



Eight Health Reform Compliance Pitfalls ...

And What Employers Must Do To Survive Them

The National Congress on Health Insurance Reform

Sharon Cohen, JD

Sharon.Cohen@TowersWatson.com

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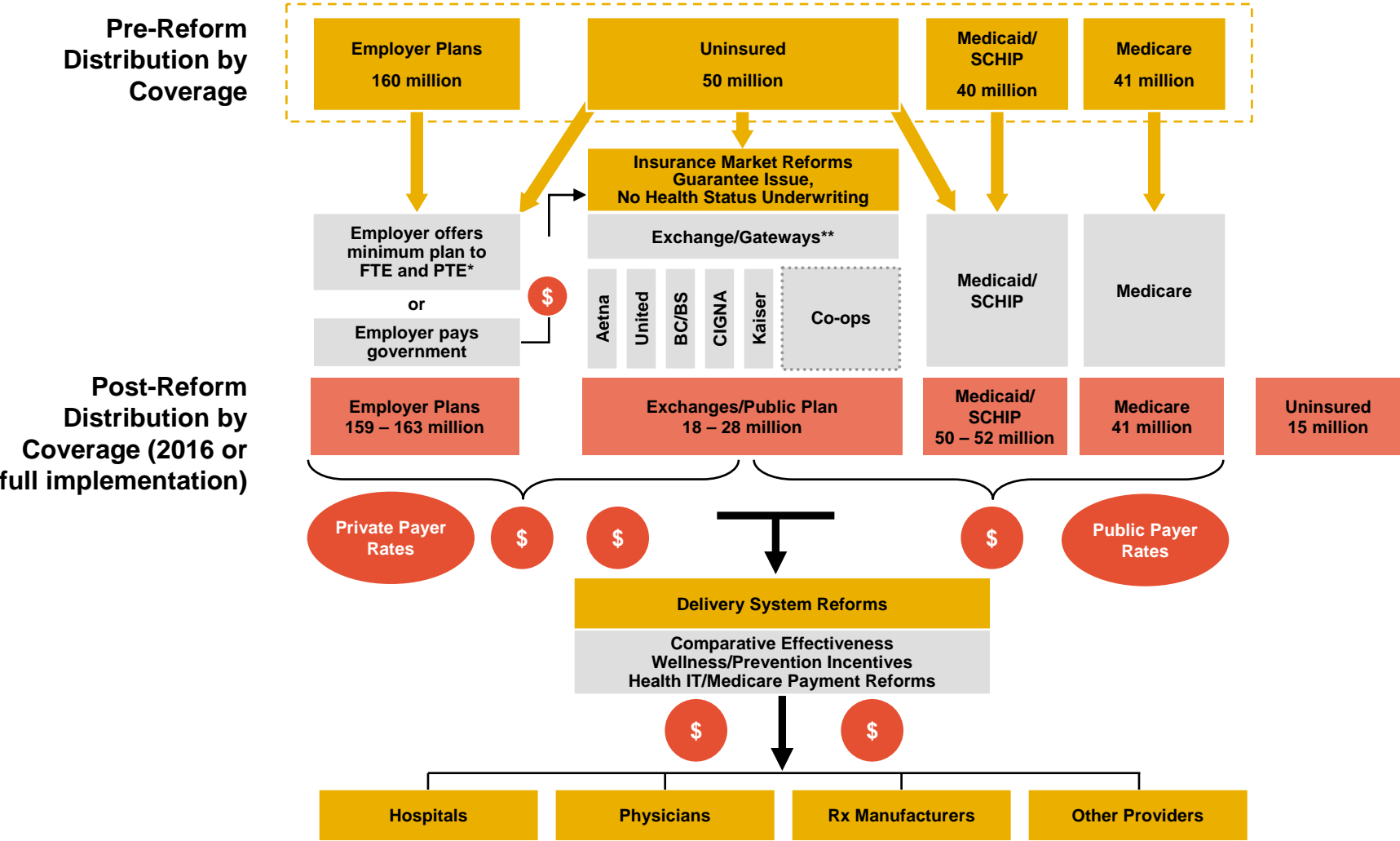
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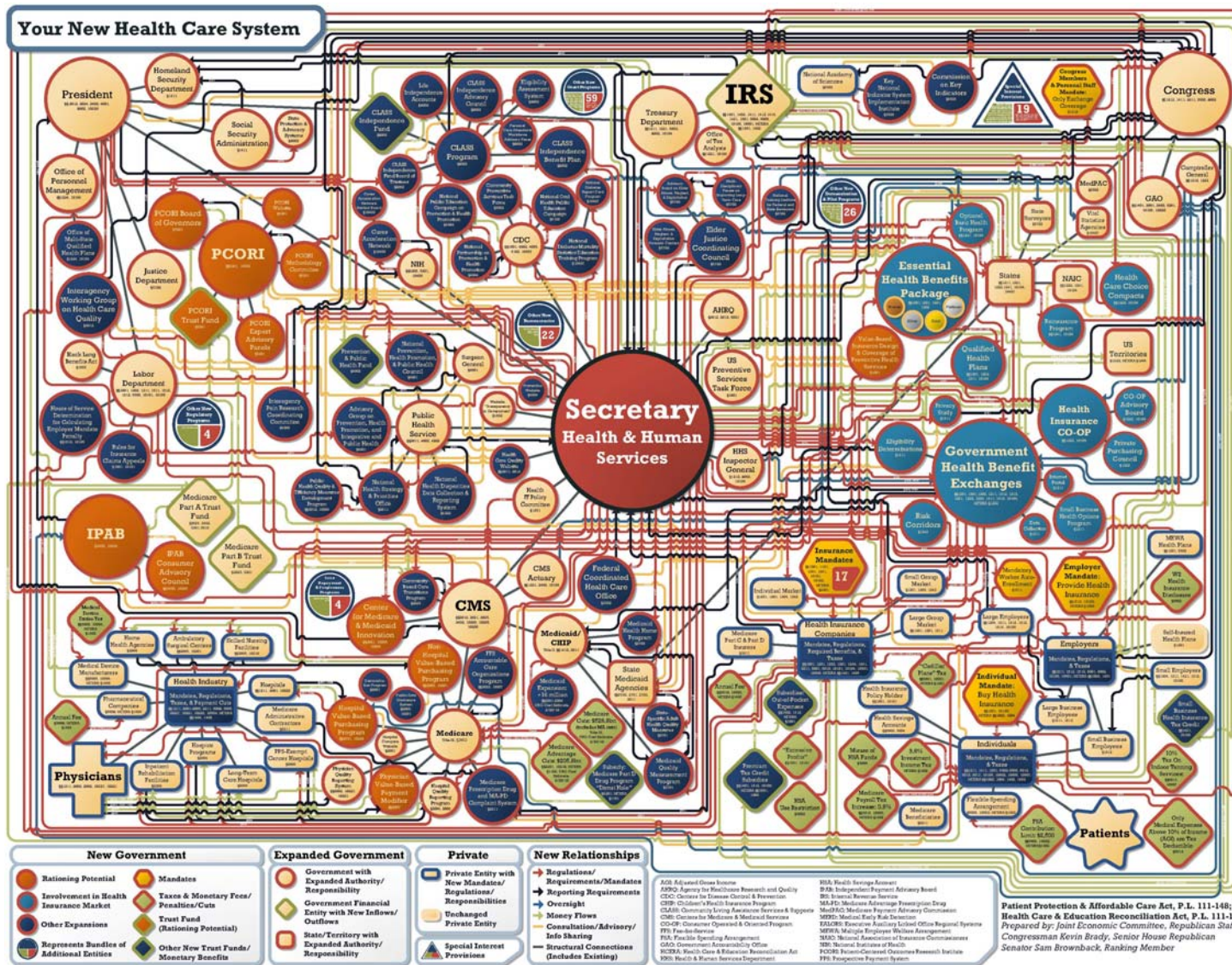
- Health care reform generally
- Common compliance pitfalls
- Regulatory and legislative landscape
- Ways to survive
- Appendix

Health care system post-HCR — It's supposed to work like this...



*TBD if employees may decline employer plan in favor of Exchange-based coverage and premium subsidies.
 **Low-income premium subsidies expected; e.g., perhaps up to 400% of federal poverty level.
 Source: U.S. Census Bureau; Lewin Group estimates using the Health Benefits Stimulation Model; Congressional Budget Office.

...but sometimes it feels like this



Pitfall #1 - Grandfathering

- Generally group health plans in existence when Patient Protection and Affordable Care Act (PPACA) was enacted (March 23, 2010)
- Regulations outline actions that will cause loss of grandfathered status
- Impact of losing status
 - Provide preventive care without cost sharing
 - Nondiscrimination rules apply to insured health plans
 - Must cover dependent children with other employer coverage
 - Comply with patient protections
 - Implement new rules for internal and external claim appeals
 - Comply with expanded plan disclosures
- Weigh the pros and cons
 - Avoid certain group health plan mandates and requirements...but for how long?
 - Lose ability to actively manage plan design and contribution strategy

*In this world nothing can be said to be certain except death,
taxes and the eventual loss of grandfathered status*

Pitfall #2 – Lifetime and annual dollar limits

- No lifetime dollar maximums on essential health benefits
- Restricted annual dollar maximums for “essential health benefits” permitted
 - No defined list of essential health benefits, but include at least the following general categories and items and services covered within categories:
 - Ambulatory patient services
 - Hospitalization
 - Mental health and substance use disorder services, including behavioral health treatment
 - Prescription drugs
 - Laboratory services
 - Emergency services
 - Maternity and newborn care
 - Preventive and wellness services and chronic disease management
 - Rehabilitative and habilitative services and devices
 - Pediatric services, including oral and vision care
 - Minimum allowable annual restrictions:
 - \$750k PY before 9/23/2011
 - \$1.25M PY before 9/23/2012
 - \$2M PY before 9/23/2014
 - Waiver process available for limited benefit plans
 - Notice/re-enrollment required for individuals who exceeded limits
- Lifetime dollar maximums and annual dollar limits permitted on non-essential health benefits
- Unclear how limits on infertility treatment, durable medical equipment, chiropractic services, etc., affected

Pitfall #3 -- Rescission

- No rescission of coverage permitted except in cases of fraud or intentional misrepresentation
 - Regulations define rescission as any retroactive termination of coverage
 - A cancellation or discontinuation of coverage is *not* a rescission if
 - It is done prospectively
 - It is attributable to a failure to timely pay required premiums or contributions
 - Permissible rescission (e.g., for nonpayment of premiums) requires at least 30 days notice
- What is the impact dependent audits?
- Can a plan ever terminate coverage retroactively without implicating rescission rule?

Pitfall #4 – Preventive care

- Plans must cover preventive services without cost-sharing requirements
- Required services (“the list”)
 - Evidence-based health care services rated A or B by U.S. Preventive Services Task Force
 - Preventive care and screenings for infants, children and adolescents under Health Resources and Services Administration guidelines
 - Preventive care and screenings for women under Health Resources and Services Administration guidelines
 - Immunizations recommended by CDCP** Advisory Council
- Regulations allow for network and medical management restrictions
- Does the plan cover all that is required?

Pitfall #5 – Grievance and appeal procedures

- New rules for internal review and external appeals procedures
- A plan sponsor/insurer must provide notices to participants in a "culturally and linguistically appropriate manner" of:
 - Available internal appeals and external review processes, including information on how to initiate an appeal
 - Availability of, and contact information for, any applicable office of health insurance consumer assistance or ombudsman to assist individuals with the internal claims and appeals and external review processes
 - Ability of individuals to review their file, present evidence and testimony and continue receiving coverage pending outcome
- Increased and additional claim review and notification timing
- Is the plan prepared to handle updated claims appeals process, implement external review process and contract with Independent Review Organizations (IROs)?

Pitfall #6 – Retiree health

- Retiree-only plans exempt from many (but not all) requirements under PPACA and other federal laws
 - What is a retiree-only health plan?
 - Plan with less than two participants who are current employees
 - Separate document/SPD, administration, Form 5500, no commingling of plan assets can be indicators of separate retiree plan
- Retiree-only exemption does NOT affect application of excise tax on high-cost employer-sponsored health plans
 - Recognition in FAS calculations
- Is grandfathered status affected if retirees are moved to a separate plan?
- Is it worth staying in the game?
 - Availability of health plans in the Exchanges
 - Excise tax exposure
 - Hurdles to terminating retiree health coverage (e.g., union contracts; individual employment agreements; severance policies)

Pitfall #7 – Pay or play

- Generally employers must offer full-time employees (30 hours per week) a health plan that meets minimum coverage and affordability requirements **OR** pay a penalty
- Coverage requirements
 - Cover 60% of covered benefits
 - Employee contribution not exceed 9.5% of employee's household income
- Employers not offering minimum coverage pay \$2000/yr per full-time employee (FTE)
- Employers offering minimum coverage, pay if FTE employees receive subsidized coverage. Penalty will be lesser of:
 - \$3,000 x number of FTEs who receive subsidized coverage or
 - \$2,000 x number of FTEs
- Does it make sense to pay or play?
- Other considerations
 - Who are full-time employees?
 - Control group rules
 - Coverage for part-time employees

Pitfall #8 – Cadillac tax

- Tax equal to 40% of total premium in excess of threshold
 - Beginning 2018, threshold amounts**
 - Active employees
 - \$10,200 single coverage
 - \$27,500 family coverage
 - Retirees (55-65), actives in plan in which majority of covered employees repair or install electrical or telecommunication lines or are engaged in high-risk professions
 - \$11,850 single coverage
 - \$30,950 family coverage
 - Not applicable to separate fully-insured vision and dental plans, and certain other policies
- Creates a tax-effective ceiling for plan designs
 - Employers may decide to reduce benefits to avoid the tax
 - Managing trend below CPI isn't easy and won't happen overnight
 - Enhanced focus on wellness initiatives
 - Enhanced focus on employee engagement in treatment decisions
 - Direction to high quality facilities and providers by condition

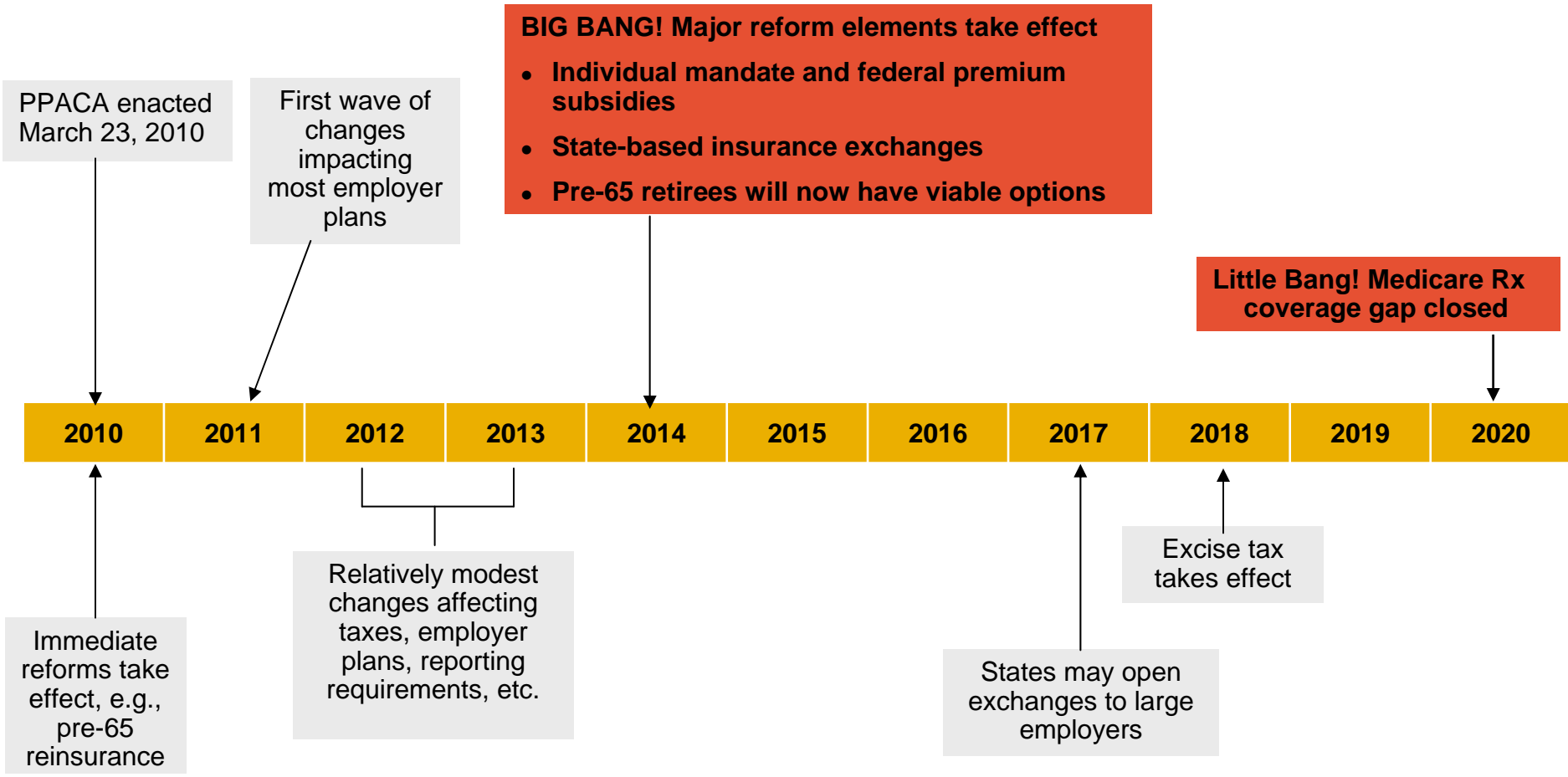
** Indexed to CPI-U plus 1% for 2019; reverts to CPI-U in 2020; adjustments for age/gender, demographics of plan and higher-than-expected U.S. health care cost increases prior to 2018; calculated annually by each employee individually (and summed) based on their plan choices, indexed all future years

Ways to survive

- Conduct financial, qualitative and other analyses
- Be prepared for change
 - Consider the length of time it takes to make a decision and act on it
 - Uncertain legislative and regulatory environment makes it difficult to plan
- Consider workforce issues
- Secure resources and budgets
 - Information technology (IT) for employers and vendors is critical
- Watch political environment and litigation
 - Repeal of legislation and/or significant changes unrealistic
 - Politics, rhetoric and gridlock will dominate
 - Most likely litigation will reach the Supreme Court - Will PPACA be found unconstitutional?

Appendix

Legislative landscape



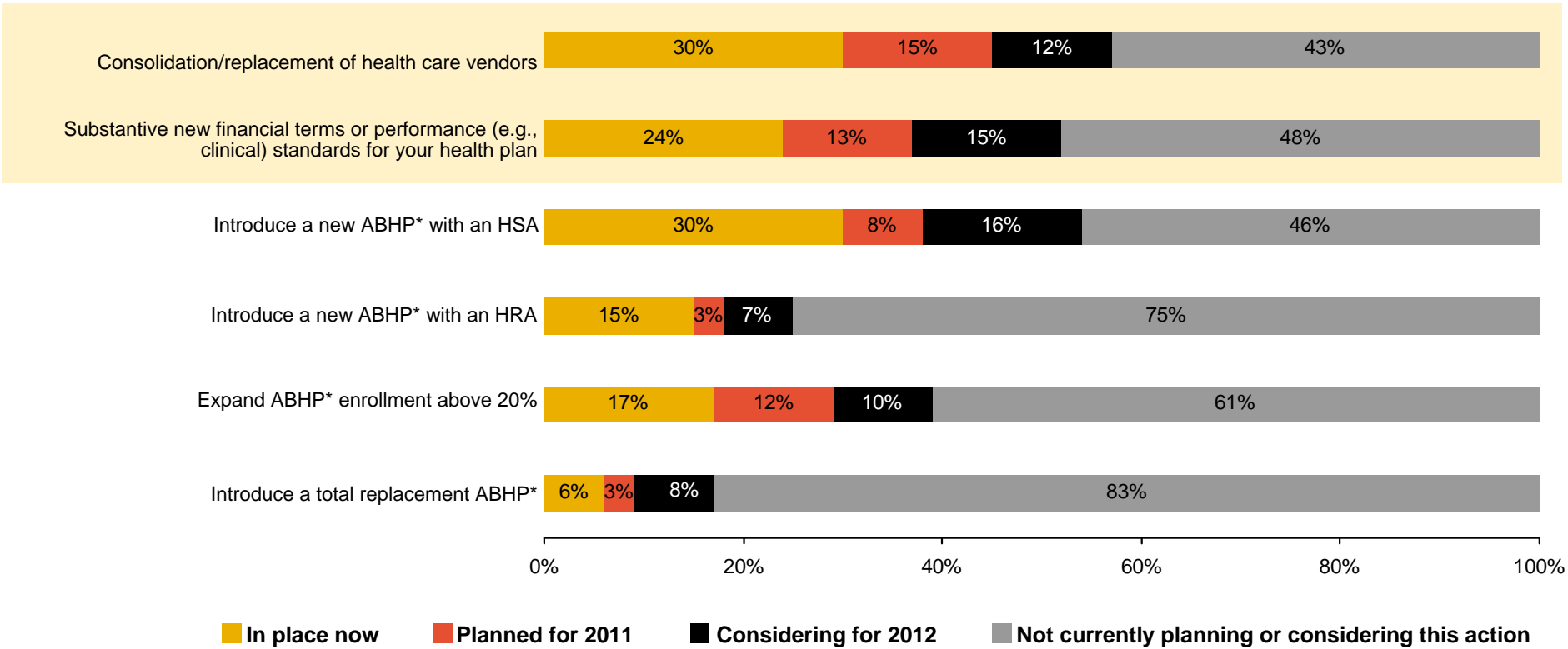
Large employer reactions to reform

- Cost management is a key issue for employers and many employees will face higher employees premiums, copays and deductibles
- A majority of employers plan to implement significant or moderate health care plan changes in 2011 (59%) and 2012 (67%)
- Account-based health plans (ABHPs) continue gain enrollment. By 2012, 64% of employers are projected to offer an ABHP and 39% are projected to have ABHP enrollment of more than 20%
- Percentage of employers offering incentives for positive employee behavior and outcomes continue to grow
- Compliance with PPACA was the top priority in 2010 (57%); rethinking long-term benefit strategy for active employees is the top priority in 2011 (43%)
- 55% plan to lose their grandfathered status by 2011, rising to 85% in 2013

Health care reform has emerged as a total business issue among leaders and senior management, not just HR professionals

Existing and planned strategies/programs

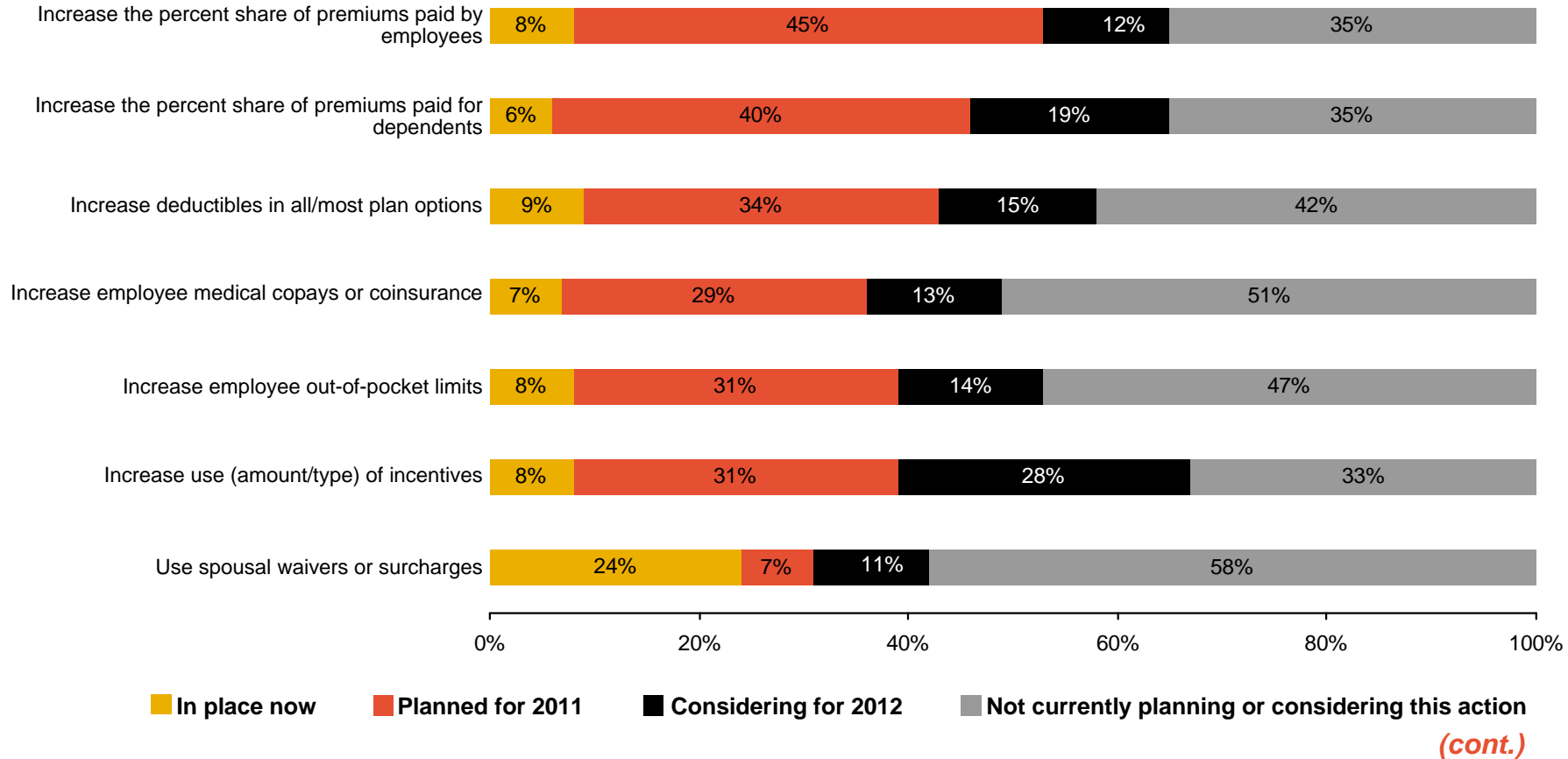
Which specific strategies or programs does your organization have in place or plan to have in place between now and the end of 2012?



Base: Those giving a valid answer (percentages exclude not sure)
 Source: Towers Watson Health Care Changes Ahead 2010

Existing and planned strategies/programs

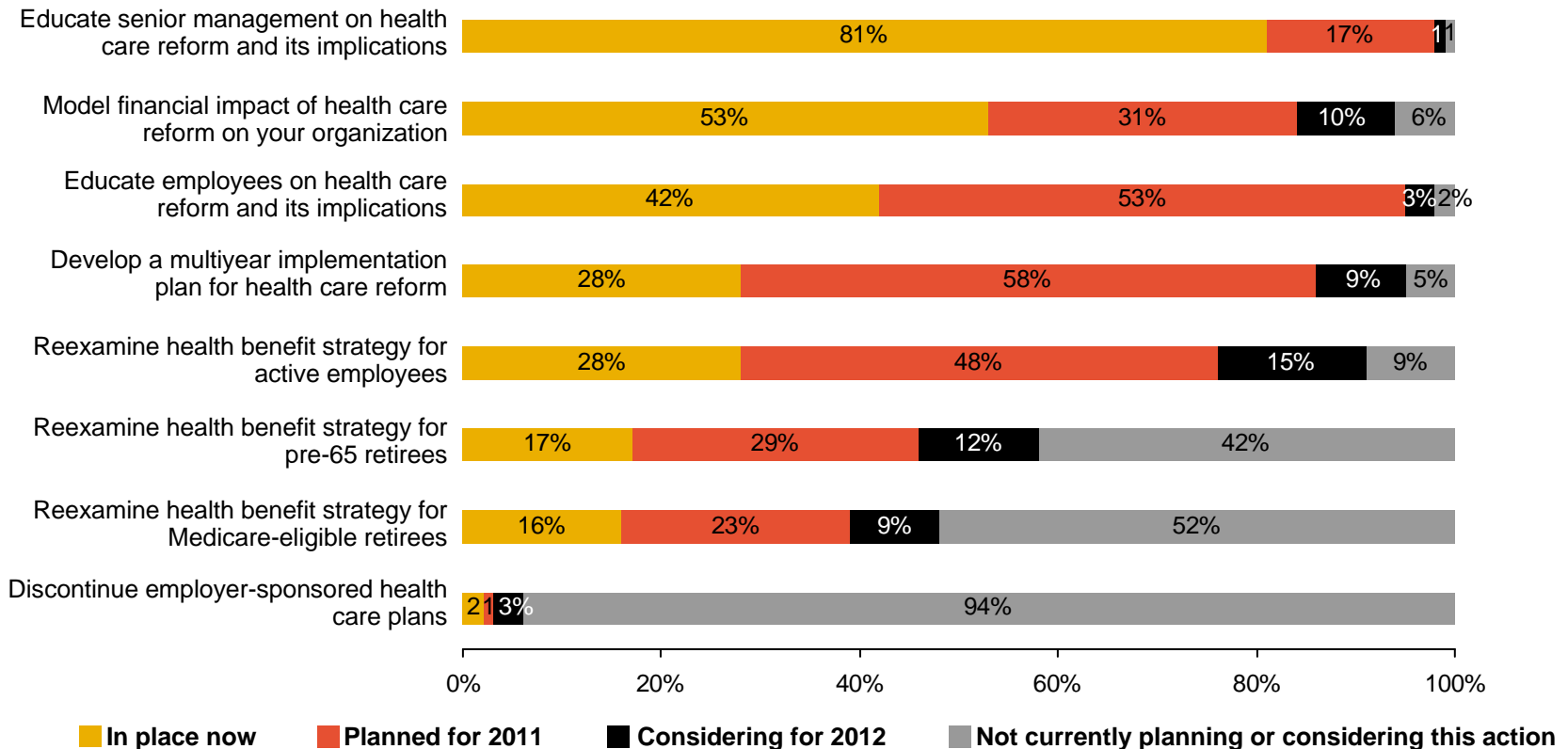
Which specific strategies or programs does your organization have in place or plan to have in place between now and the end of 2012?



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Planned actions in response to PPACA

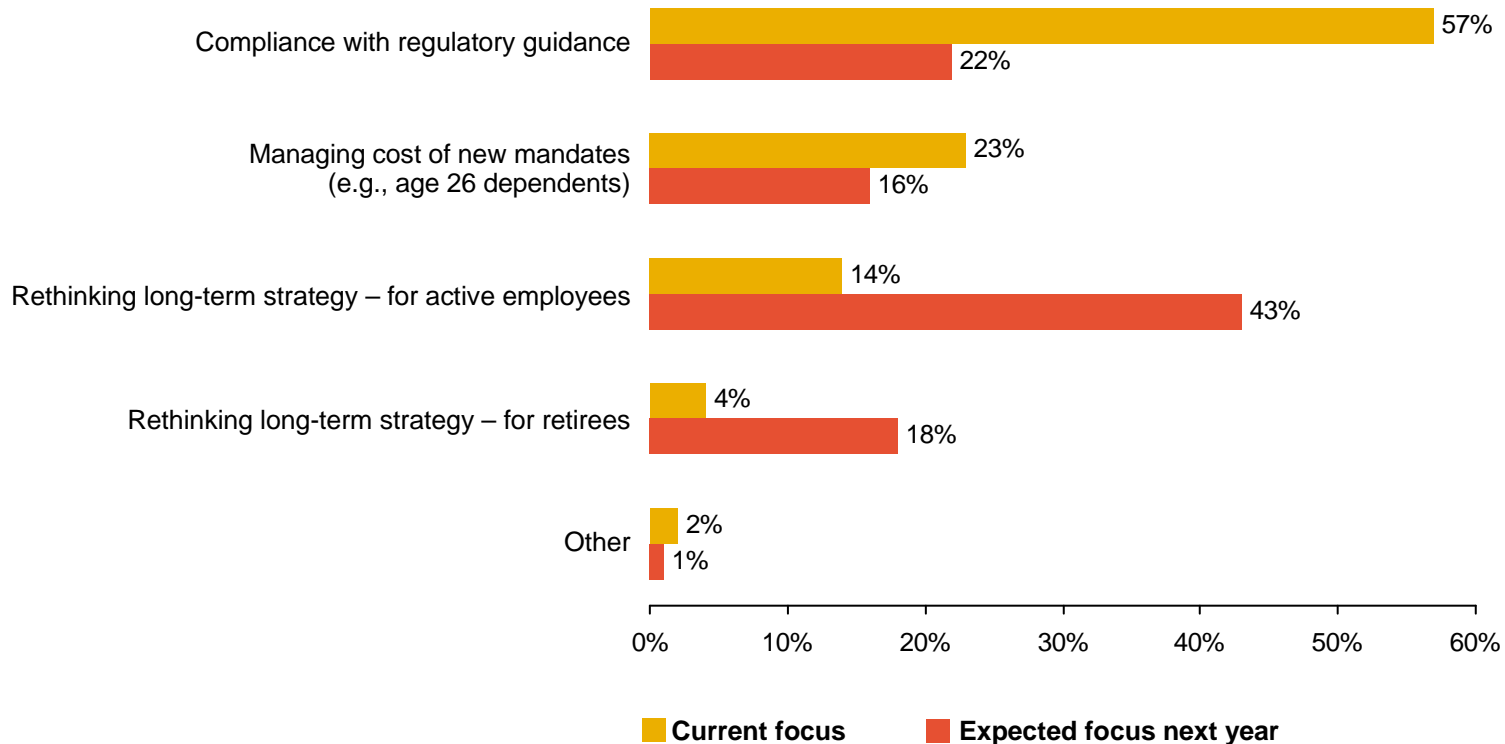
In response to health care reform, which specific actions has your organization already taken or plan to take before the end of 2012?



Base: Those giving a valid answer (percentages exclude not sure)
 Source: Towers Watson Health Care Changes Ahead 2010

Expected reactions to PPACA

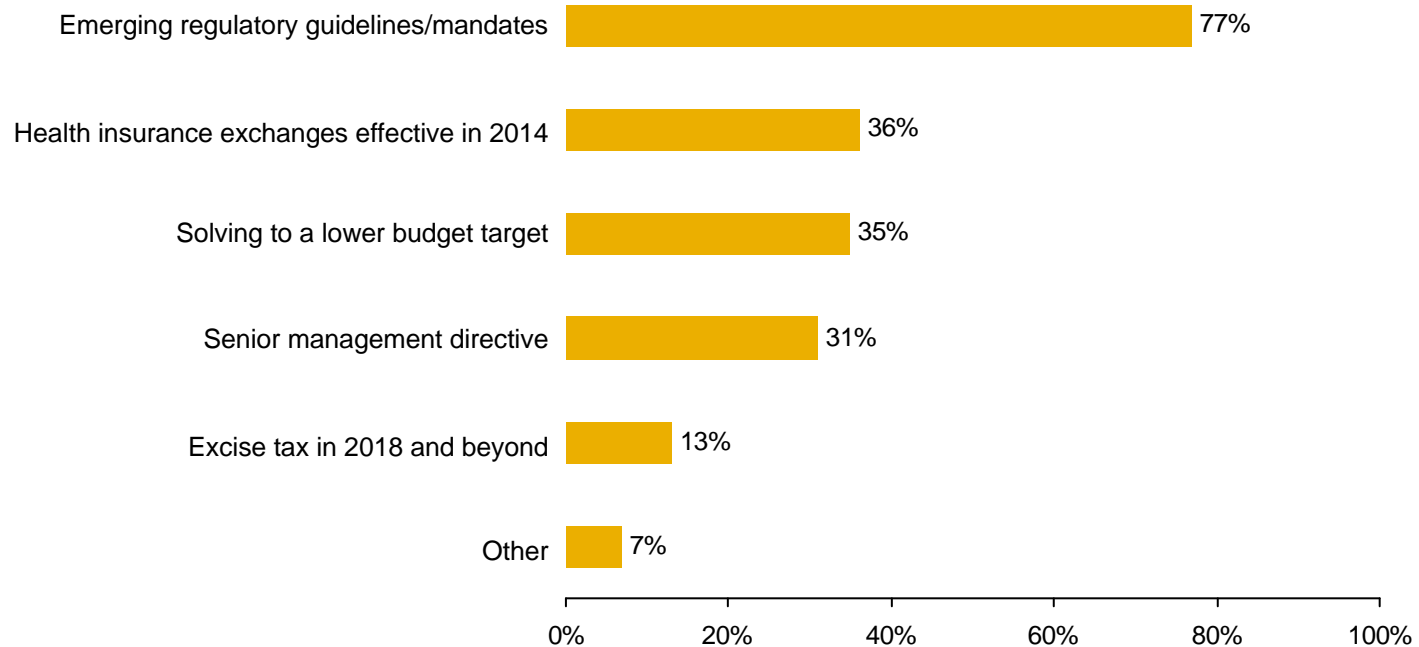
What is currently the primary focus of your organization's response to the Patient Protection and Affordable Care Act (PPACA)? What do you think it will be next year?



Source: Towers Watson Health Care Changes Ahead 2010

Health care strategy influences

Which *two* factors are expected to *most* influence your health care strategy in the next two years?



Source: Towers Watson Health Care Changes Ahead 2010

Regulatory landscape

- Regulations and other guidance addressing 2011 PPACA mandates

Coverage for adult children	Lifetime and annual dollar limit prohibition
Grandfathered plan status	Preexisting condition exclusion prohibition
Rescissions	Preventive health services
Limited health benefit plan waivers	Minimum loss ratios on insured plans
Internal and external appeals process	Patient protections
Break time for nursing mothers	ERRP
Over the counter drugs and medicines in account based plans	Form W-2

- And we wait

Prohibition on salary discrimination in insured plans	Form W-2 reporting instructions
Increase excise penalty tax for certain HSA withdrawals	Uniform explanation of coverage
Quality of care and wellness reporting (possible increase for wellness incentives) (<i>agencies have until 2012 to set requirements</i>)	Transparency in coverage reporting (<i>appears to coordinate with Exchanges</i>)

Health Reform litigation (ultimately destined for the Supreme Court)

Case	Description	Action
Florida. v. HHS	FL joined by nineteen other states allege PPACA is unconstitutional. The lawsuit, filed in Florida claims the mandate exceeds the powers of the federal government, the tax penalty is unlawful and the law infringes on the sovereignty of the state	Briefs filed requesting summary judgment
Virginia v. Sebelius	Virginia seeks relief from enforcement of PPACA, maintaining that law violates the Commerce Clause	12/13/2010 - Court rules minimum essential coverage provision is unconstitutional, but does not grant Injunctive relief
Thomas More Law Center v. Obama	Law Center and several Michigan residents allege that PPACA is unconstitutional and request injunctive relief from enforcement (arguments similar to VA case)	10/07/2010 - Court finds no grounds and denies injunction
U.S. Citizens Association v. Sebelius	OH Association alleges PPACA is unconstitutional on a variety of grounds	11/22/2010 – Court allows challenge to the individual mandate to go forward
Liberty University v. Geithner	VA group alleges PPACA is unconstitutional and invalid and seek to enjoin enforcement	11/30/2010 - Lawsuit dismissed
New Jersey Physicians Inc. v. Obama	NJ Physician group alleges that PPACA violates the Commerce Clause and their Fifth Amendment rights	12/07/2010 - Lawsuit dismissed
Baldwin v. Sebelius	CA group alleges PPACA is unconstitutional	8/27/2010 – Lawsuit dismissed