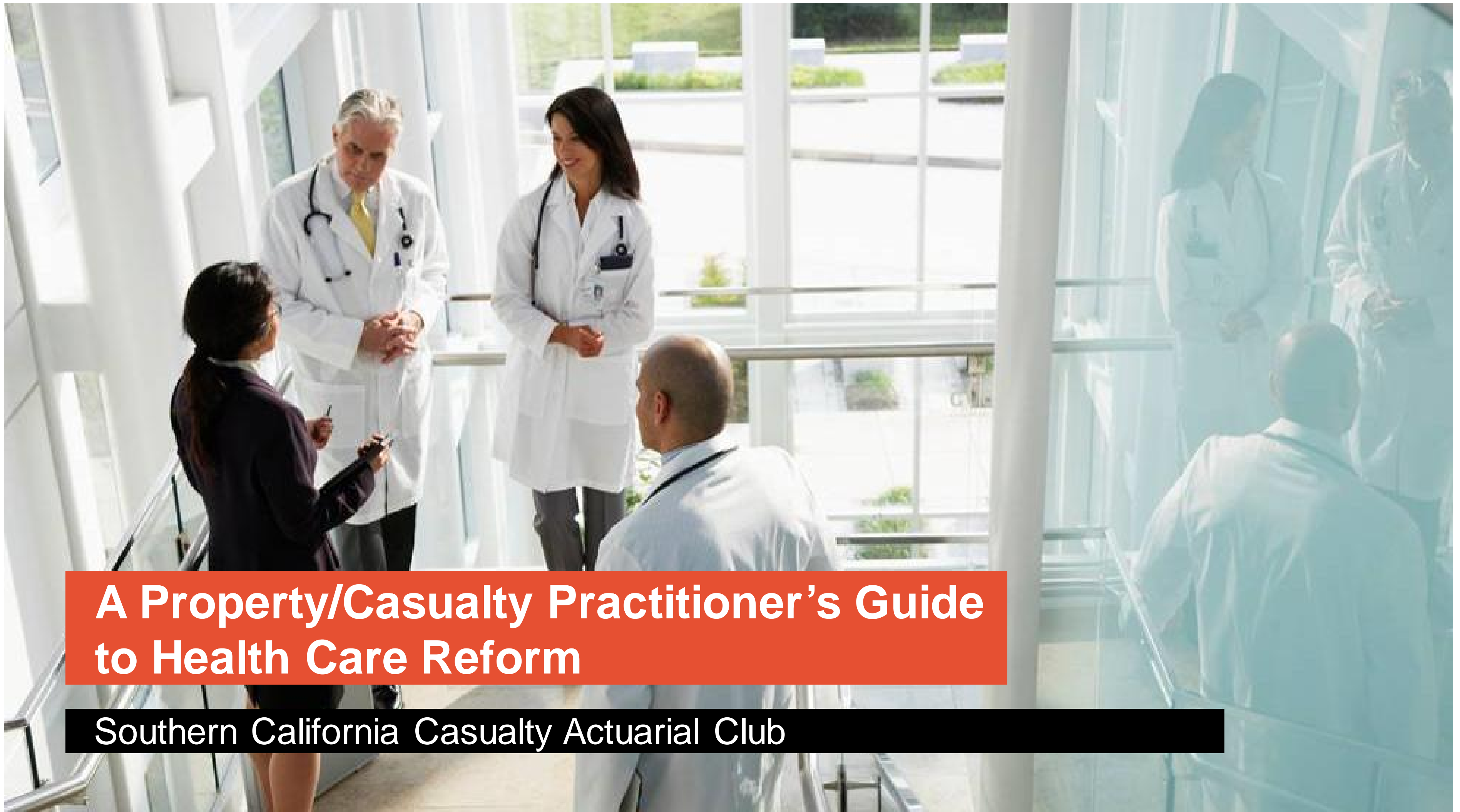

A Property/Casualty Practitioner's Guide to Health Care Reform

Southern California Casualty Actuarial Club

Timothy P. Quinn, FCAS, MAAA, ARM

May 15, 2014

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Patient Protection & Affordable Care Act (PPACA)

- Broad overview sponsored by Kaiser Family Foundation
  - http://kff.org/health-reform/video/youtoons-obamacare-video/

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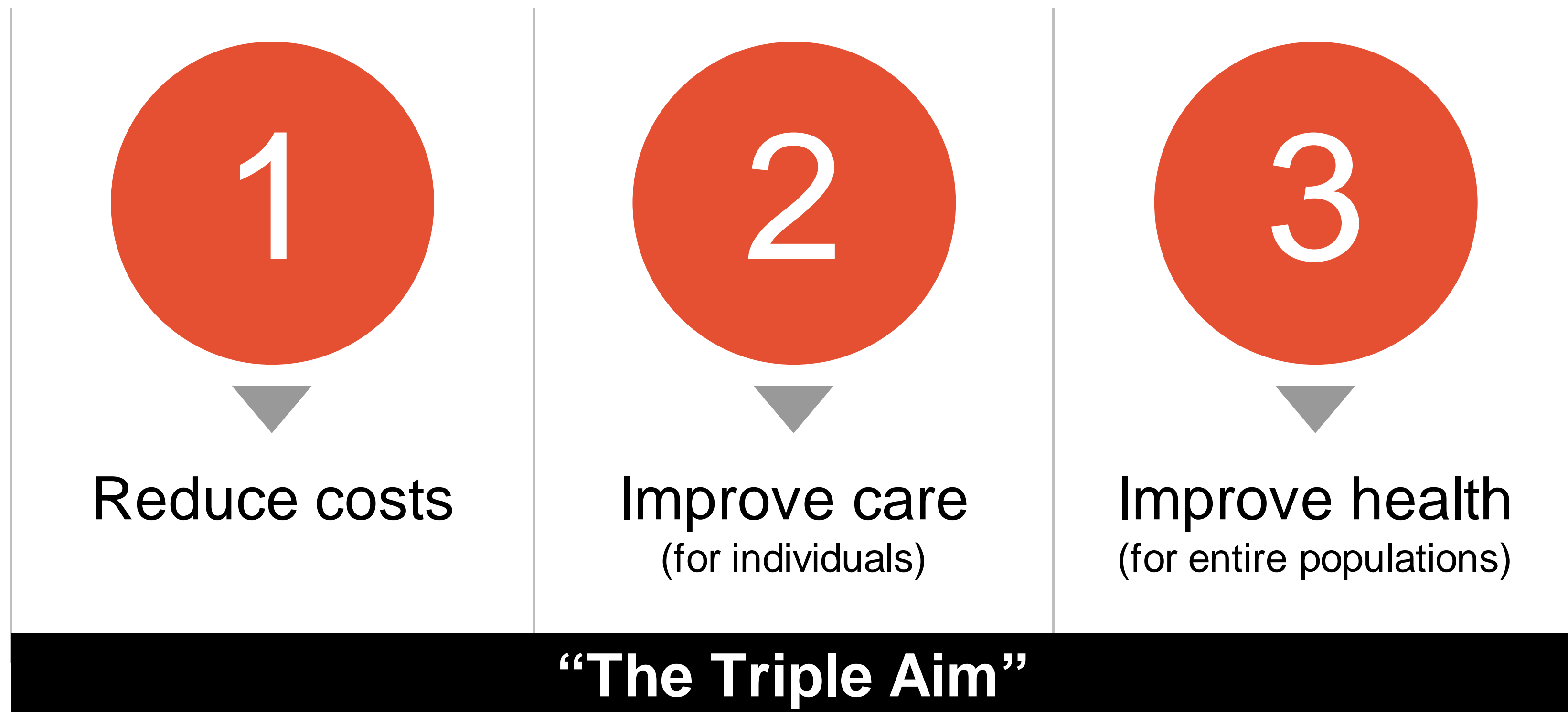
Health care reform takes aim at three key areas



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PPACA implements broad, historic changes to U.S. health care

- Expand access to health insurance and care
  - Guaranteed issue of coverage in private insurance market
  - Expanded Medicaid eligibility if approved by individual states
    - Improves affordability for lower wage earners
  - Subsidies and premium tax credits for low and modest income individuals
  - Restricted rating factors and other significant changes in private insurance market
  - Enhanced regulatory rate review processes

- Focus on containing medical costs
  - Incentives to create medical homes and Accountable Care Organizations (ACOs)
    - Most health care systems are re-examining their delivery of care model
  - Measures to reduce waste, fraud, and abuse while improving quality outcomes
    - Comparative effectiveness research
    - Value-based Medicare payment structure
  - And promoting prevention and wellness
    - No cost-sharing for preventive services
    - Support for employer-based wellness programs

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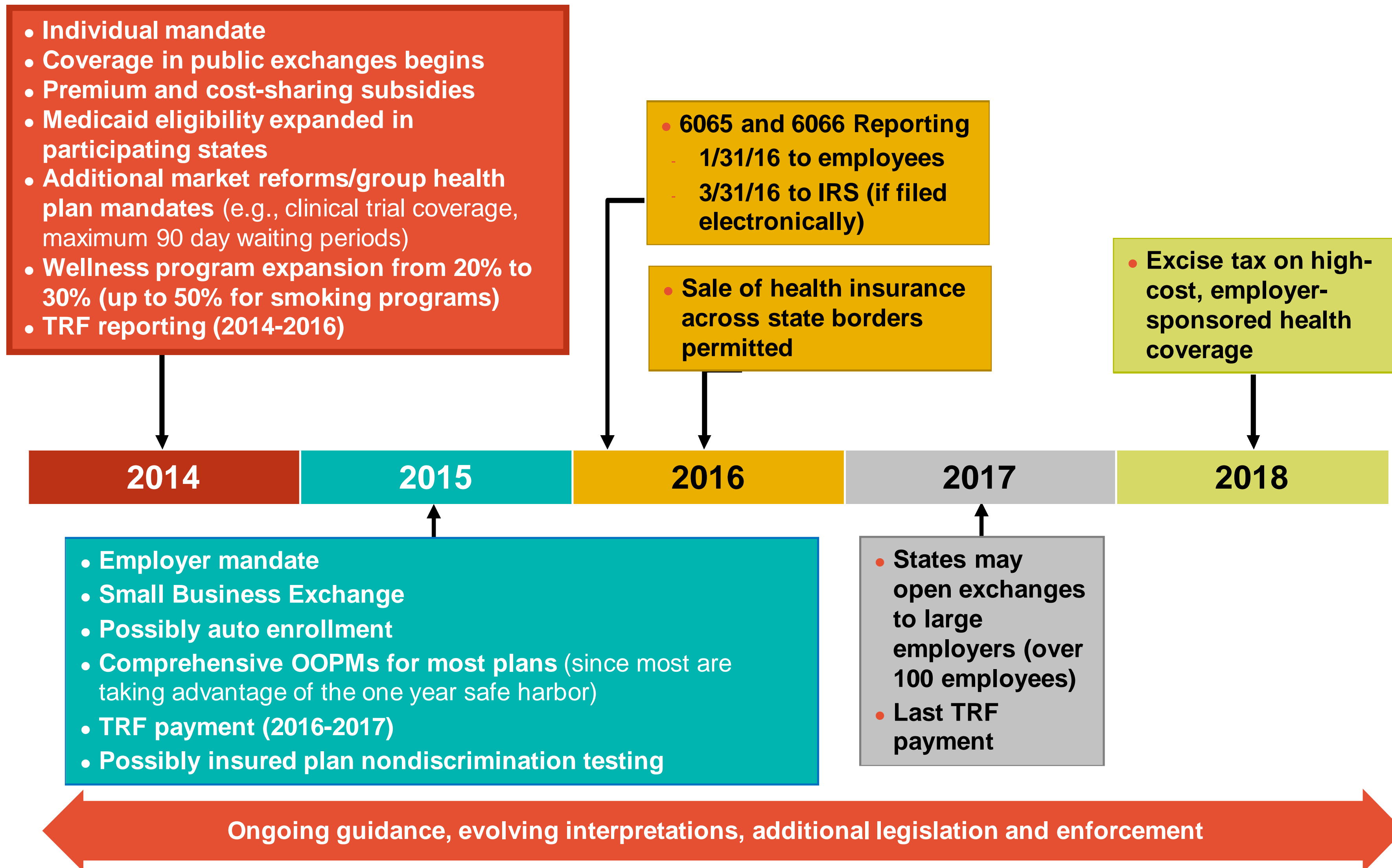
PPACA implementation: getting beyond 2014



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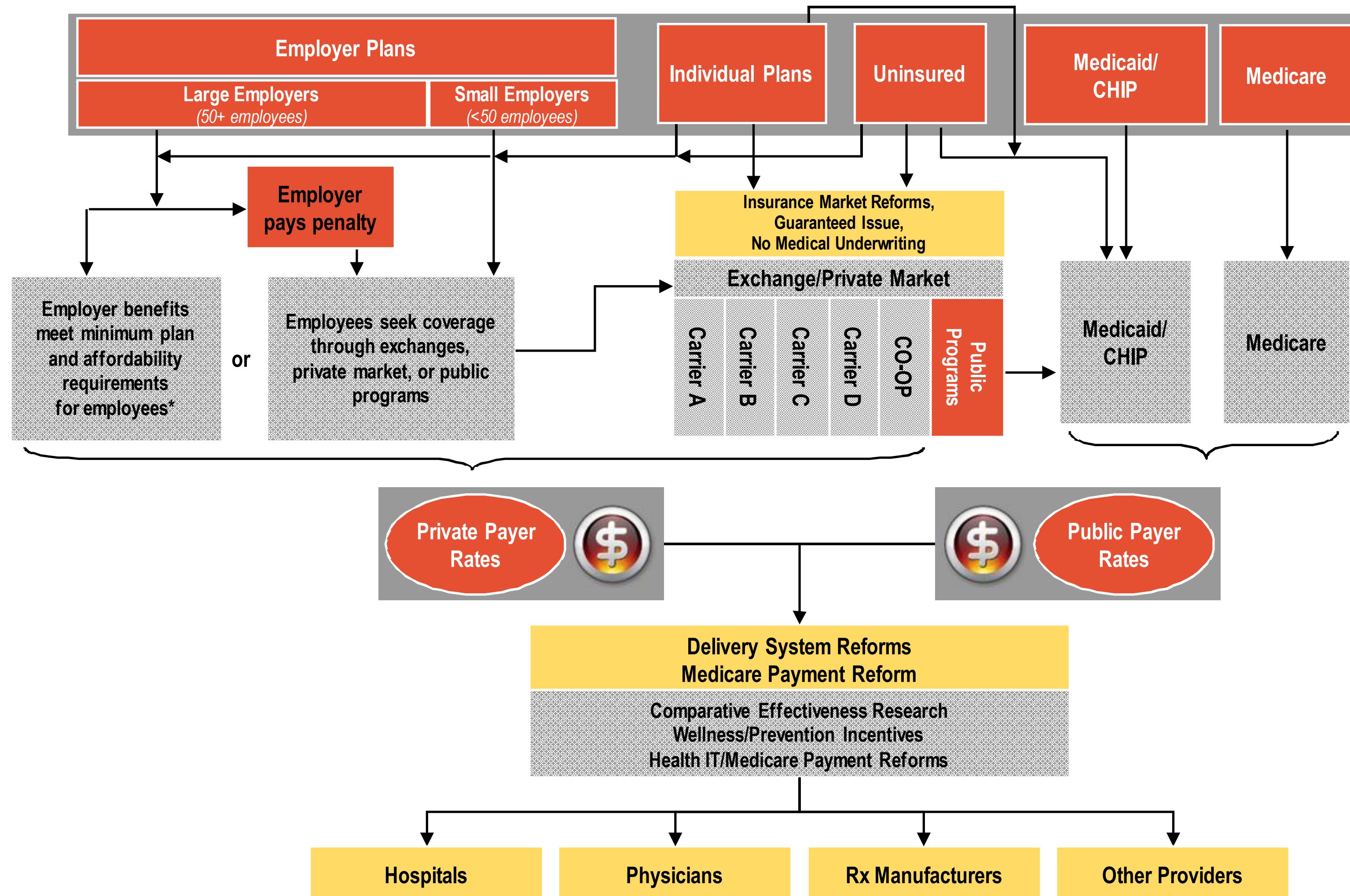
In 2014, much of the current structure of the health insurance market remains, but with new dynamics



Source: Kaiser Family Foundation

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The private health insurance market faces uncertainty as it prepares for 2014

- Significant market reforms
  - Guaranteed issue/elimination of medical underwriting
  - Modified community rating
    - Rating factors limited to age, tobacco use, geographic area, and family consideration
    - Limited variation in rating factors
  - Minimum coverage requirements
    - Essential Health Benefits
    - Actuarial Value (e.g. "metal" tiers)
  - Limitations on out of pocket maximums, annual/lifetime limits
  - Transparent marketplace
    - Exchanges
    - Rate review
- Rate stabilization programs
  - Risk adjustment
  - Reinsurance
  - Risk corridor

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Public programs benefit from some reforms and provide platform for pilot programs

- Medicare
  - Medicare Advantage rates restructured to reflect differences in Medicare fee-for-service rates
  - Quality bonuses for Medicare Advantage plans and primary care providers
  - Incentives to create Accountable Care Organizations (ACOs)
  - Reduce Medicare payments for preventable hospital readmissions and hospital-acquired conditions
  - Bundled payment pilot for various services for an episode of care that begins three days prior to a hospitalization and spans 30 days following discharge
  - Hospital value-based purchasing program
- Medicaid
  - Medical homes
  - Increase prescription drug rebates
  - Prohibit federal funding for Medicaid services related to health care system acquired conditions
  - Increase reimbursement rates for primary care provider

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Changes to delivery of care promote prevention and quality

- Focus on preventive medicine and primary care
  - Low or no cost-sharing for preventive care and primary care services in private plans
  - Increased Medicaid reimbursement rates for primary care services
- Incentives to enhance coordination of care through ACOs, medical homes in public programs
  - Aimed at improving quality and reducing costs
  - ACO providers share in savings
  - May support trend toward employed vs. private practice physicians
  - Once established, ACO and medical home models may easily expand beyond public programs
- Comparative effectiveness research initiatives
- Support for rural health care providers
  - Funding for prevention and wellness services in rural areas
- Payment linked to quality outcomes
  - Medicare value-based purchasing program for hospitals; plans to expand beyond hospitals
  - Quality bonuses
  - Plan quality ratings listed on exchanges

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Demand for medical services is a source of risk and uncertainty

- Guaranteed issue and individual mandate expected to reduce uninsured population
  - Individual mandate may or may not be effective
    - Congressional Budget Office currently estimates 7 million will use the Marketplaces (exchanges)
  - Varying opinions on relative morbidity of uninsured populations and impact of pent-up demand
  - Cost-sharing design of private health plans may change incentives to seek care
- Focus on primary care and preventive medicine will increase demand for these services
  - Demand must be balanced with pressure to control costs while maintaining quality
  - More reliance on physician extenders to meet demand
  - Specialists may or may not be as acutely affected by increased demand

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Impact of PPACA on health care delivery systems

- Immediate expansion of Medicaid coverage
  - Sicker patients
  - Lower reimbursement rates
- Increased competition for patients with private insurance
- More accountability on providers and delivery systems to build integrated models and manage care across a continuum of settings
- Need for healthcare information technology (HIT) and coordination practices
- Need for realistic assessments of capacity and competitive market to address increased patient demand and decreased supply of physicians
- Increased need to address efficiency, outcomes, and cost effectiveness

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Property/casualty risk profiles are likely to evolve for health insurers, employers, and health care providers

- Medical professional liability
  - Health care providers
  - Insurance and other risk-financing mechanisms
- Workers compensation
  - Employers, employees, and health care providers
  - Insurance and other risk-financing mechanisms
- Directors & officers, errors & omissions, and employment practices liability
  - Health care providers
  - Employers
  - Health insurers
- Automobile liability

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Discussion of PPACA and Property/Casualty Coverages

- In the following slides, we identify areas for discussion as relates to property/casualty insurance and health care reform.
- Our opinion is that it is still too early to definitively state what will be the impacts of health care reform on property/casualty coverages – and how that impact will vary based on how PPACA manifests in various states.
- The information within the next few slides is speculative and meant to provoke thought and discussion. It is not an exhaustive listing of all of the possible impacts.

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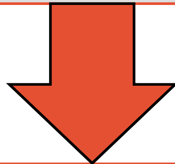
Decrease in the uninsured and newly insured population (continued)

Provision

- Individual mandates/ guaranteed issue
- Subsidies to help small biz and individuals obtain coverage
- Medicaid eligibility expansion



Likely Impact

- Fewer uninsured and more units of service delivered
- More patients on Medicaid

How this could LOWER liability

- More access ➔ Healthier workers, fewer injuries, less delay in diagnosis (WC)
- Could be claim/cost shift to Group Health as GH system less administrative burden to access (WC)
- GH will now cover pre-existing conditions-WC may have had to previously absorb the cost as EE had no alternative (WC)
- Earlier treatment can lead to better outcomes (MPL)
- Early prenatal care ➔ less pregnancy risk (MPL)
- Future economic losses possibly smaller for those eligible for expanded coverage (MPL)

How this could RAISE liability

- Could be claim/cost shift from GH as GH more likely to have deductibles, co-pay, etc. which are expected to increase to cover cost to reform (WC)
- Capacity shortage can delay returning to work (WC) or lead to increased errors (primary care shortage) (MPL)
- More units of service ➔ more potential risk (MPL)
- Increase in insurance is not associated with a decline in ED utilization (MPL)

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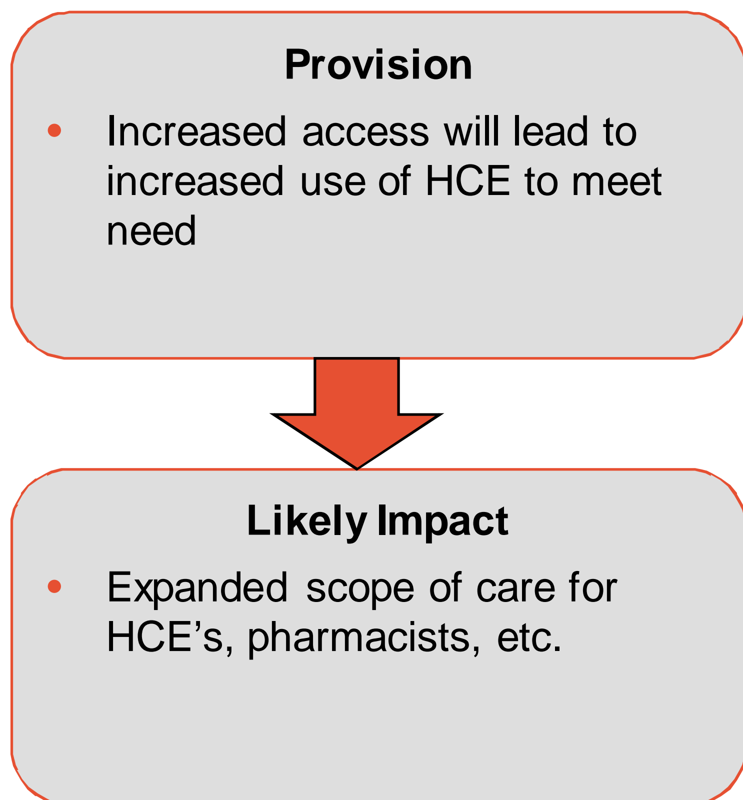
Change in provider model to increase use of non-physician practitioners (NP, PA, Pharmacists/"Health Care Extenders")



How this could LOWER liability

- Non physicians are more likely to follow algorithms and practice evidenced based medicine (WC & MPL)
- HCE typically have lower costs (WC & MPL)

How this could RAISE liability

- Lower level of expertise may lead to more missed difficult diagnoses (WC & MPL)
- Shortage of physicians could lead to inadequate supervision (WC & MPL)
- Current nursing shortage could be exacerbated (WC & MPL)

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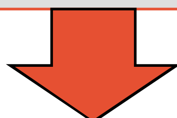
Adoption of Health Care IT

Provision

- PPACA and American Recovery and Re-investment Act of 2009 offer large incentives to providers to adopt EMRs and Computerized Physician Order Entry (CPOE)



Likely Impact

- Higher take-up rate of these tools which should lead to easier coordination of care and better data for tracking and analysis

How this could LOWER liability

- Could lead to less errors in communication of provider "orders" (WC & MPL)
- Ability to analyze data could lead to better protocols, less patients harmed (WC & MPL)
- Coordination of care could lead to less errors due to better communication (MPL)

How this could RAISE liability

- Inadequate training and\or inappropriate use (eg.: 'cut/paste') could increase adverse outcomes (WC & MPL)
- Delays in data transfers, output, incomplete or missing data could increase errors (MPL)
- Additional exposure for data breaches
- Data provided could be used against defendants within litigation (MPL)

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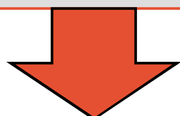
Change in Medicare Fee Schedules

Provision

- Changes to FFS rates and hospital payments
- Less frequent fee updates
- Establish independent board to review growth in Medicare spending



Likely Impact

- Fees change for services tied to Medicare fee schedule

How this could LOWER costs

- If fees are tied to the Medicare schedule and schedule decreases then fees may decrease (WC & MPL)
- If fees for specialty services (such as surgeries and MRI's) decreases, then perhaps less incentive to do these procedures (WC & MPL)

How this could RAISE costs

- Providers may look to alternative sources of income to close the gap from reduced revenue from Medicare (WC & MPL)
- Increased utilization lead to longer RTW determinations (WC & MPL)
- Fee schedules may be tied to changes in Medicare formulas or allocation of payments by type of service. Changing fee schedules may impact disproportionately (WC & MPL)

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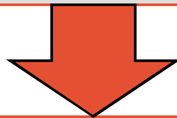
Accountable Care Organizations

Provision

- Ability to earn bonuses based on overall costs of an attributed population
- ACO's to develop voluntarily based on efficiencies, will share in cost savings, will report on quality and costs



Likely Impact

- Further provider consolidation and possible return of capitation-like arrangements
- Required adequate primary care participation; processes to promote evidenced-based medicine; report on quality and costs and coordinate care

How this could LOWER liability

- Increased coordination and collaboration can lead to lower malpractice risk
- In the case of a claim, one organization has liability rather than multiple
- Reporting on quality and costs could provide transparency on best practices
- Coordination of Defense across providers

How this could RAISE liability

- Larger organizations more likely to have higher limits of liability which will be exposed
- Increased exposure of "managed care" type liability relating to denial of care types of claims under tighter cost controls
- Consolidation process could increase D&O exposure (antitrust)
- Could exacerbate the primary care physician shortage

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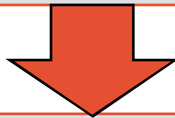
Value-Based Payment Models

Provision

- Medicare to establish "Hospital Value Based Payment Program" – provide incentive payments for meeting performance criteria – both improved care and safety to be included
- Reduce\prohibit payments for re-admit and hospital-acquired conditions



Likely Impact

- Hospitals are financially rewarded based on performance
- Will increase efforts to eliminate 'defective' care

How this could LOWER liability

- Increased incentive for patient safety; should lower frequency of loss and possibly severity
- Improvement of care due to transparency of information on quality

How this could RAISE liability

- Failure to qualify for incentive payments or non-payment could be interpreted as evidence of negligence
- The incentive model may exacerbate supply shortages
- Transparency of information on quality could lead plaintiff attorneys to target underperforming providers

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Considerations for Workers Compensation

- Background
  - WC medical costs estimated as less than 3% of total health care spending in 2011
  - WC medical severity had been rising at twice the Medical CPI rate
- Cost shifting concerns
  - Will reform force providers to adjust to fiscal restraints such that all types of medical care are beneficiaries OR
  - Will costs not absorbed by public programs and other negotiated fees be passed to other payors – such insurance liability or WC payors?
- Direct impacts on WC
  - Changes to the Federal black lung program – PPACA reinstates two provisions centering on coal miners' and survivors' entitlement to benefits that had been cut by 1981 amendments to the BLBA
  - "Libby" care in Libby, MT – Medicare to cover medical care for any person (not only employees) that are exposed to asbestos
  - Medical device excise tax of 2.3% – Most medical devices become subject to a 2.3% excise tax collected at the time of purchase
  - Increased taxes on pharmaceutical industry likely to be passed on to workers compensation payors

MOST IMPACTS ARE INDIRECT AND WILL VARY BY STATE

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Other Property/Casualty Lines of Business

- Directors and Officers Liability\EPLI
  - Anti-trust concerns for larger systems
  - Merger and Acquisition exposure
  - Health Insurers
  - Considerations Public\Private; For-Profit\Non-for-Profit
  - Concerns on workforce demographics and PPACA requirements
- Reinsurance of A&H exposures
  - Uncertainty as to consistency of books of exposures as the individual risks may choose to be with exchanges rather than prior coverage
- Automobile Liability
  - Where provision of medical care is concerned, how care is delivered could impact costs of Auto Liability
- Fiduciary Liability
  - For organizations as respects provision of employee benefits

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Conclusions

- The actual impacts of Health Care Reform on coverages are starting to be understood.
- The impacts will vary by state due to how health care is regulated/ provided at the state level as well as tort and no-fault provisions.
- Insurance professionals can prepare now to collect, analyze and monitor data. Be prepared to react in a timely manner.

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Contact Information

Timothy P. Quinn, FCAS, MAAA, ARM
Senior Consultant
Towers Watson
345 California St.
Suite 2000
San Francisco, CA 94104
Phone: 702 215 9162
tim.quinn@towerswatson.com

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