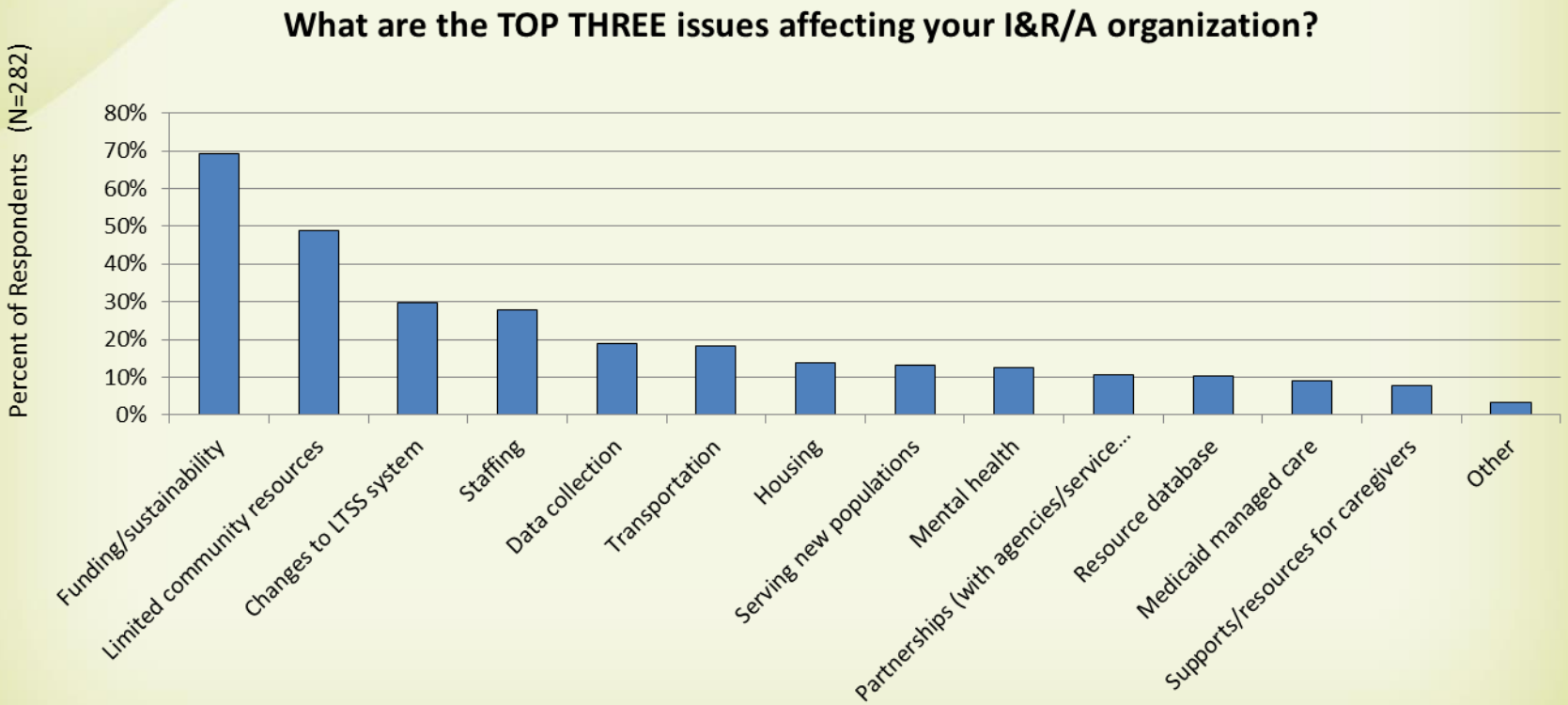
NASUAD
National Association of States
United for Aging and Disabilities

National Policy Updates

May 23, 2016

Aging and Disability I&R/A Agencies: Experiencing the Impact of Policy and Regulatory Changes



NASUAD
National Association of States United for Aging and Disabilities

DOL Regulations

- White Collar Exemption and Home Care Rule

White Collar Exemption

- In 2015 DOL released a proposed rule that would increase the threshold for overtime exemptions to executive, administrative, and professional workers
- Currently, the threshold is $455/week ($23,660/year)
- The proposed rule set the new level at 40th percentile of national wages ($50,440/year) updated annually:
- The final rule sets at 40th percentile of the lowest wage census block ($47,476/year) and updates every 3 years
- An estimated 4.2 million individuals will be impacted by the changes
- Many HCBS provider agencies may be affected by this rule

White Collar Exemption

- Effective date of the changes: December 1, 2016
  - In the middle of state fiscal years
  - Wide range of state programs, including HCBS, likely to be impacted
- One exemption from the policy:
  - Nonenforcement for community-based providers of ID/DD services with 15 or fewer beds
  - Period of nonenforcement: December 1, 2016 until March 17, 2019
- Policy questions:
  - How to identify “ID/DD services”
  - How to set differentiated rates (if needed) for exempt providers?

Home Care Rule

- DOL released regulations that changed the definition of “companionship” and limited the ability of third-party employers to claim exemption from FLSA
- Regulations were scheduled to become effective January 1, 2015; however, a Federal Judge placed the major portions of the rule under injunction
- DOL won appeal of the decision
- Regulations became effective in October 2015 and DOL “discretionary enforcement” ended Dec 31st

NASUAD
National Association of States
United for Aging and Disabilities

CMS HCBS Regulations

CMS HCBS Regulations: Background

- Background: In January 2014, CMS released regulations that create new requirements for the provision of Medicaid HCBS services
  - The most significant provision is the requirement that all settings of HCBS services be “integrated into the community”
  - Additionally, the rule requires person centered service plans for individuals receiving Medicaid HCBS
  - Rule sets expectations that states mitigate conflict of interest between person centered plan development and service delivery
- The regulations required states to submit “transition plans” that discuss how they will come into compliance with the rule
- States must be in full compliance no later than March 17, 2019

Medicaid HCBS Transition Plans

- CMS continues to work with states regarding their HCBS Transition plans;
- Currently, there is one approved statewide plan (TN):
  - On a recent call, CMS officials indicated that some other states may see approval soon
- CMS is focusing on “systemic” and “site-specific” review of settings
  - Systemic: review of state laws, regulations, licensure requirements, etc., for HCBS settings
  - Site-specific: process for examining whether the qualities of individual settings comport with the rules

Current Status and Issues

- Heightened Scrutiny:
  - What process will states use to identify settings subject to heightened scrutiny? Determine whether they are compliant with the rules, and submit evidence of the determination to CMS?
  - CMS indicated that 5 states have submitted heightened scrutiny review requests
- Ongoing concerns regarding Adult Day Services and Secure Perimeter Settings
  - CMS/ACL conference call tentatively scheduled for June 22nd to discuss models that comport with the regulation

Person Centered Service Plans

- Required for each individual receiving Medicaid HCBS
- Person centered service plans will assist the person in achieving personally defined outcomes in the most integrated community setting
- Plans will identify: strengths, preferences, needs (clinical and support), and desired outcomes of the individual
- Any modifications to the HCBS settings requirements needed by an individual must be supported by a specific assessed need and justified in the person centered plan
- Person centered service planning will require **time, training**, and **skills**

NASUAD
National Association of States United for Aging and Disabilities

OAA Reauthorization

New definition for Aging and Disability Resource Centers

Emphasis on Information and Referral!

Under New OAA Definition ADRCs Provide:

- **Comprehensive information** on the full range of available public and private long-term care programs, options, service providers, and resources within a community, including information on the availability of integrated long-term care services
- **Person-centered counseling** to assist individuals in assessing their existing or anticipated long-term care needs and goals, and developing and implementing a person-centered plan for long-term care
- **Access** for individuals to the full range of publicly-supported long-term care services and supports for which the individuals may be eligible, including home and community-based service options
- in cooperation with AAAs, CILs, and other community-based entities, **Information and Referrals** regarding available home and community-based services for individuals who are at risk for residing in, or who reside in, institutional settings, so that the individuals have the choice to remain in or to return to the community

NASUAD
National Association of States United for Aging and Disabilities

For more information, visit NASUAD at www.nasuad.org

Nanette Relave
National I&R Support Center Director
nrelave@nasuad.org