training for PP

Ind. Code § 29-3-8-3



# What MAY a Guardian do?

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- Receive, manage, dispose of property or real estate for PP's benefit.
- Take custody of PP and establish their place of residence.
- Consent to medical or other professional care and treatment
- Consent to marriage
- Delegate decision-making authority to PP

Ind. Code § 29-3-8-4



# What MAY a Guardian do?

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- Pay a third party for PP's care.
- Pay PP's debts from PP's assets.
- Distribute income to PP or custodian of PP.
- Get reimbursed for reasonable expenses made in good faith for the benefit of PP.
- Receive reasonable compensation.

Ind. Code § 29-3-9-3



# What MAY a Guardian do?

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MUST have prior Court order:

- File for divorce, legal separation, annulment
- Consent to sterilization
- Restrict voting rights (rarely granted)
- Accessing PP's electronic communications or digital assets
- Settling a claim or lawsuit for PP
- Moving PP to new county or state.



# What SHOULD a Guardian do?

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- Treat PP with dignity and respect, maintain privacy and confidentiality.
- Involve PP to the greatest extent possible in all decision-making.
- Select the option that places the least restrictions on PP's freedom and rights.
- Advocate for PP's goals, needs, and preferences.
- Maximize PP's self-reliance and independence.
- Avoid conflicts of interest and self-dealing.
- Comply with all laws and court orders.
- Manage all financial matters carefully. No co-mingling.

National Guardianship Association, Certified Guardian Ethics



# Guardian Liability

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- Immune from civil liability for performance as guardian (except for gross misconduct).  
Ind. Code § 29-3-11-4
- May be removed by the court on petition if:
  - becomes incapacitated, disqualified, unsuitable, incapable of discharging duties;
  - mismanaged assets;
  - failed to perform any duty imposed by law or court order.



# Guardianship Types

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- Temporary – 90 days with option for cause for additional 90 days.
- Limited – person retains decision-making authority for all other areas.
- Full – All decisions made by the guardian.
- Look at Letters of Guardianship – MUST be issued by a Court.



# Guardians and HCBS

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- Having a guardian does NOT mean PP loses ALL decision-making power.
  - PP should, to greatest extent possible, lead or direct their PCISP planning process and team meetings.
  - PP should have choice in activities, food preferences, personal items, friends.
- PP's perspective, wishes, and goals must be addressed and considered when identifying services and living arrangements.
- Guardian can change service providers, withdraw person from services, advocate on behalf of person.



# Rights of Service Recipients

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- Be treated with respect and dignity.
- To have relationships.
- To see information about themselves and to keep information private.
- To be in charge of their own meetings and services.
- To have materials available and explained to them.
- To be free from abuse, neglect, exploitation.
- To go to the doctor, dentist, hospital if needed.
- To make a complaint without fear.
- To be in charge of their belongings and money.



# Rights of Service Recipients

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- Have a lease or similar document with protections equal to those under Indiana's LL/T laws.
- Privacy in their sleeping or living unit.
- Units have entrance doors lockable by the person, with only them and appropriate staff having keys.
- Choice of roommates, if sharing units.
- Furnish and decorate their sleeping or living units.
- Freedom and support to control their own schedules and activities.
- Access to food at any time.
- Have visitors of their choosing at any time.



# Restriction of Rights

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- Guardian decisions that impair or prevent full compliance with HCBS requirements may result in an inability to use Medicaid funds.
- Any infringement on a person's rights (whether by a guardian or service provider at the guardian's direction) must be consistent with the modification requirement:
  - must be narrowly tailored and justified based on health or safety risk NOT preference, value, or convenience.
  - Must be clearly documented in the PCISP, reviewed regularly, and have goals working towards ways to lessen or eliminate the need for the restriction.



# Disagreements with Guardians

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- Be proactive – have a policy or principles for guardian involvement.
- Determine if issue is something guardian MUST decide.
- Don't stop at "No." Is concern tied to legitimate health and safety issue? Can it be addressed in a less restrictive way?
- Be clear about potential outcomes
- Call a team meeting, consider involving Ombudsman or IDR.
- Contact the court if guardian is jeopardizing health and safety, not acting in person's best interest, unnecessarily restricting rights.
- If person doesn't need guardian or no longer wants one, contact IDR.



# Guardian Enforcement

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- If a third party fails to comply with a guardian's written demand or instruction that was issued within the scope of the guardian's authority the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.
- A court may award attorney's fees and costs to the guardian if the person acted in bad faith in failing to comply with the guardian's written demand or instruction; or refused to respond within thirty (30) business days after receiving the guardian's written demand or instruction.



# Frequently Asked Questions

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- Can a guardian restrict visitors?
  - Not unless the modification process is followed OR a court ordered no contact/protective order. Guardian can file for a protective order on behalf of person.
- Can a guardian install cameras?
  - Depends – if in the person's own home, possibly. If provider owned/controlled unit – not unless there is health/safety reason, modification process was followed, consent of others in the home/posted notice, cameras not in bedrooms or bathrooms.
- Can a guardian prevent the person from getting a job?
  - Depends – Guardian would sign employment forms, may constructively prevent or refuse employment services.
- Can a person under guardianship vote?
  - YES! The only way their right to vote is ever restricted is if expressly stated in Letters of Guardianship.



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[IndianaDisabilityRights.org](http://IndianaDisabilityRights.org)

## HCBS Stabilization Grant

- FSSA has allocated \$173M to HCBS Stabilization Grants to provide immediate funding relief to Indiana's workforce and community-based provider network.
- The HCBS Stabilization Grant will be distributed to eligible HCBS Medicaid providers as a one-time payment in Q1 of CY2022.





# Provider Eligibility Criteria

**Providers must meet ALL criteria listed below to be eligible**

HCBS Medicaid Provider - As of the date of the attestation, providers must be an actively enrolled IHCP provider as one of the following types:

- 05 (Home Health Agency)
- 11 (Behavioral Health Provider)
- Specialty 111 (Community Mental Health Center) - for Medicaid Rehabilitation Option (MRO) services
- Specialty 115 (Adult Mental Health and Habilitation)
- Specialty 611 (Children's Mental Health Wraparound)
- Specialty 612 (Behavioral and Primary Healthcare Coordination)
- 12 (School Corporation)
- 32 (Waiver)
- Program of All-Inclusive Care for the Elderly (PACE) programs
  
- Active during the COVID-19 Public Health Emergency - defined as having submitted claims for paid expenditures during CY 2019 through 2021
  
- Currently Active - defined as currently providing services to Medicaid beneficiaries; and providers must have at least one Medicaid claim paid for a calendar year 2021 date of service



# HCBS Stabilization Grant Distribution Process

Prior to the receipt of funds, each provider must sign and submit an Attestation Form.

## Attestation/Payment Process

- Access the Attestation Form from the FSSA HCBS Webpage: <https://www.in.gov/fssa/ompp/hcbs-enhanced-fmap-spending-plan/>
- Submit your signed Attestation Form online via the Microsoft Forms link by February 10, 2022.
- Following submission of your signed Attestation Form, FSSA will confirm eligibility. If eligible, your Stabilization Grant payment should show up between February and March 2022.
- Pass through at least seventy-five percent (75%) of the amount received towards HCBS related workforce stabilization activities

## Questions?

Check the FAQ at <https://www.in.gov/fssa/ompp/hcbs-enhanced-fmap-spending-plan/>  
Direct all inquiries to [hcbs.spendplan@fssa.IN.gov](mailto:hcbs.spendplan@fssa.IN.gov)

# EVV Update

Requirements for 24-hour congregate setting:

- Includes: Respite Care, Residential Habilitation Hourly (all levels), and Participant Assistance and Care.
- EVV not required if it is a 24-hour congregate setting.
- Provider must add HQ modifier to the claim to indicate a 24-hour congregate setting.

Per IHCP Bulletin [BT202205](#)



# 60-day Notice Requirements

- All individuals, at any time, have choice of providers of their supports
- There are some situations, including provider business changes, that can prompt a reminder that ensures individuals understand that they have the choice to change providers
  - Change in ownership (full or partial)
  - Changes in name and/or control
  - Termination of specific services or locations
  - Closing of Provider Agency



# 60-day Notice Requirements

- Per the signed Provider Agreement, 460 IAC 6-9-7, and *42 code of Federal Regulations, part 455, subpart B*:
  - A minimum of 60-days' notice of termination of services, change of ownership, and/or control of the agency along with the reminder that they are free to choose a new provider must be given to all individuals receiving supports
  - Current provider must assist in the transition of services for each individual and continue providing services until all transitions are complete



# 60-day Notice Requirements

- Requirements for providers that are currently supporting individuals and are planning to undergo any of the aforementioned changes must provide BDDS with the following information prior to any changes:
  - Names of all persons currently receiving services and which services each individual is receiving.
  - Names of the Case Managers (and Case Management Organization) that corresponds with each person currently being supported.
  - A copy of the letter the Provider plans to send to individuals involved
  - BDDS must also be cc'd on at least one letter to an individual, an individual's family or guardian (if applicable), and a case manager





**Thank you!**