

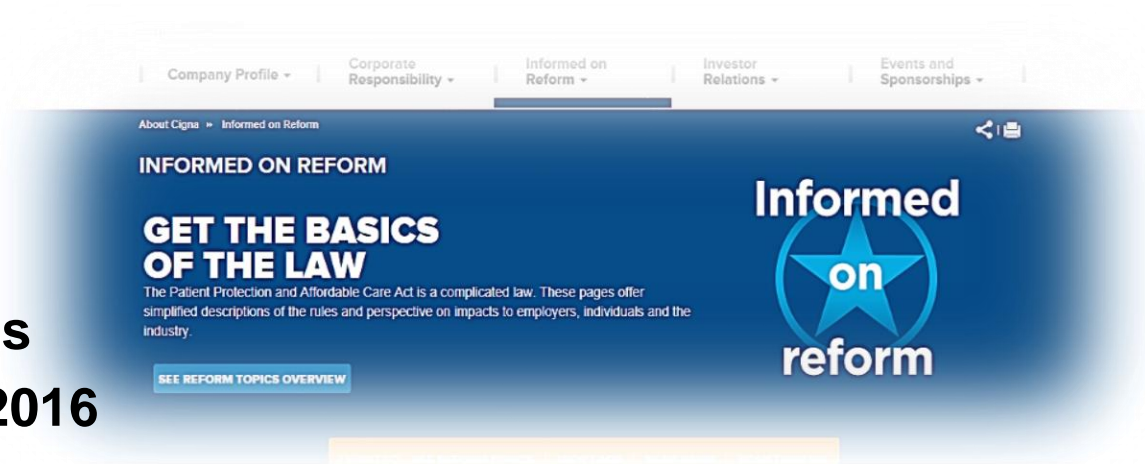
HEALTH CARE REFORM IN 2016 AND BEYOND

Kari Knight Stevens, Esq.
September 27, 2016



Agenda

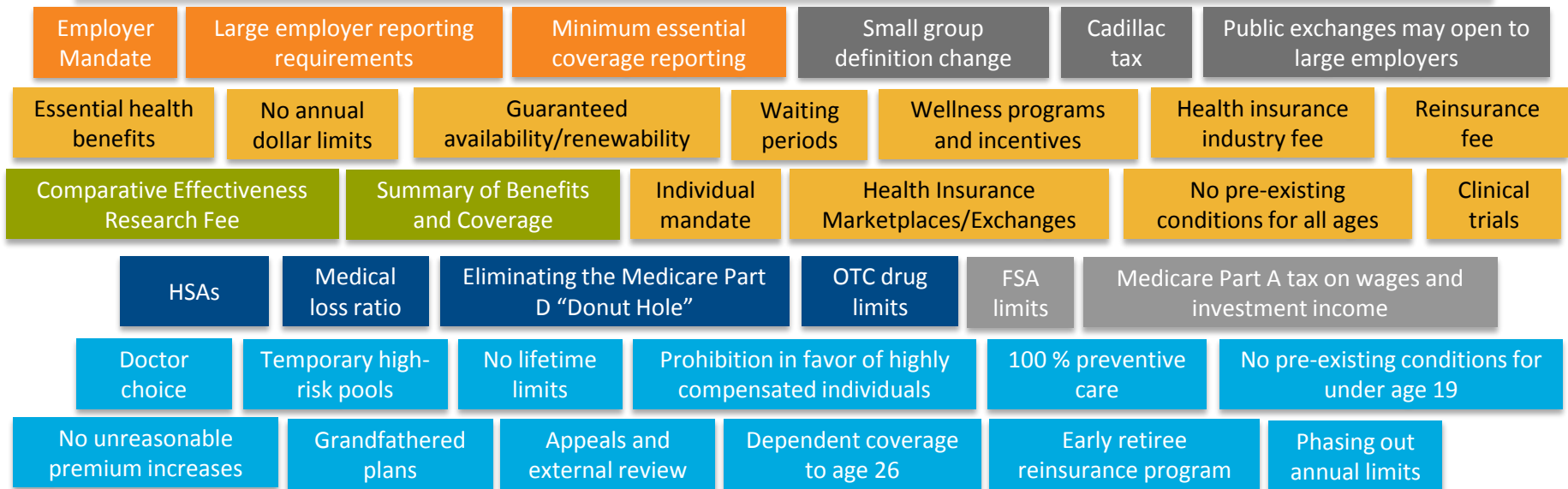
- **Where We've Been**
- **PPACA updates**
 - Cadillac tax
 - Wellness programs
- **Other hot topics in 2016**
 - Reporting requirements
 - Nondiscrimination
- **Looking ahead**



Provision Timeline

2016 AND BEYOND

55 PPACA provisions already implemented with 12+ in progress or on the horizon



THE CADILLAC TAX DELAY: NOW WHAT?



High-cost “Cadillac” plan excise tax

Delayed from 2018

Effective
beginning in
2020

40% excise tax* on coverage in excess of certain thresholds

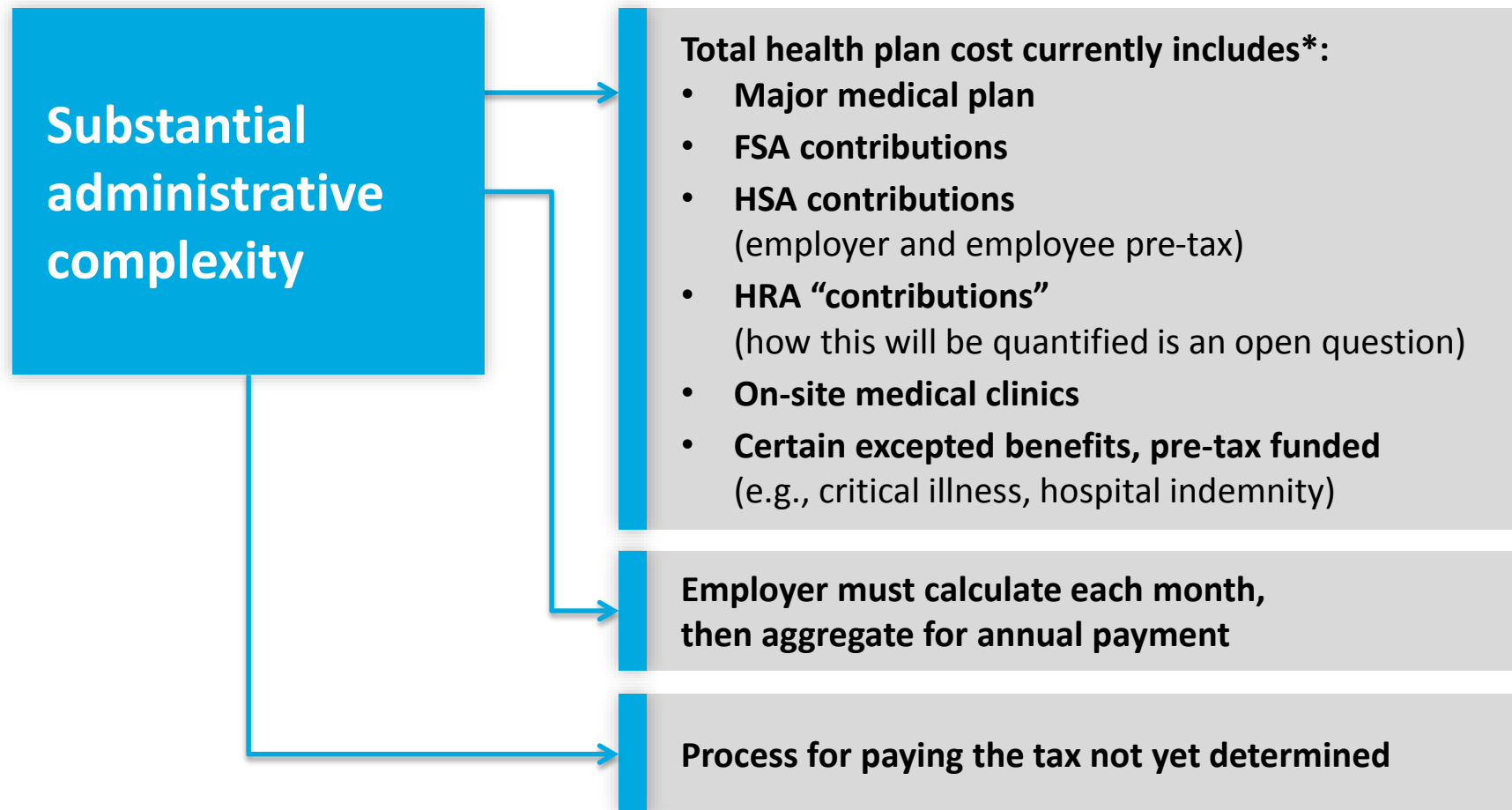
- \$10,200 for self-only
- \$27,500 for family

Calculation based on total cost of applicable coverage paid by both the employer and employee

*Originally nondeductible, a 2015 year-end tax spending package now makes the tax deductible for employers who pay it.



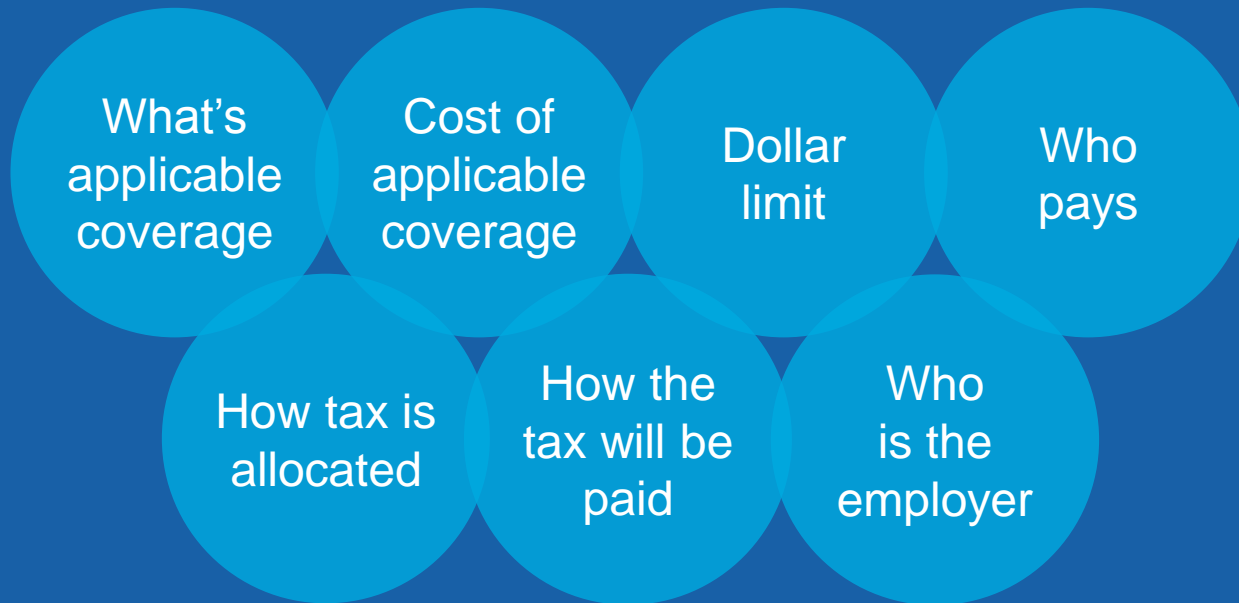
High-cost “Cadillac” Plan Health Care Excise Tax: Included



*Based on regulatory guidance as of 9/2015



Open issues



Purpose of the tax

Reduce
health care
cost growth
in employer-
sponsored
insurance

Indirectly
impact the
tax-preferred
treatment of
employer-
provided
health care
benefits

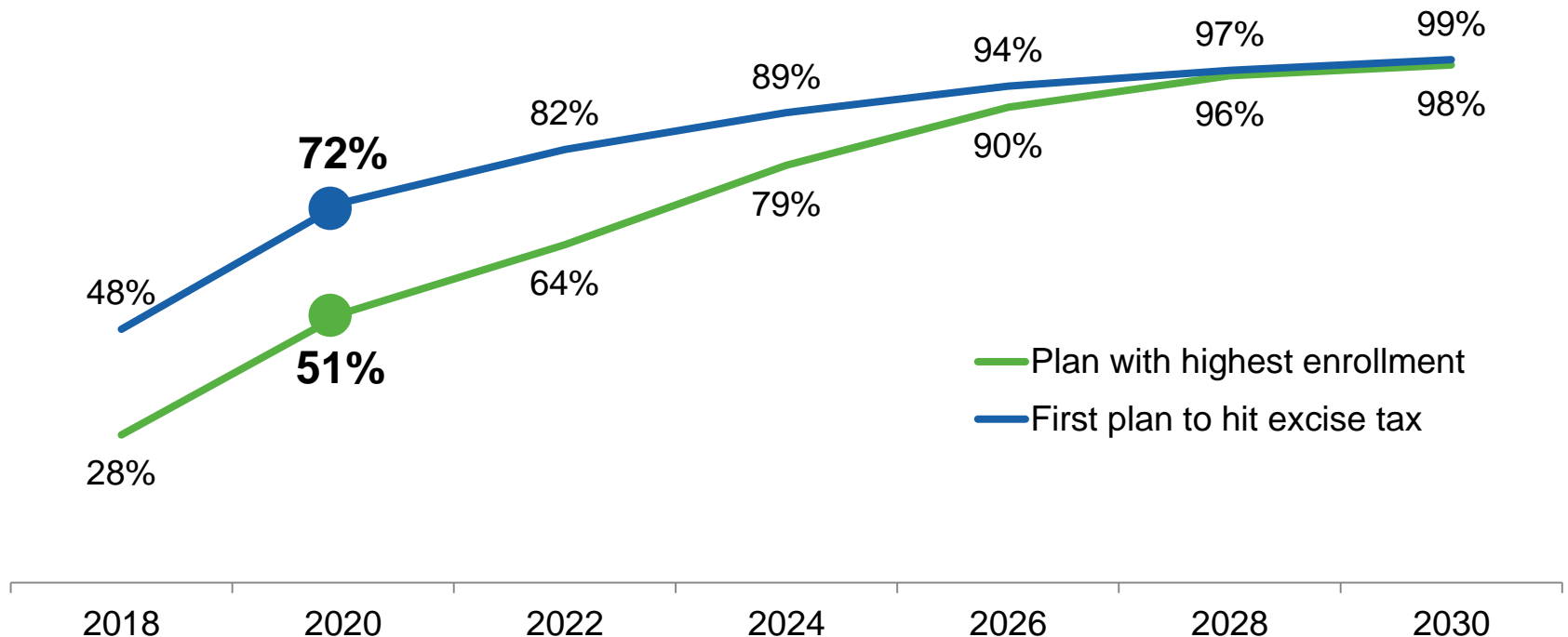


**Help finance
expansion
of coverage
under PPACA**

Impact of the delay to 2020

More employers will be impacted when implemented

In 2020, over half of large employers expect their current health plan – with no changes – with highest enrollment would trigger the Cadillac tax.



40% excise tax

Changes employers are making

78% of large employers changing health care plans in response to the tax

Recent National Business Group on Health survey* found

- 57% implementing or expanding account-based CDHPs
- 53% adding or expanding incentives for wellness programs
- 42% increasing employee cost-sharing
- 30% eliminating high-cost plans
- 20% narrowing their provider networks to control costs

Employers are also decoupling dental and vision benefits from their health care plans



* National Business Group on Health ; Large Employers' 2015 Health Plan Design Survey, August 2014

40% excise tax: Challenges and advocacy

Recent updates

Continued bipartisan support to repeal or modify the excise tax

Congressional activity

**ALLIANCE
TO FIGHT THE 40**
Stop the 40% tax on health benefits

www.fightthe40.com

Cigna is a founding member of the Alliance
and on its Executive Committee



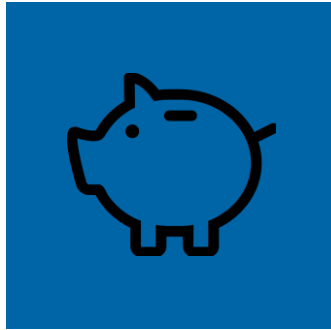
WELLNESS AND INCENTIVES – A REGULATORY ALPHABET SOUP



Why wellness?



Health drives improved outcomes



\$396
savings per
individual/year¹



Losing 5-7%
of body weight
can prevent or
delay onset of
Type 2 Diabetes²



Resilient
employees are
**31% more
productive**³



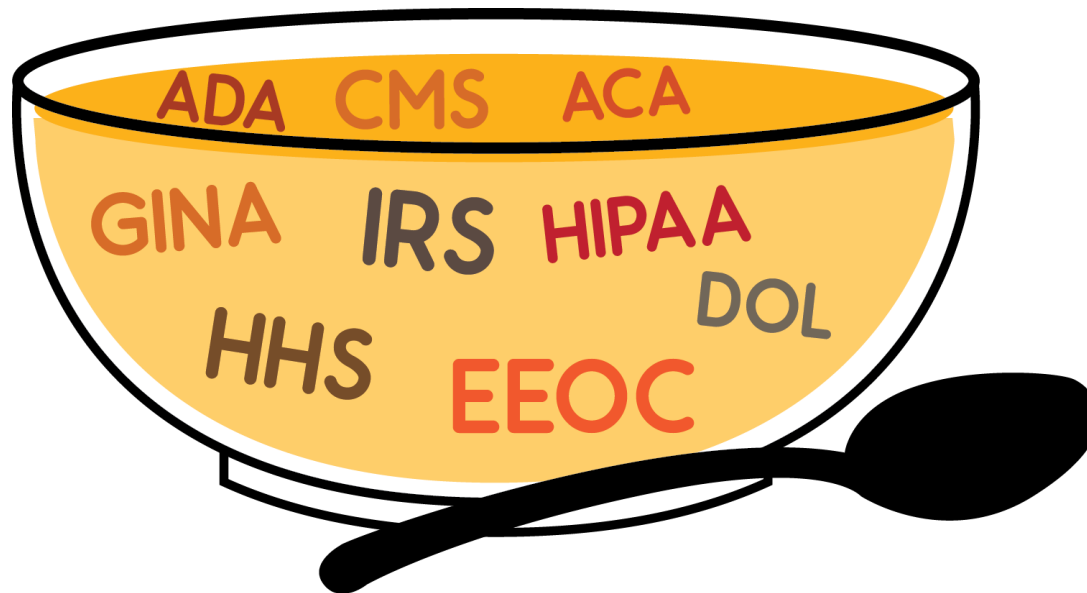
66% with
heart disease
**controlled
cholesterol
when coached**⁴

1. Based on Your Health First 300 2014 Book Of Business Study using CCA Methodology
2. National Diabetes Education Program, "Small Steps, Big Rewards. Prevent Type 2 Diabetes For Life. Campaign Information. Web. 16 June 2015
3. The Value of Happiness – How Employee Well-being drives profits, Harvard Business Review, January-February 2012)
4. Cigna NPS and Consumer Value Solution Research 2013

Workplace Wellness: A Regulatory Alphabet Soup

Several regulations impact wellness plans

**Compliance with one set of regulations
does not ensure compliance with all.**



Sources: Patient Protection and Affordable Care Act, 2013 and EEOC, "Amendments to Regulations Under the Americans With Disabilities Act," April 20, 2015



Wellness and incentives

ACA v. ADA v. GINA

ACA Regulations Final in 2013	ADA Regulations Final in May 2016	GINA (Title II) Final in May 2016
Enforced by: IRS, HHS, DOL	Enforced by: EEOC	Enforced by: EEOC
Applies to: wellness programs that are group health plans	Applies to: any employer wellness program with medical exams or inquiries	Applies to: employers and wellness programs soliciting genetic information
Other Key Differences:		
<ul style="list-style-type: none">• Voluntary participation requirements (ADA)• Incentive amount and calculation (ACA vs. ADA vs. GINA)• Reasonable accommodations and alternatives (ADA and ACA)• Notice and confidentiality requirements		



Final EEOC wellness regulations

- Final ADA and GINA regulations intended to help align rules with Affordable Care Act, but key differences remain
- Rules apply to wellness programs whether part of group health plans or stand-alone and include medical inquiries

ADA

- Voluntary, cannot deny access to employer's group plan for failure to participate
- EEOC's position that "Bona fide benefit plan" safe harbor does not apply
- Must be "reasonably designed"
- Sets incentive limits for employee only
- Notice and confidentiality requirements

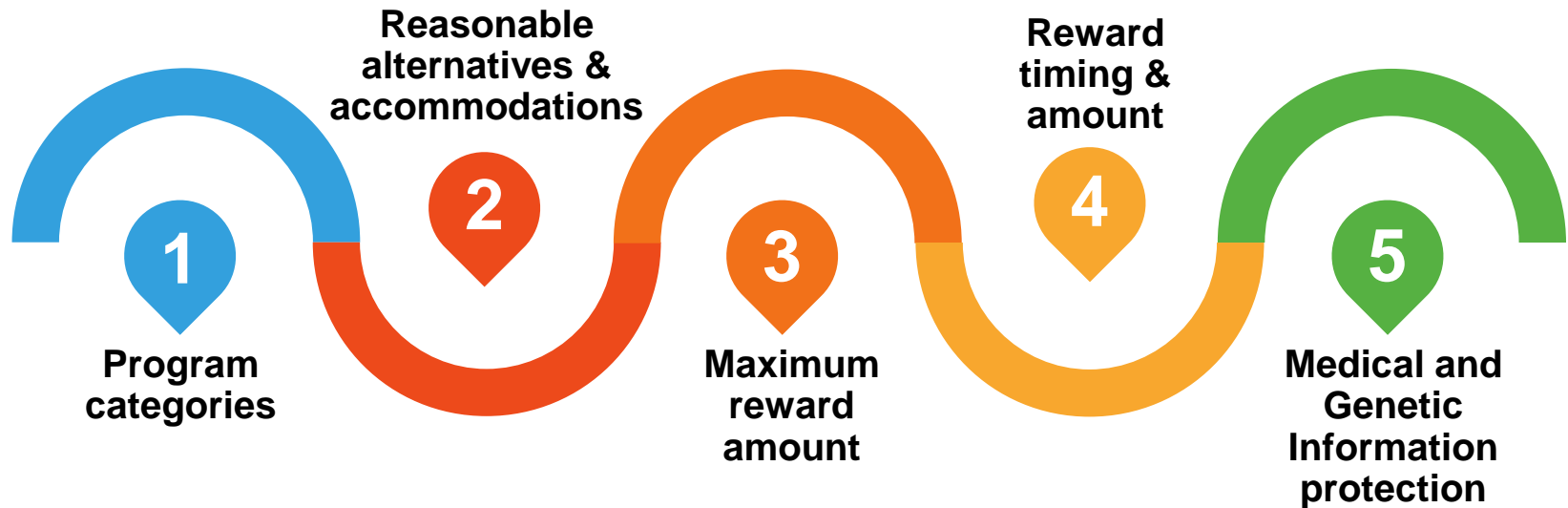
GINA

- Cannot deny access to group plan for failure to participate
- Can provide incentives for spouse participation in HRA, but not children
- Sets incentive limits for spousal participation
- Tobacco use is not genetic information
- Notice and confidentiality requirements



Wellness and incentives

Five key concepts



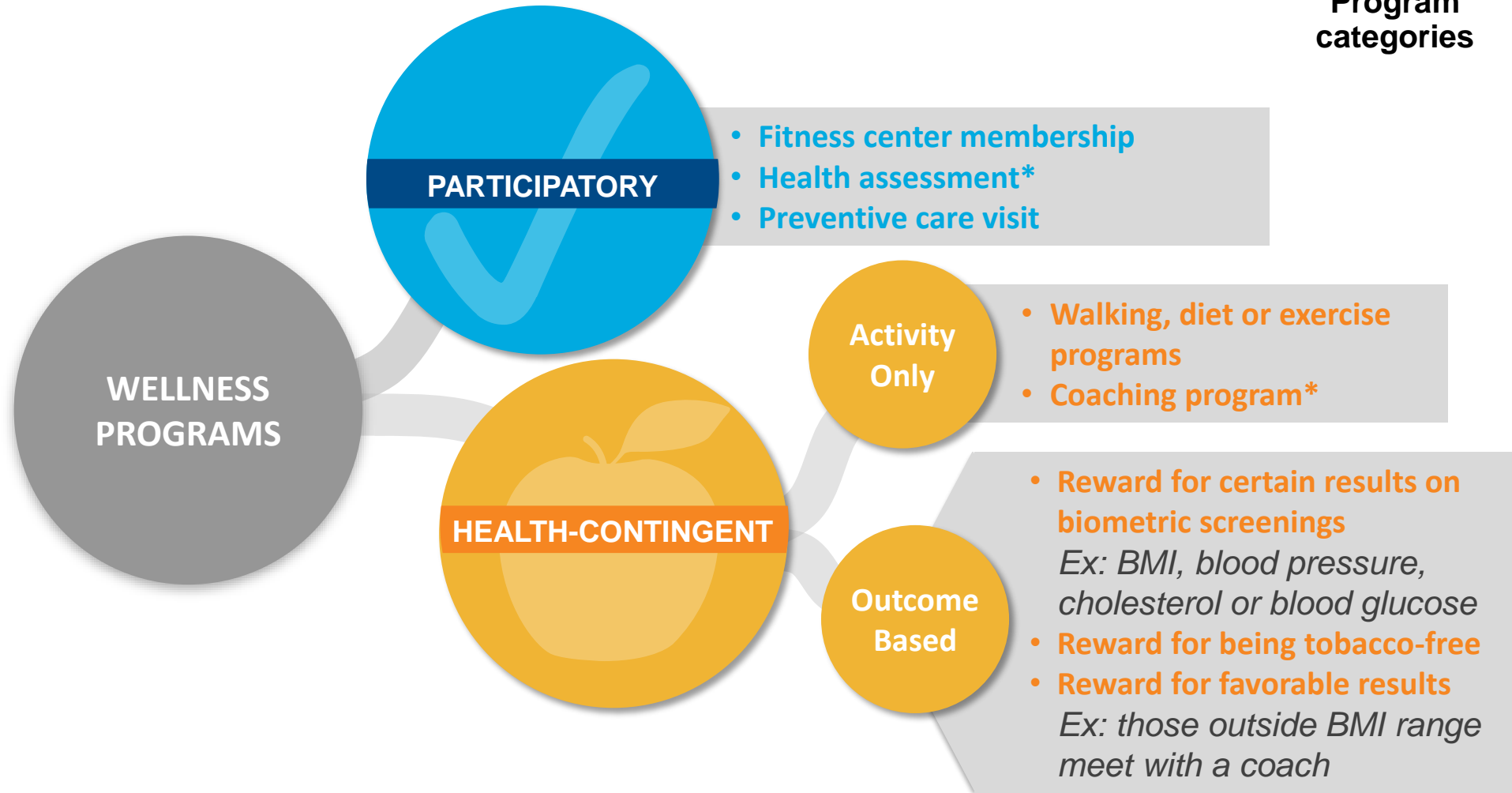
Legislative goals

- Support incentives that encourage customers to improve health
- Protect customers against unfair practices based on their health
- Applies equally to all employers and employees

Wellness and incentives

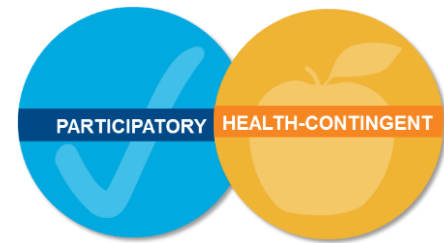
Program categories regulated differently

1 Program categories



Wellness and incentives

Can a Health Risk Assessment be used for gatekeeping?



Okay for incentives

Can use completion of health risk assessments as requirement to incentives

Not okay for plan eligibility

Completion of health risk assessment cannot be used for access to:

- more robust plans
- plans with lower cost share amounts



Wellness and incentives

ACA v ADA: reasonable alternatives and accommodations

2

Reasonable
alternatives &
accommodations



ADA: Contingent on health factors; adequate time to earn*

Example: a sign language interpreter must be provided for a health seminar participant who is deaf



Activity
Only

ACA: Contingent on medical advice.

Example: complete a preventive care visit instead of a physical activity-based program

Outcome
Based

ACA: Not contingent on medical advice.

Example: talk with a coach instead of completing a biometric screening

* Not contingent on medical: if medical-related inquiries or screening are part of the program, it must offer a reasonable alternative at any time

Wellness and incentives

Incentive limits: key differences

3

Maximum
reward
amount

	ACA	ADA	GINA
Limit: Non-tobacco cessation	30%	30%	30%
Limit: Tobacco cessation	50%	50% self-reported use 30% clinical tests	No requirement (tobacco use is not a genetic condition)
Limit basis: Total cost/ employer and employee share	Self-only coverage 30% of family coverage if spouse and dependents participate	Self-only coverage	Self-only coverage Up to 2 x 30% of self-only coverage if spouses participate
Limit Includes	Health-contingent	Health-contingent and Participatory	Not specified

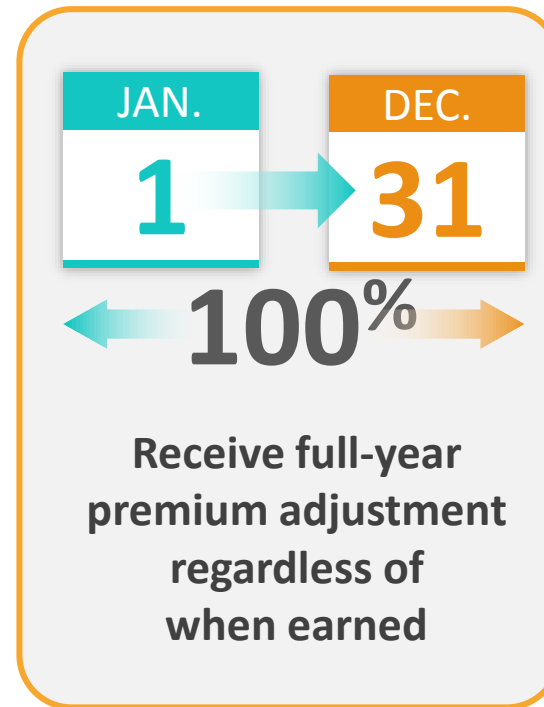


Wellness and incentives

4

**Reward
timing &
amount**

- Qualify at least 1x/year
- Award during plan year or “within reasonable time” in new plan year
- Reasonable alternatives on same timeline
- Prorate new hires



Wellness and incentives

MEDICAL

- Notice requirement provided descriptions of collected health data, including:
 - Who can access it
 - How it is used
 - How it is kept confidential*
- HIPAA privacy rule compliance

* EEOC provided a sample notice

GENETIC (GINA)

- Prohibits use of genetic information for eligibility/enrollment and underwriting
- Exceptions for wellness program incentives relating to genetic information of employee & collection of health information from spouse (family history)
- Knowing and voluntary

Wellness and incentives

Employer considerations and next steps

- 1 “Penalties” vs. “rewards”
- 2 Boost reward/penalty levels
- 3 Comply with Notice and confidentiality requirements
- 4 Ensure voluntary participation and link to group health plan
- 5 Consider all federal requirements*
- 6 Ensure reasonable accommodations
- 7 No adverse action against employees for non-participation



* ACA, ADA, ERISA, HIPAA, GINA and IRC

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OTHER HOT TOPICS IN 2016: REPORTING & NONDISCRIMINATION



Two sets of ACA reporting requirements

Due January 31 to employees, March 31 to the IRS*



Large employer reporting IRS code 6056

Confirms compliance with the employer mandate

- Impacted employers must file with IRS and report to listed employees
- Report on who was offered coverage and who accepted it
- Reporting coincides with tax filing season – on previous year coverage (*i.e. 2016 information due in 2017*)



Minimum essential coverage IRS code 6055

Confirms compliance with the individual mandate

- Insurers and self-funded plans must file with IRS and report to listed individuals
- Report on each month any individual has coverage, including dependents
- Report at the beginning of the year on previous year coverage (*i.e. 2016 information due in 2017*)
- Outreach for SSNs of enrollees missing valid SSNs



* Less than 250 Forms 1095 can be mailed to IRS if postmarked by February 28

ACA reporting requirements

2016 draft forms available

2016 Draft Forms 1094-C and 1095-C available

Notable changes include:

- References to transitional relief for 2015 calendar year have been removed
- Descriptions of remaining relief amended to clarify that relief only applies to certain months in 2016
- “Do not attach to your tax return” language added to Form 1095-C
- Changes to codes on Form 1095-C for reporting offer of coverage to employee and dependents



ACA reporting requirements

First year considerations

Electronic filing through the AIR System

- June 30, 2016, final 2015 deadline – you should still file if you have not done so, IRS will not accept 2015 returns after 12/31/2016
- If any transmissions or submissions were rejected, you have 60 days from the date of the rejection to submit a replacement
- Any “accepted with errors” message – the IRS expects you to submit a correct replacement within the 60 day correction period

Both “Good Faith” relief and “Reasonable Cause” waivers for the first filing year

- No clear rule
- Documentation as a best practice



Nondiscrimination

Regulatory overview of Section 1557

A final rule on nondiscrimination in health programs and activities

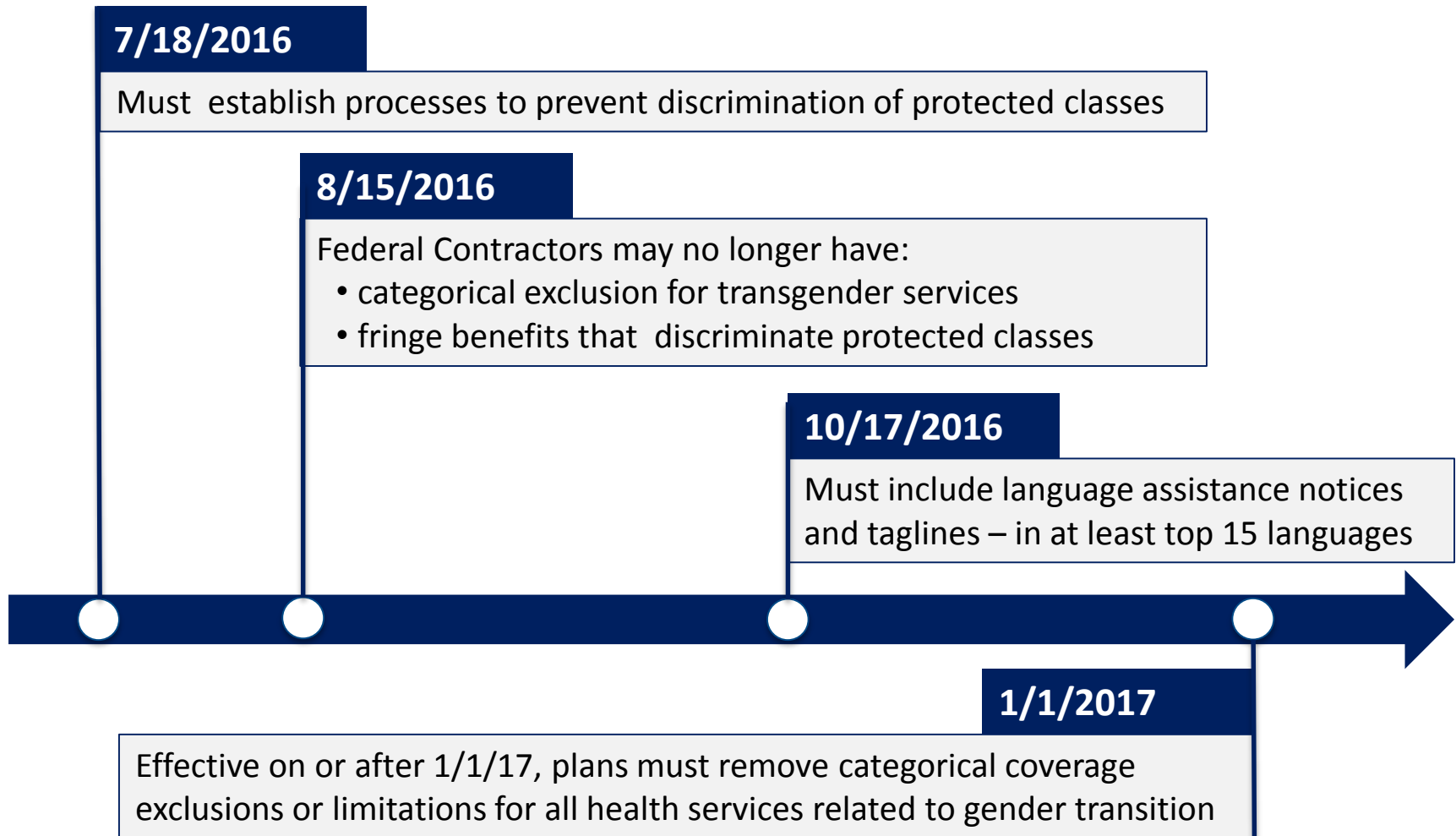
Issued May 13, 2016 by the Department of Health and Human Services (HHS), and the Office of Civil Rights (OCR), in Section 1557 of the Affordable Care Act (ACA)

- Prohibits discrimination of “protected classes” in health programs and activities, i.e. based on race, color, national origin, sex, age or disability
- Clarifies existing nondiscrimination requirements, and sets new implementation standards



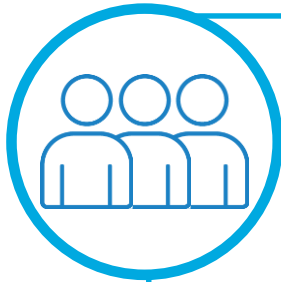
Nondiscrimination

Rule effective dates



Nondiscrimination

How does this impact employers?



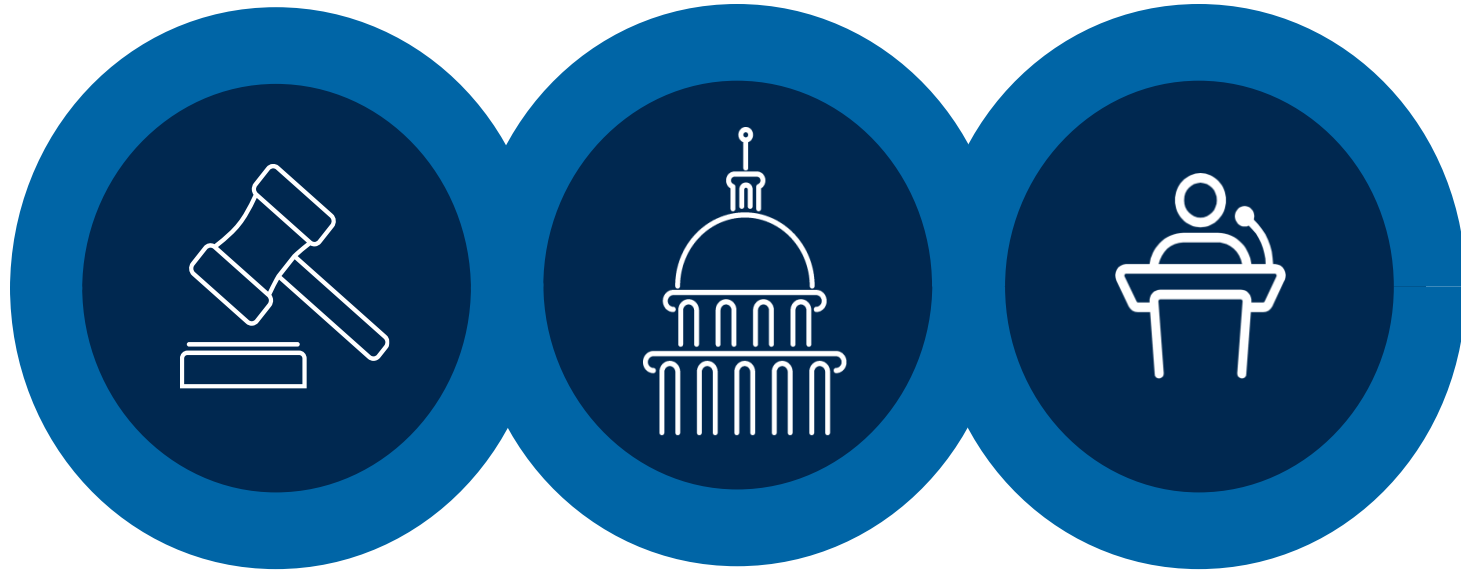
The “average” employer primarily will be required to eliminate categorical exclusions or limitations on gender transition.

- Cigna is removing the transgender exclusion from our standard plan benefits.
- Hospitals, physician groups or others engaging in “healthplan activities” must comply with other pieces of the regulation, i.e. language assistance, disability accommodations and discrimination grievance processes

LOOKING AHEAD



Legal and political considerations



Judicial

Active case law challenges to ACA provisions

Legislative

Ongoing congressional challenges to change or repeal ACA

Executive

Regulatory oversight, interpretation and uncertainty with changing administrations

Market forces

Evolving stakeholder needs in a rapidly changing, dynamic environment



Individuals

Increased role in coverage decisions; seek greater affordability and personalization

Health care professionals

Consolidating and moving to a value-based system

Brokers & Employers

Desire greater affordability, increased cost predictability improved productivity

Government

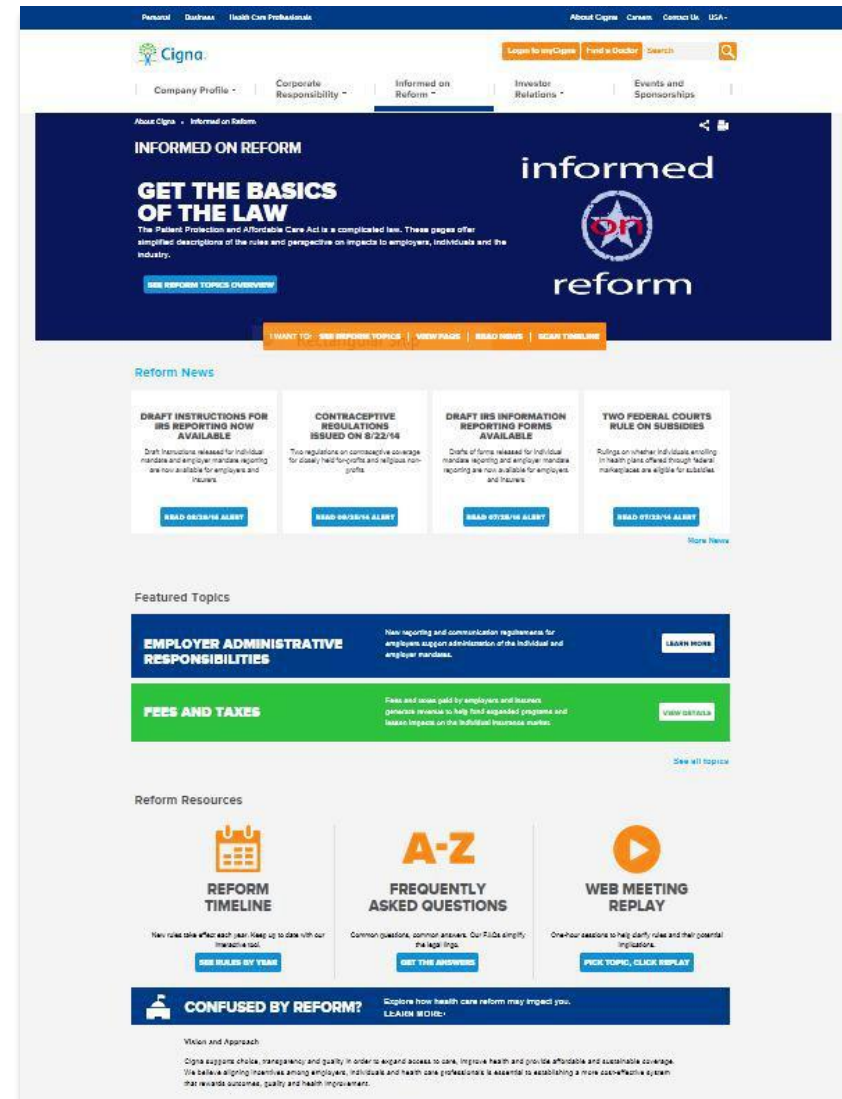
Seek increased access, high-value programs and solutions for higher-risk/complex populations



Cigna resources

Meeting a variety of needs

- **InformedOnReform.com**, our award-winning website
 - News alerts
 - Interactive timeline
 - Web meeting series
 - FAQs and fact sheets
- Education, communication and consulting services
 - **HCRforYOU.com**
 - Strategy sessions & roundtables
 - Online toolkits
 - Groom Law Group, complimentary resource



QUESTIONS?



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