

# Governing Compensation in Hospitals and Health Systems

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Integrated Healthcare Strategies



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# Today's Agenda

**April 4, 2019**

The Environment

Build Your Compensation Brand

Communication Strategies

Compensation Trends

Best Practices in a Regulatory Environment

Practical Applications



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# The Environment

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## INDUSTRY CHALLENGES

Cybersecurity

Health Reform

Tightening Labor Market

Artificial Intelligence

Medicare Advantage Expansion

Mergers/Affiliations  
Mgmt Contracts

Insurer and  
Provider  
Consolidation

Opioid Crisis

Social  
Determinants

Government  
Regulations  
and Legislation

Patient  
Experience

Continuum  
of Care



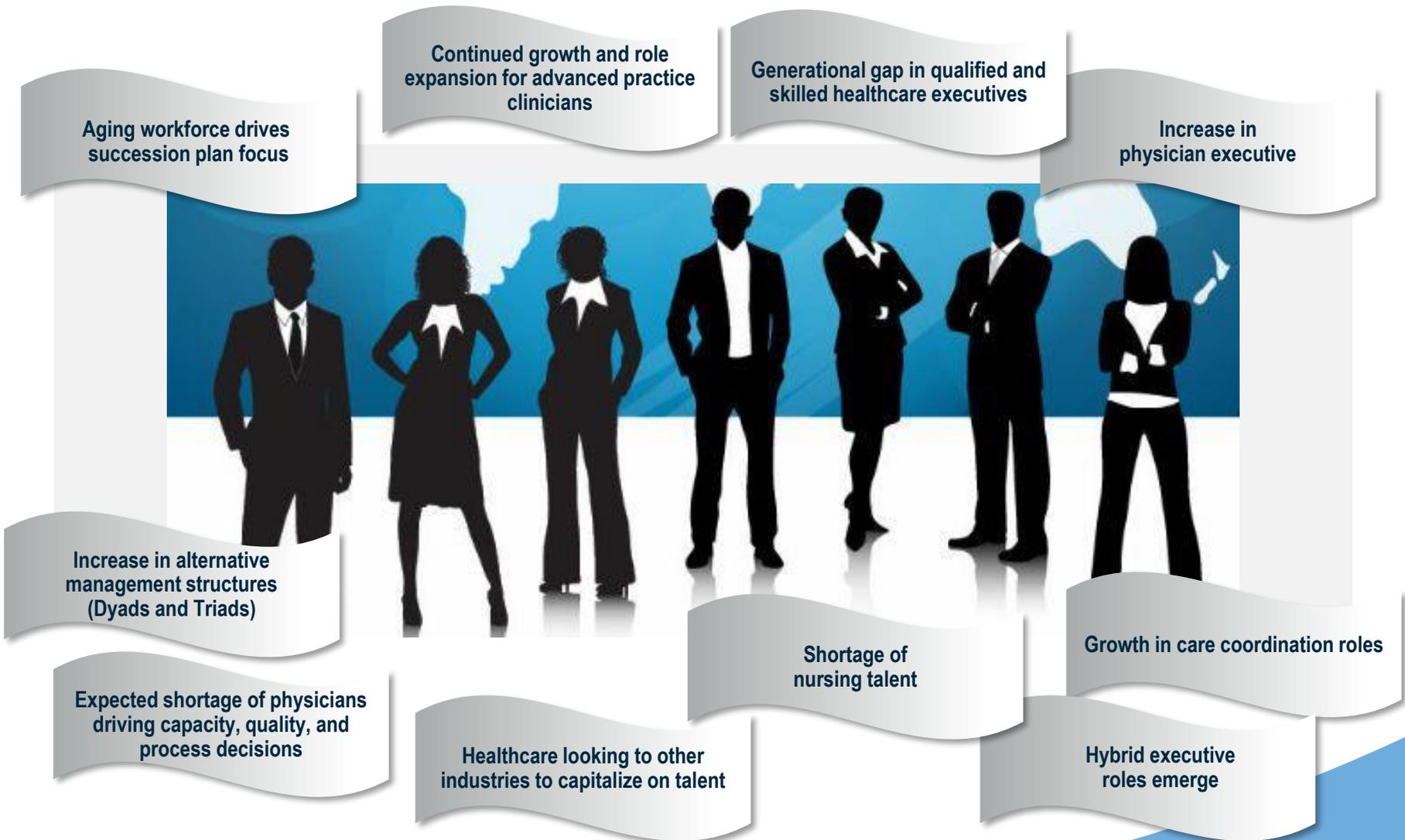
# Mergers and Acquisitions

## Significant change and uncertainty are having a major impact on organization structure and management positions

<b>More than 150 hospital / health system mergers/acquisitions in 2018</b>	Up from 115 in 2017
<b>More transactions in the form of affiliations rather than long-term financial commitments; CEO's are anticipating a slowdown in true mergers</b>	System size has decreased in importance as a metric for future sustainability – increased focus on strategic and operational discipline
<b>Physician employment has increased dramatically – by both health system and private equity</b>	Increased competitive landscape as private equity acquisition can offer increased sense of autonomy, ownership stakes, access to capital – enhanced technology and better pay Health systems and hospitals need to manage the physician practices and make more strategic decisions related to staffing, leadership, and compensation programs
<b>Aligning management hierarchies and overall compensation programs across merger partners</b>	Different institutions have significantly different approaches to doing business so programs and leadership structures need to be optimized across all platforms to enable a successful partnership



## Impact on Talent





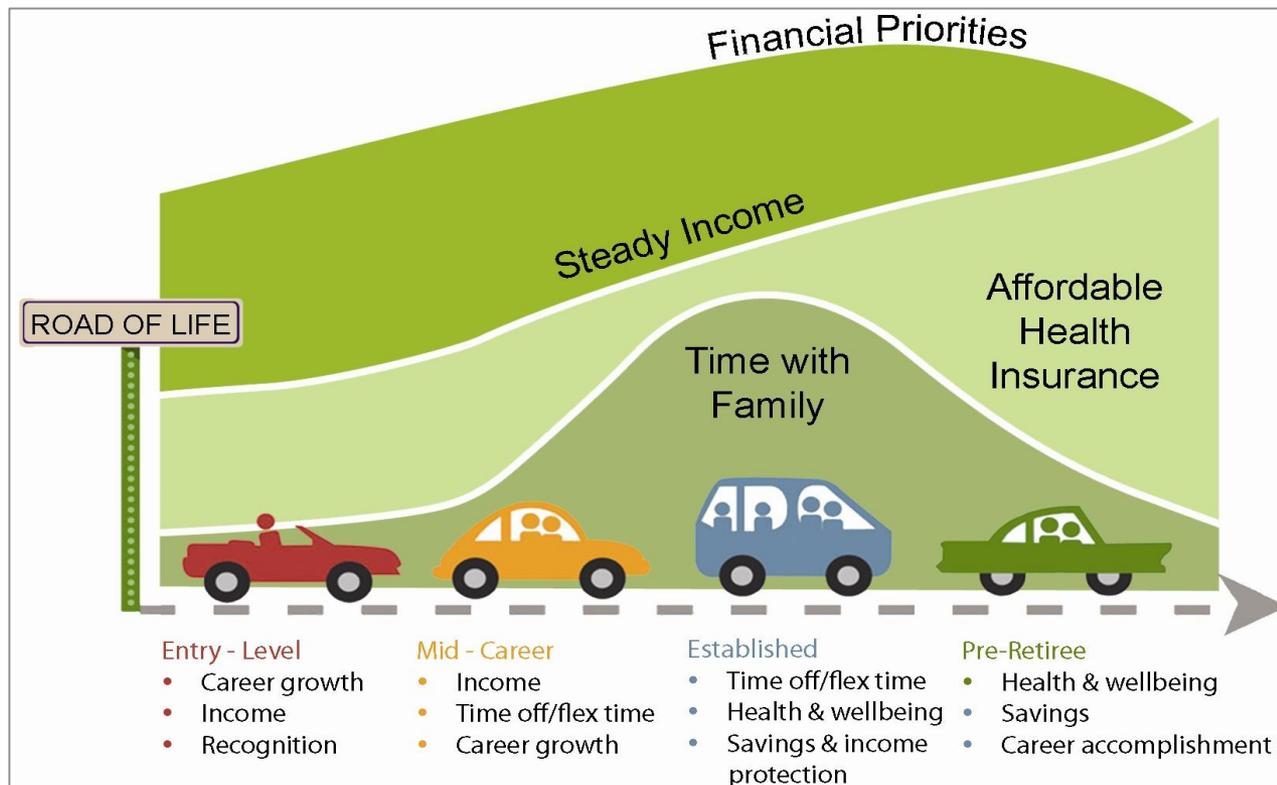
## Planning for Workforce Needs

### WHAT ARE THE NEEDS OF OUR PRESENT AND FUTURE WORKFORCE?

Life stage matters and knowing the demographics of your workforce will help you better understand their compensation and benefit needs

Planning around these life stages could help your organization differentiate itself in your market

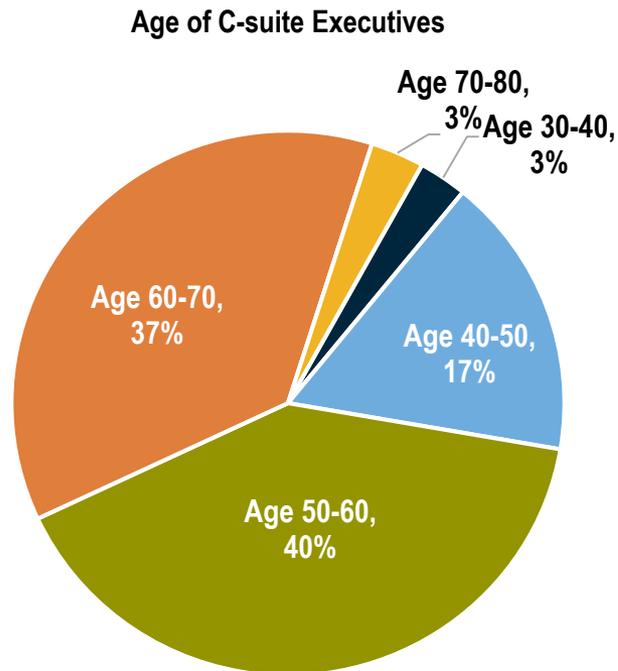
Difficult to effectively execute this when 53% to 64% of organizations manage comp and benefits on a year-to-year basis as opposed to multi-year strategies





# Executive Succession Planning

## Executive Talent Is Aging



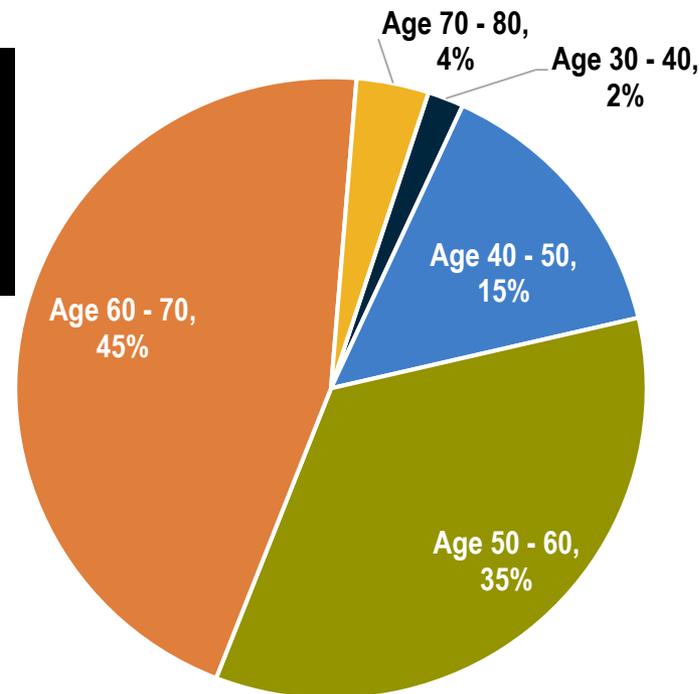
Source: Integrated Healthcare Strategies database 2010 – 2018 / N = 2400



# Executive Succession Planning

More than 65% of healthcare CEOs are over the age of 55 and half of those are over the age of 60

Age of of CEOs in Integrated Healthcare Strategies' Database (by age)



2017 was the fourth year of hospital CEO turnover at 18%

\* American College of Healthcare Executives – “Hospital CEO Turnover Rate Remains Steady”

\* Integrated Healthcare Strategies database n=324



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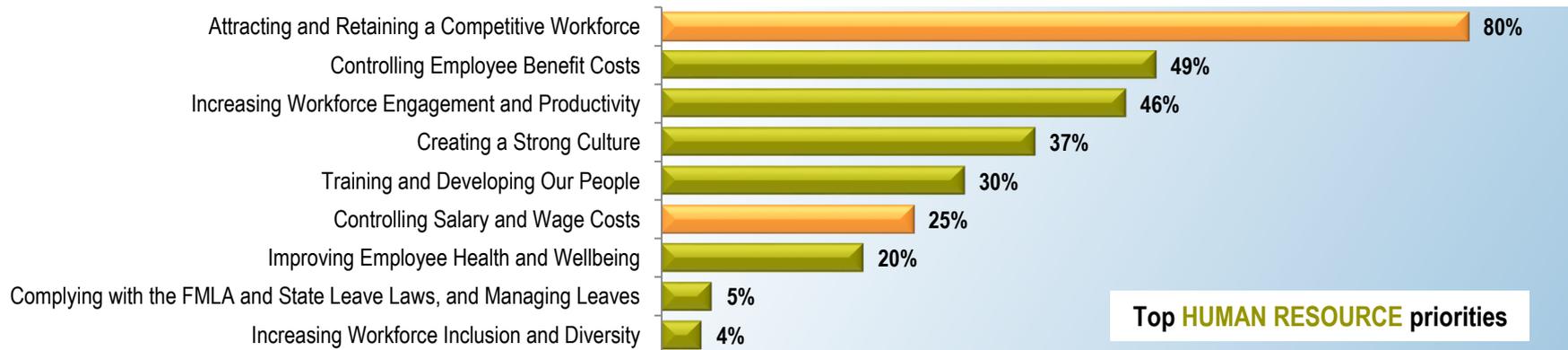
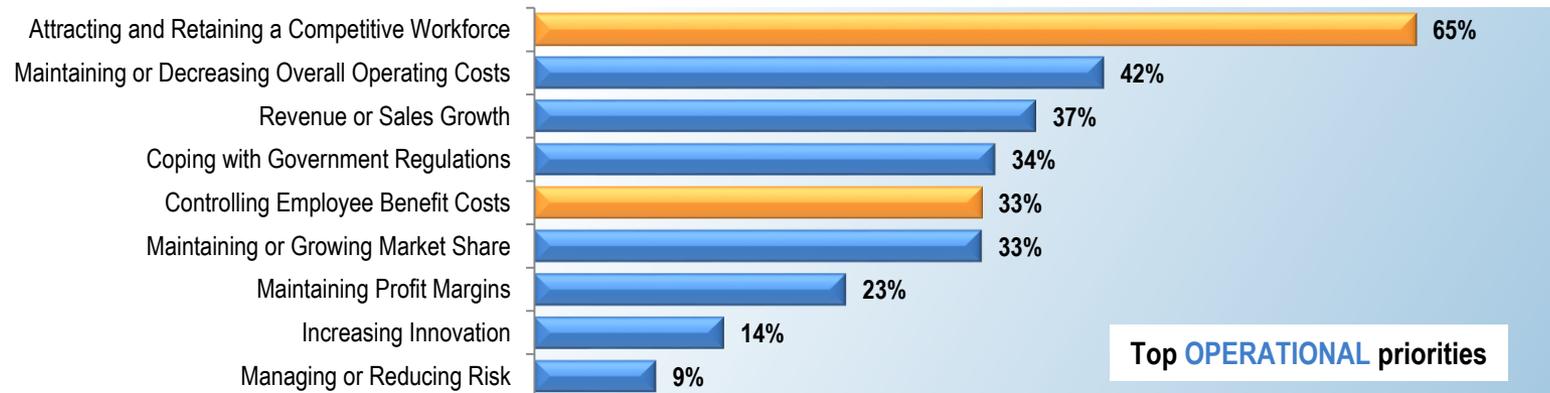
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# Build Your Compensation Brand

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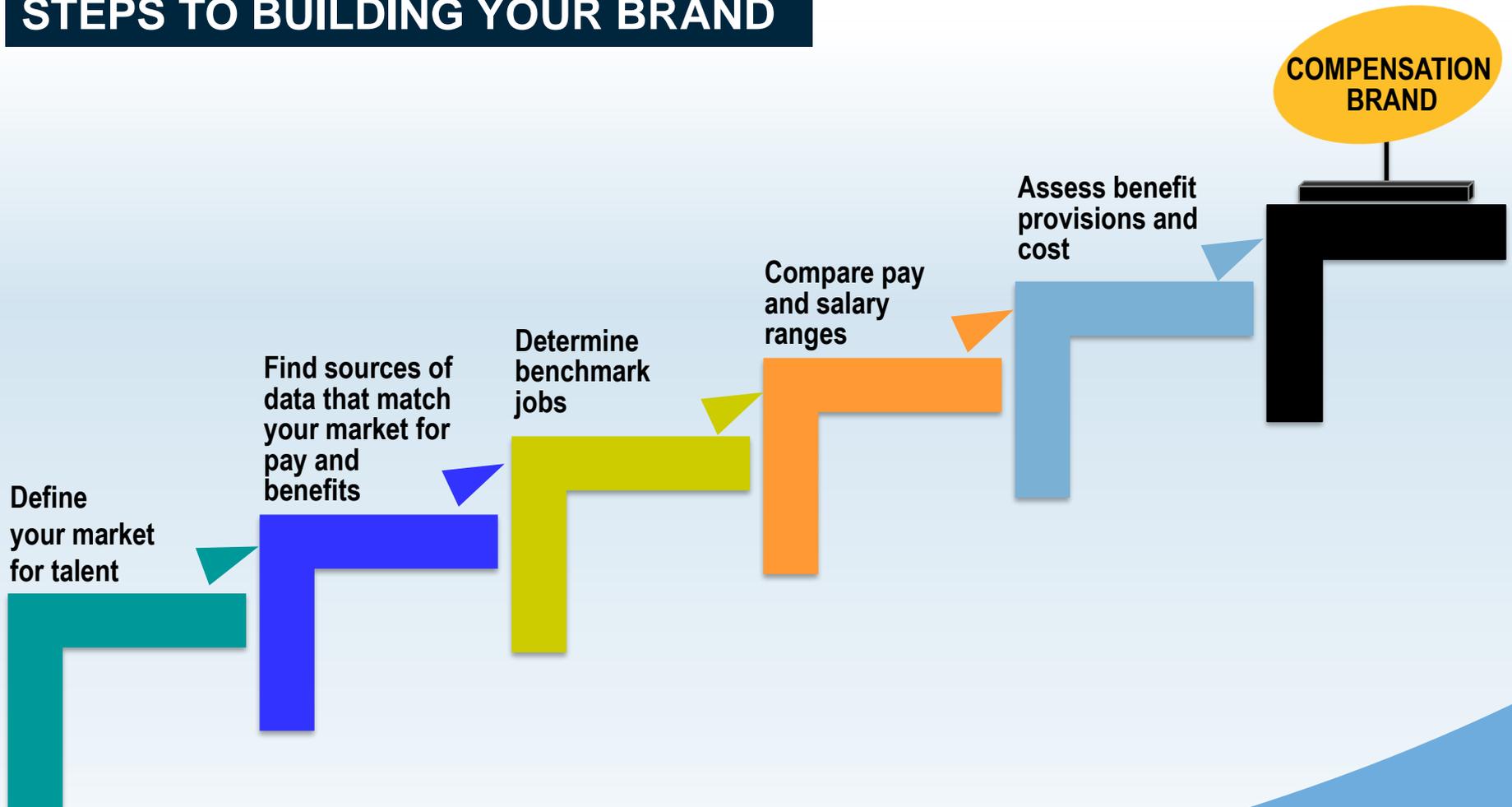
# Organizational Priorities



Data Source: Gallagher 2018 Benefits Strategy and Benchmarking Survey; Operational Priorities response represents 1,293 healthcare organizations and Human Resource Priorities response represents 1,306 healthcare organizations

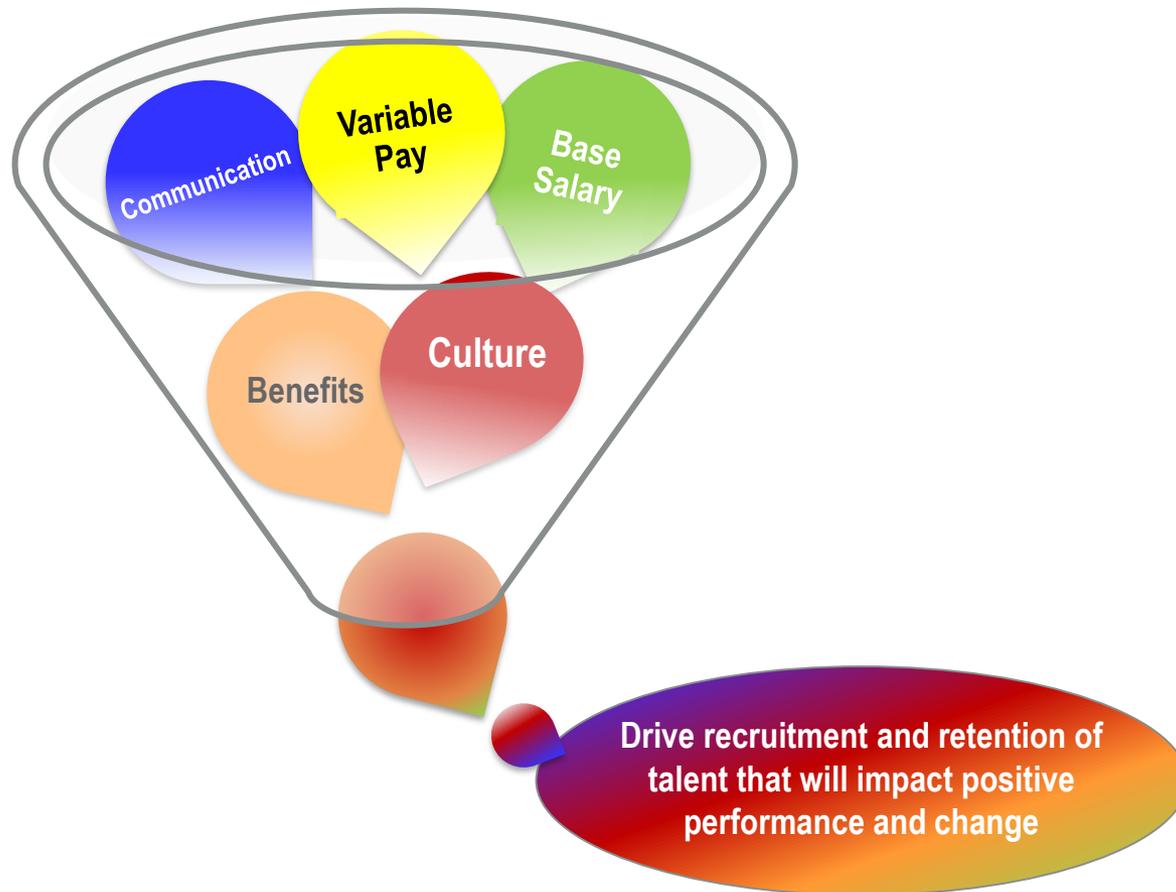


# STEPS TO BUILDING YOUR BRAND





# Tools for Differentiation





# Compensation Strategy in a Changing Environment



“Any plan that pays the **right amount of money to the right people** for the **right results** achieved the **right way** is a good plan”

David Bjork, PhD  
Integrated Healthcare Strategies



# Compensation Philosophy Components

It's the framework that guides decision making and communications

## Clearly defines authority and process for decision-making

- Role of the Board, Committee, CEO, HR, Management, etc.

## Identifies the appropriate peer group(s)

- National, regional, local, etc.
- For-profit, not-for-profit, private, public?
- Hospitals, systems, clinics, etc?
- Financial performance – bond ratings
- Quality ratings - leapfrog, etc.

## Describes the objectives of various pay programs

- Support mission
- Recruit, retain, reward
- Align with organizational priorities

## Specifies the competitive positioning

- P50, P60, P75, etc.
- Salaries, Benefits, Special Pay Practices



# Why is a Compensation Philosophy Important?

## Best practice communication starts with a compensation philosophy



The foundation of all compensation programs is a clearly stated, comprehensive philosophy statement

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### **RATIONALE**

***In the absence of a defined philosophy, employees will create one on their own; and, management will have more difficulty defending or communicating the program***





## Why is a Compensation Philosophy Important?

**A well-considered compensation philosophy is the best explanation for why employees are paid what they are paid and provides the basis for:**



Maintaining a consistent approach to governing compensation

Communicating compensation decisions to employees

Recruiting & retaining talent



Responding to inquiries about pay

Demonstrating pay is reasonable to regulators/auditors



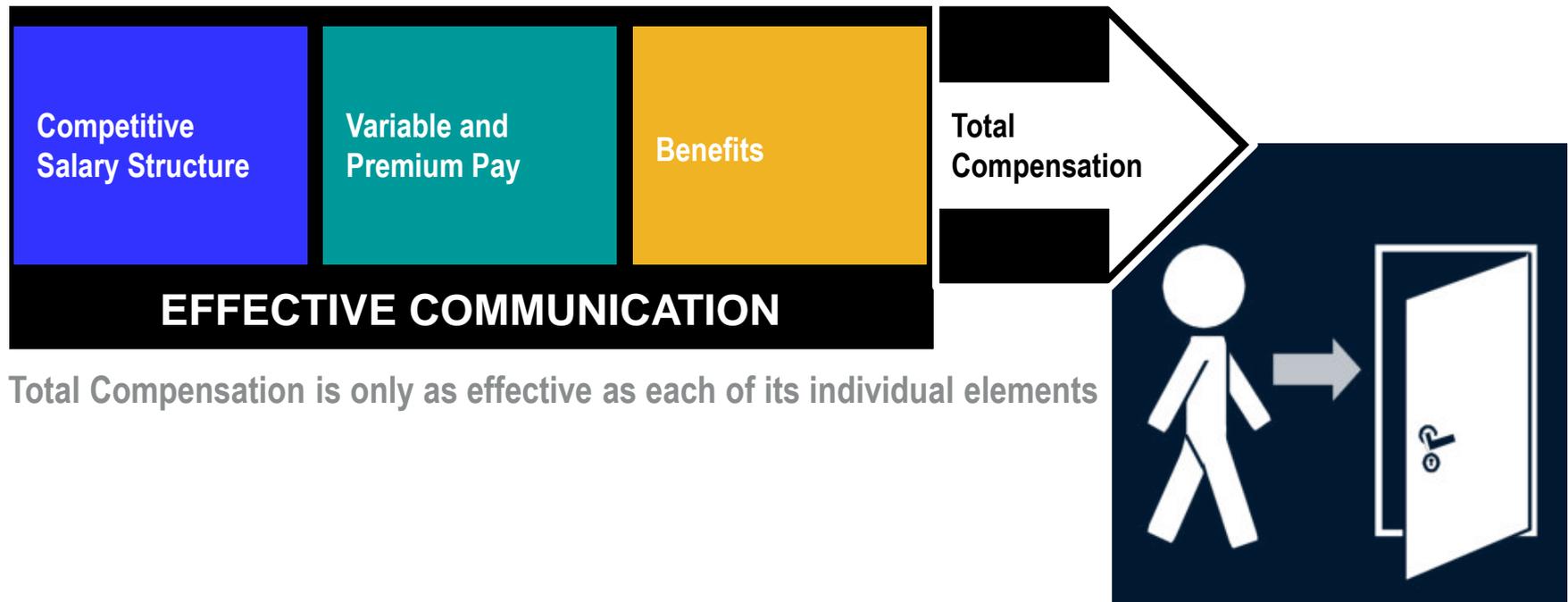
Explaining pay decisions to various stakeholders

Helping the board and management make good pay decisions



# Compensation Elements

What will it take to get prospective employees through our door?



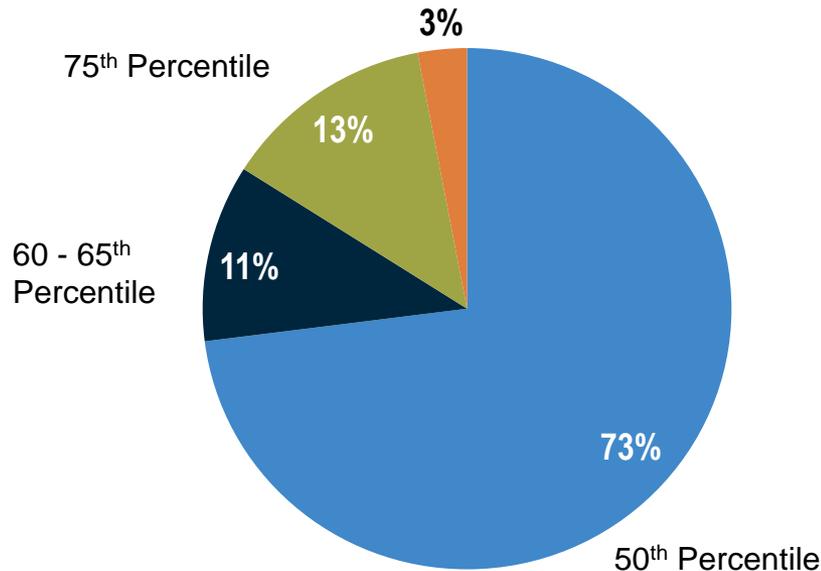
Total Compensation is only as effective as each of its individual elements



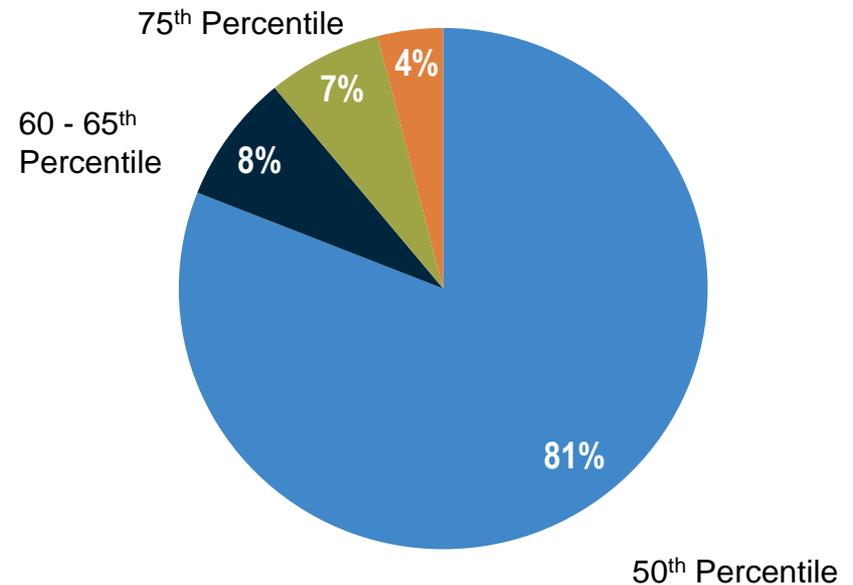
# Executive Compensation Philosophy

## Executive Base Salary Philosophies Among Hospitals and Systems

### NATIONAL ORGANIZATIONS Base Salary



### REGIONAL ORGANIZATIONS\* Base Salary



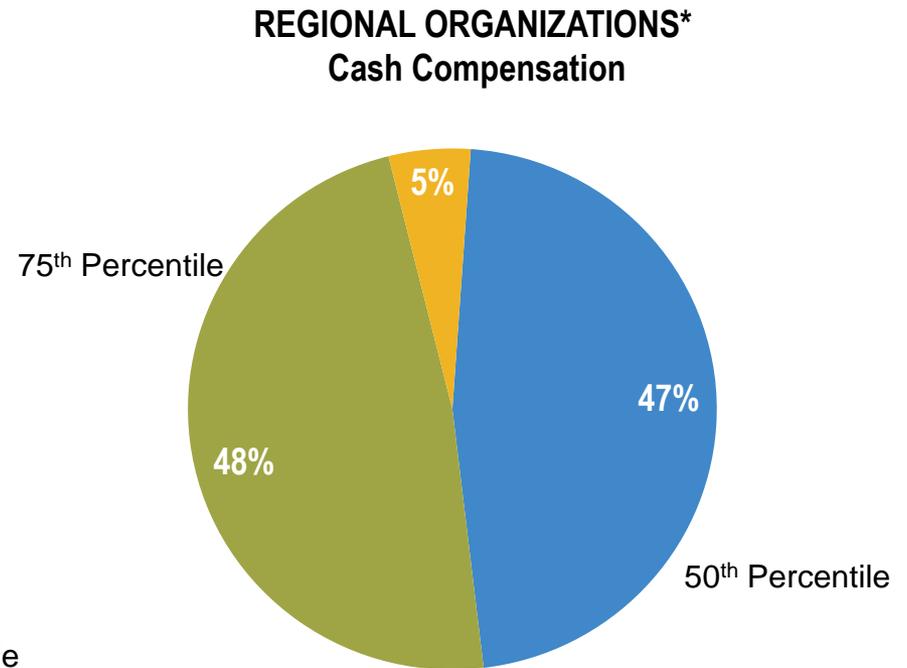
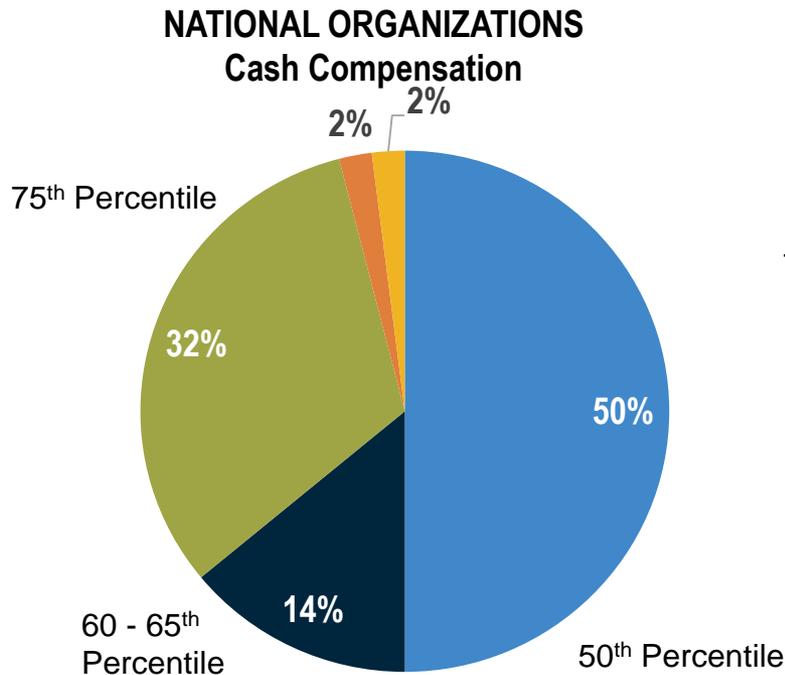
■ 50th   
 ■ 60 - 65th   
 ■ 75th   
 ■ 90th   
 ■ Other

\* States included in the regional sample – NC, SC, VA, KY, WV, TN, GA



# Executive Compensation Philosophy

## Executive Total Cash Philosophies (salary plus incentives) Among Hospitals and Systems



■ 50th   
 ■ 60 - 65th   
 ■ 75th   
 ■ 90th   
 ■ Other

\* States included in the regional sample – NC, SC, VA, KY, WV, TN, GA

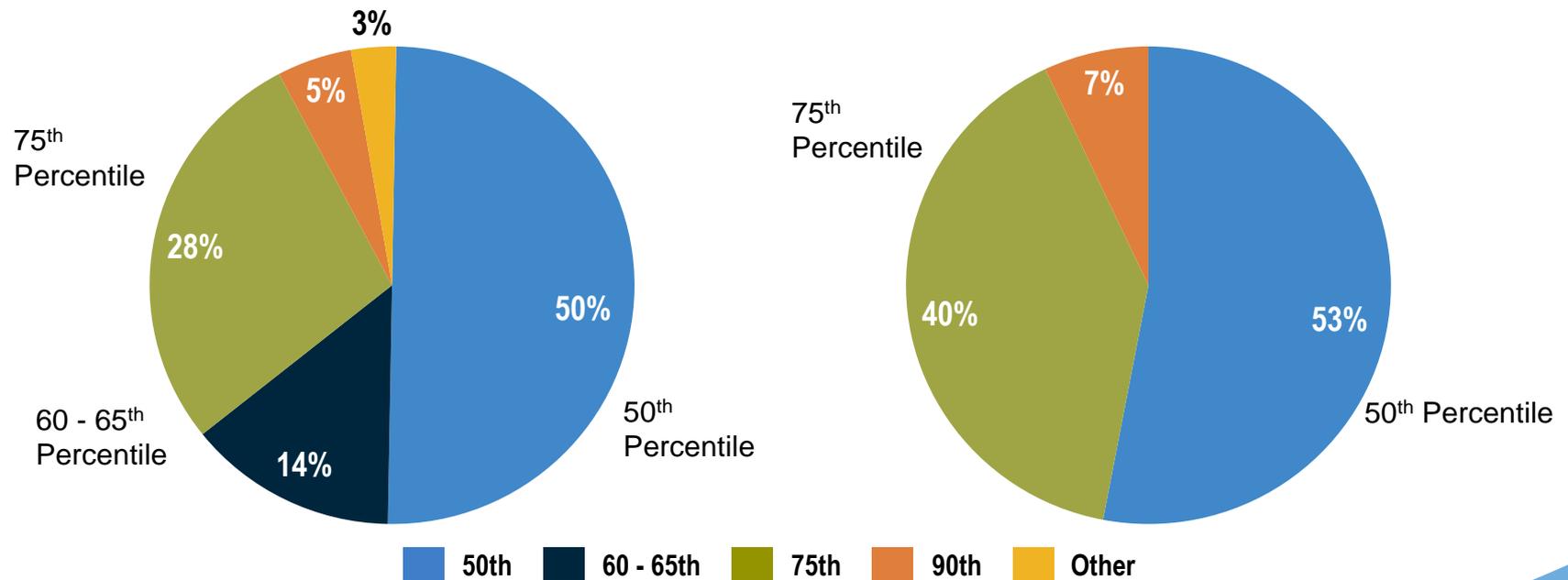


# Executive Compensation Philosophy

## Executive Total Compensation Philosophies (salary plus incentives plus benefits) Among Hospitals and Systems

### NATIONAL ORGANIZATIONS Total Compensation

### REGIONAL ORGANIZATIONS\* Total Compensation



\* States included in the regional sample – NC, SC, VA, KY, WV, TN, GA



# Staff Compensation Philosophy

85% of national organizations and 87% of regional organizations\* target market median for establishing staff compensation levels

## PEER GROUP COMPOSITION



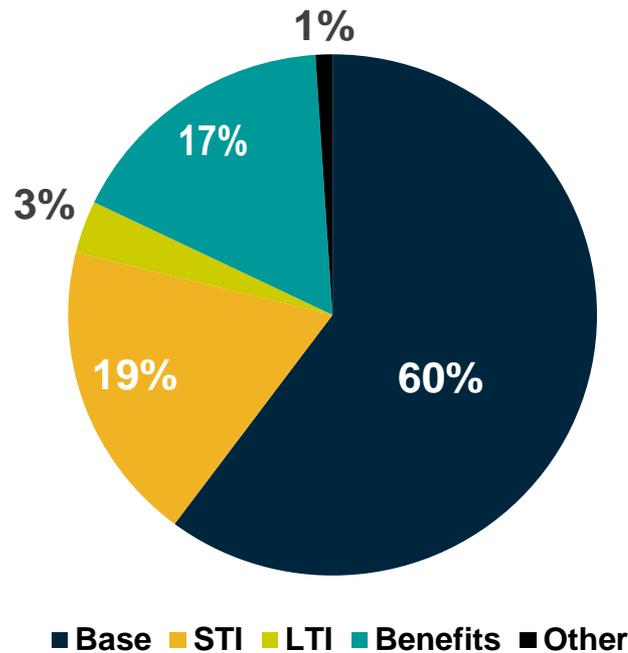
\* States included in the regional sample – NC, SC, VA, KY, WV, TN, GA



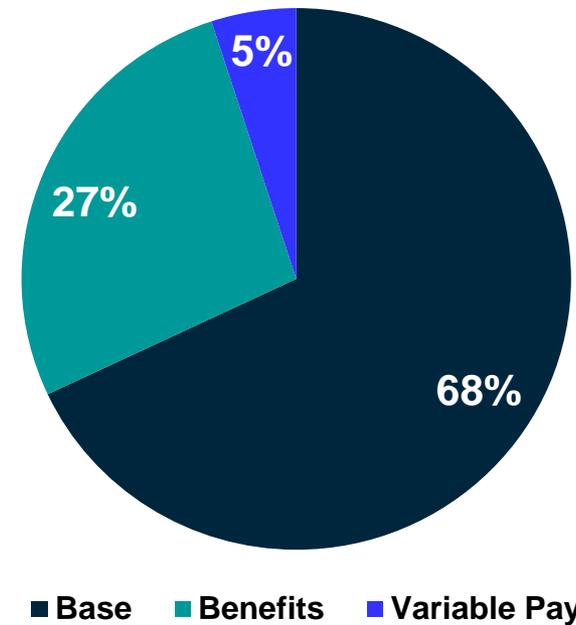
# Observations on Compensation Positioning

## Examples of Total Compensation Composition

### Executive Compensation



### Staff Compensation





# Observations on Compensation Administration

## MOST ORGANIZATIONS ADMINISTER SALARIES FOR STAFF DIFFERENTLY THAN FOR EXECUTIVES

### EXECUTIVES

**SALARY RANGES WITH MIDPOINTS TARGETED AT OR ABOVE THE 50<sup>TH</sup> PERCENTILE**  
May take 4 to 6 years to reach midpoint

**MANAGED AT THE INCUMBENT LEVEL**  
Flexible and discretionary

**OFTEN COMMUNICATED ANNUALLY**  
Through executive compensation reviews and tally sheets

**CLOSELY MONITORED BY THE BOARD AND CEO**  
To avoid excess benefit transactions

### STAFF

**TYPICALLY WITHIN RANGES TARGETED VERY NEAR THE 50<sup>TH</sup> PERCENTILE**  
May take 10 years to reach midpoint

**MANAGED ACROSS LARGE GROUPS OF EMPLOYEES**  
More formulaic and sensitive to changes

**SOMETIMES COMMUNICATED, OFTEN NOT EFFECTIVELY OR FREQUENTLY**  
Passive (pay slips) instead of active (total reward statements)

**CLOSELY MONITORED BY HR AND DEPARTMENT LEADERS**  
To remain competitive and ensure appropriate staffing levels



# Observations on Compensation Administration

## COMMON PROBLEMS WITH MANAGING COMPENSATION



**Not adhering** to the compensation philosophy



**Not recognizing** employee pay as a major strategic investment

**Confusion** around pay programs can impact attraction and retention



**Poor** program governance



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# Communication Strategies

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# In the Absence of a Total Rewards Communication Strategy, We See...



**LOWER** employee **UNDERSTANDING, ENGAGEMENT, and TRUST** in leadership

- **INCONSISTENT** communication

*“I know, but HR won’t let me...”*

- **INCONSISTENT** treatment

*“if only I worked for that manager instead of...”*

**LACK OF TRANSPARENCY and UNDERSTANDING** of how rates are determined

- HR acts as a **GATEKEEPER** and **COMPLAINT CENTER**

**REACTIVE** salary increases and administration based on need / request

- **LOBBYING / “COWBOYING”** by managers, directors, and yes, executives

*“My people do more, know more, have more impact, their jobs are more complex, they’re working harder...”*

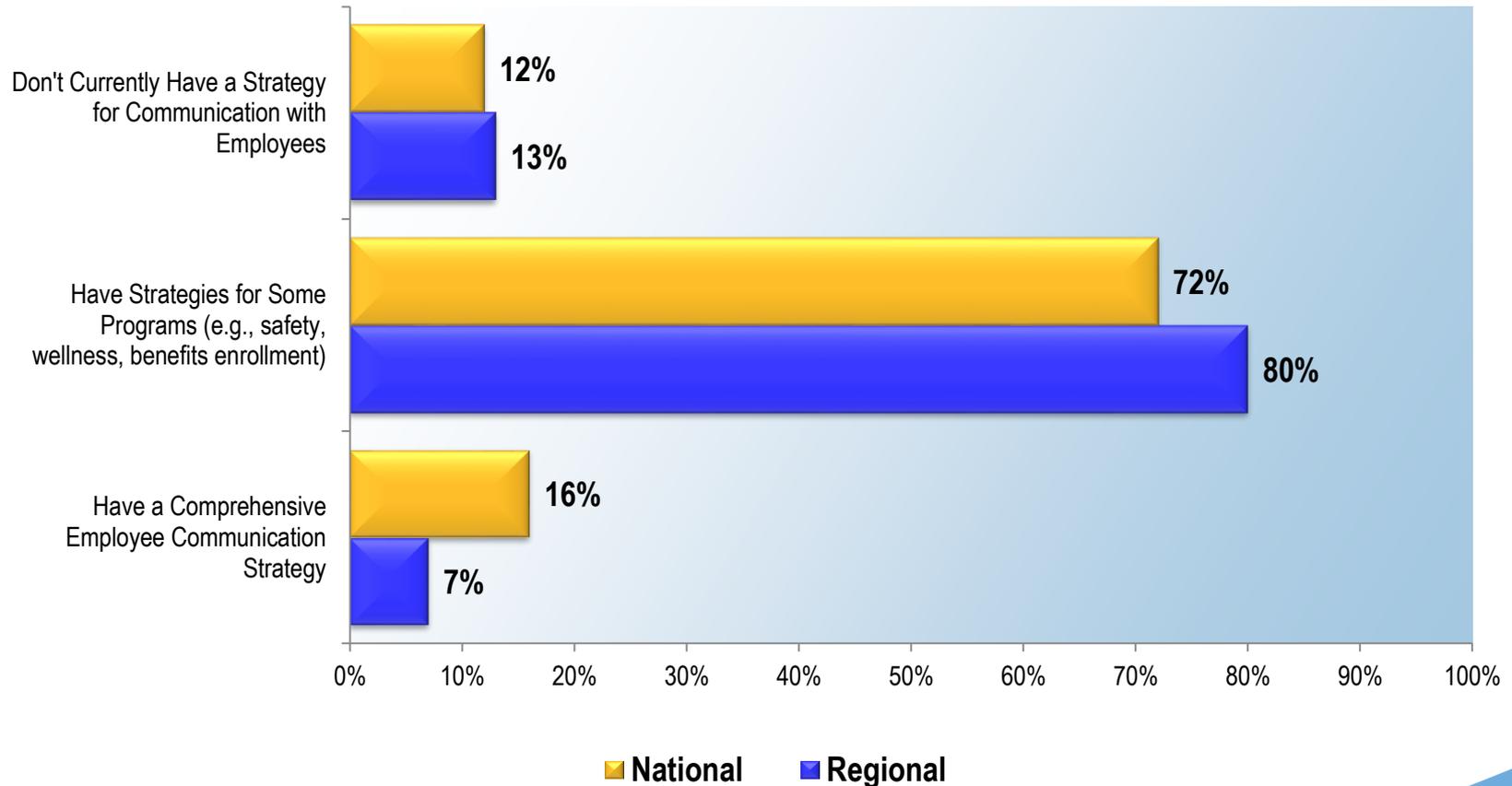
As well as...

- **PAY PRACTICES** that are used as **BAND-AIDS** and / or become entitlements
- **DATED** salary structures and pay practices
- Organizations that act as **“STEPPING STONES”** for competitors



# Communication Strategies

## Which statement best describes your employee communication strategy?

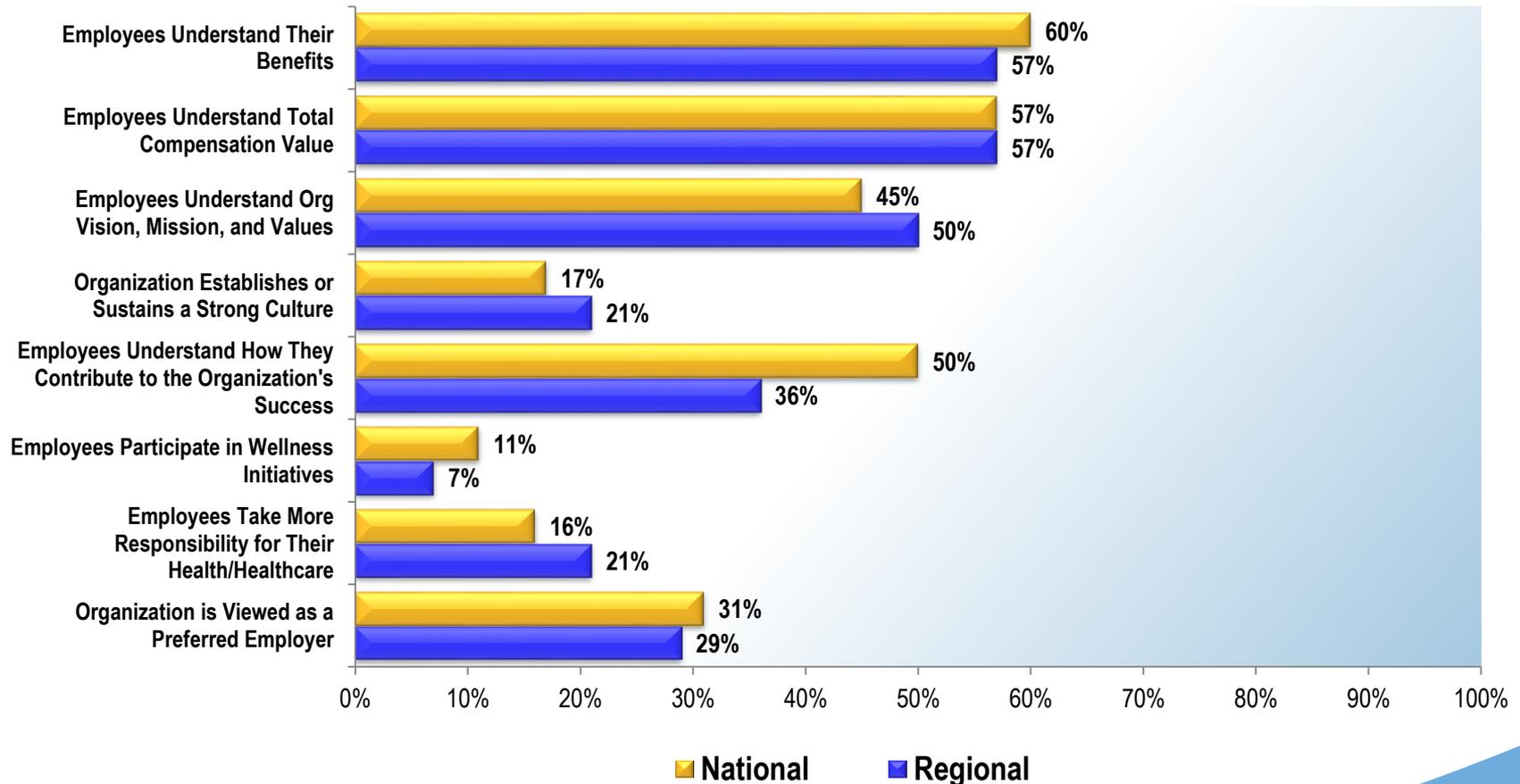


Data Source: Gallagher 2018 Benefits Strategy and Benchmarking Survey – Healthcare Industry



# Communication Outcomes

## What communication outcomes are most important for your organization?



Data Source: Gallagher 2018 Benefits Strategy and Benchmarking Survey – Healthcare Industry



## Best Practice Communication

### Begins with a comprehensive compensation philosophy

- Board/CEO to communicate effectively to and through leadership

### Leaders should be able to address questions or concerns regarding the staff philosophy

- Consistent understanding of philosophy requires repeated, consistent training and language over time

### Leverage directors and managers for communicating

- They must believe their pay is also fair and equitable
- Ensure their understanding and buy-in of the programs with the ability to communicate around it
- Utilize them as a focus group to refine any messaging that needs to be delivered
- Ensure they are well-prepared to answer employee questions

Communicate the  
philosophy  
regularly

# Communication Strategies – Executive Tally Sheets



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Aside from empowering your leaders to discuss your compensation program, there are real processes you can implement to enhance your program

Preview of 2018 Form 990, Current 2018, and Proposed 2019 Total Compensation Data				
Prepared for Mr. Smith, CEO				
	Current 2018 Total Compensation	Proposed 2019 Total Compensation	Proposed Target Total Compensation	Proposed Maximum Total Compensation
Percentile Positioning	P16	P16	P18	P20
<b>Salary</b>	\$850,000	\$900,000	\$900,000	\$900,000
<b>Annual Incentive Award<sup>(1)</sup></b>	\$115,000	\$125,000	\$540,000	\$810,000
Other Cash Awards	\$0	\$0	\$0	\$0
<b>Benefits Total</b>	\$125,905	\$125,649	\$121,589	\$128,984
<i>Retirement Benefits Total, includes:</i>	\$54,300	\$49,300	\$49,300	\$49,300
<i>Supplemental Executive Retirement Plan<sup>(2)</sup></i>	\$28,000	\$23,000	\$23,000	\$23,000
<i>Health and Welfare Benefits Total</i>	\$71,605	\$76,349	\$72,289	\$79,684
<b>Total Compensation, Excluding Perquisites &amp; PTO</b>	\$1,090,905	\$1,150,649	\$1,561,589	\$1,838,984
Compensation Philosophy				
Philosophy: Total compensation will be positioned at PXX for on-plan performance and will exceed PXX for exceptional performance.				
Benefit Expenditure Details				
<b>Retirement Benefits Total, includes :</b>	\$54,300	\$49,300	\$49,300	\$49,300
Supplemental Executive Retirement Plan <sup>(2)</sup>	\$28,000	\$23,000	\$23,000	\$23,000
403(b) Employer Match <sup>(3)</sup>	\$5,600	\$5,600	\$5,600	\$5,600
Qualified Defined Contribution Plan <sup>(4)</sup>	\$20,700	\$20,700	\$20,700	\$20,700
<b>Health and Welfare Benefits Total, includes :</b>	\$71,605	\$76,349	\$72,289	\$79,684
Medical and Dental Insurance <sup>(5)</sup>	\$18,264	\$18,264	\$18,264	\$18,264
Group Disability <sup>(6)</sup>	\$1,054	\$1,054	\$1,054	\$1,054
Group Term Life and AD&D <sup>(7)</sup>	\$1,968	\$1,968	\$1,968	\$1,968
Medicare and Social Security <sup>(8)</sup>	\$50,319	\$55,063	\$51,003	\$58,398
<b>Benefits Total</b>	\$125,905	\$125,649	\$121,589	\$128,984

# Communication Strategies – Total Reward Statement

Aside from empowering your leaders to discuss your compensation program, there are real processes you can implement to enhance your program

**DEAR EMPLOYEE,**

We often think about pay as being the only form of compensation we receive for our hard work. But, at ABC Company, there are many other investments the organization makes that extend beyond your pay to show our commitment to you and your family.

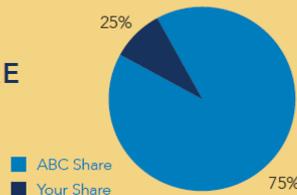
This is your annual personal [YEAR] Total Rewards statement, which outlines ABC Company's total investment in you, including your benefits, retirement and additional programs.

There are many benefits not listed in this statement that make up your Total Rewards. Visit Inflow for more information about your complete Total Rewards package.

## YOUR TOTAL REWARDS

	Your Share	ABC Share
Compensation	\$0	\$0
Health Care	\$0	\$0
Retirement	\$0	\$0
Additional Benefits	\$0	\$0

**TOTAL ABC SHARE  
\$0**



## ABC Company Total Reward Statement



## COMPENSATION

Earnings <small>(Includes overtime, premium pay, on-call and pay differentials)</small>	\$0	Paid time off balance <small>(As of Dec. 31, [YEAR])</small>	\$0
Paid time off taken <small>(Includes vacation, sick leave, personal leave, holidays, bereavement, military leave, jury/witness duty, administrative leave)</small>	\$0		
Sick leave cash-out	\$0		

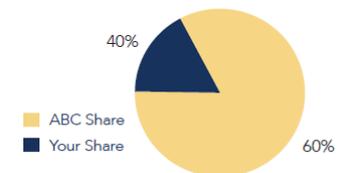
**TOTAL  
\$0**  
(does not include paid time off balance)

## HEALTH CARE

BENEFITS	Your Share	ABC Share
Medical	\$0	\$0
Dental	\$0	\$0
Vision	\$0	\$0

	Your Share	ABC Share
Flexible spending		
Health care	\$0	\$0
Dependent care	\$0	\$0
Wellness incentive <small>(Premium discount)</small>	\$0	\$0
Disability		
Long-term	\$0	\$0
Short-term	\$0	\$0
Life & AD&D insurance <small>(Employee buy-up, spouse and child)</small>	\$0	\$0
Medicare	\$0	\$0

**TOTAL  
\$0**





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# Compensation Trends

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# Tax Cuts and Jobs Act

## Tax Cuts and Jobs Act passed December 2017 now has additional guidance published on December 31, 2018

- Excise Tax on Compensation - 21% Tax paid by the employer on remuneration in excess of \$1 million paid to a covered employee

The 21% excise tax is equal to the corporate tax rate for for-profit organizations and is subject to change should the corporate tax rate increase or decrease

### Who is a Covered Employee?

- Five highest paid employees, or any employee who has ever been a covered employee of the employer
- Employees earning less than \$1M can be covered employees and that status remains
- Compensation includes that paid by a related organization
- Multiple entities within a system may each owe a portion of the excise tax

\$1 million threshold is not currently adjusted for inflation

Related organization is an organization that controls or is controlled by the employer, is controlled by the same group that controls the employer, or is a supported or supporting organization of the employer



# Tax Cuts and Jobs Act

## Tax Cuts and Jobs Act passed December 2017 additional guidance

### What is included in **Remuneration**?

- Excludes compensation related to medical services
- Excludes amounts exempted from wages (e.g., qualified plan benefits, tax sheltered annuities)
- Includes other compensation as it vests (e.g., 457(f) plans with deferred vesting dates)
- Excludes Roth contributions

Medical services compensation is compensation that is paid to a licensed professional for the performance of medical services



# Tax Cuts and Jobs Act

## Excise Tax – Parachute Payments

- 21% Tax on any excess parachute payment to a covered employee
  - An excess parachute payment arises if severance compensation will exceed three times the base amount
    - ≈ Base amount is the average annualized compensation over the five most recent taxable years ending before separation from service
    - ≈ The excess payment, if triggered, is anything over one times the base amount
  - Applies only to covered employees who are highly compensated (\$125,000 in 2019)

**Excise tax related to compensation or excess parachute payments is reported on Form 4720 which is a public document but not published**



# Executive Competitive Market

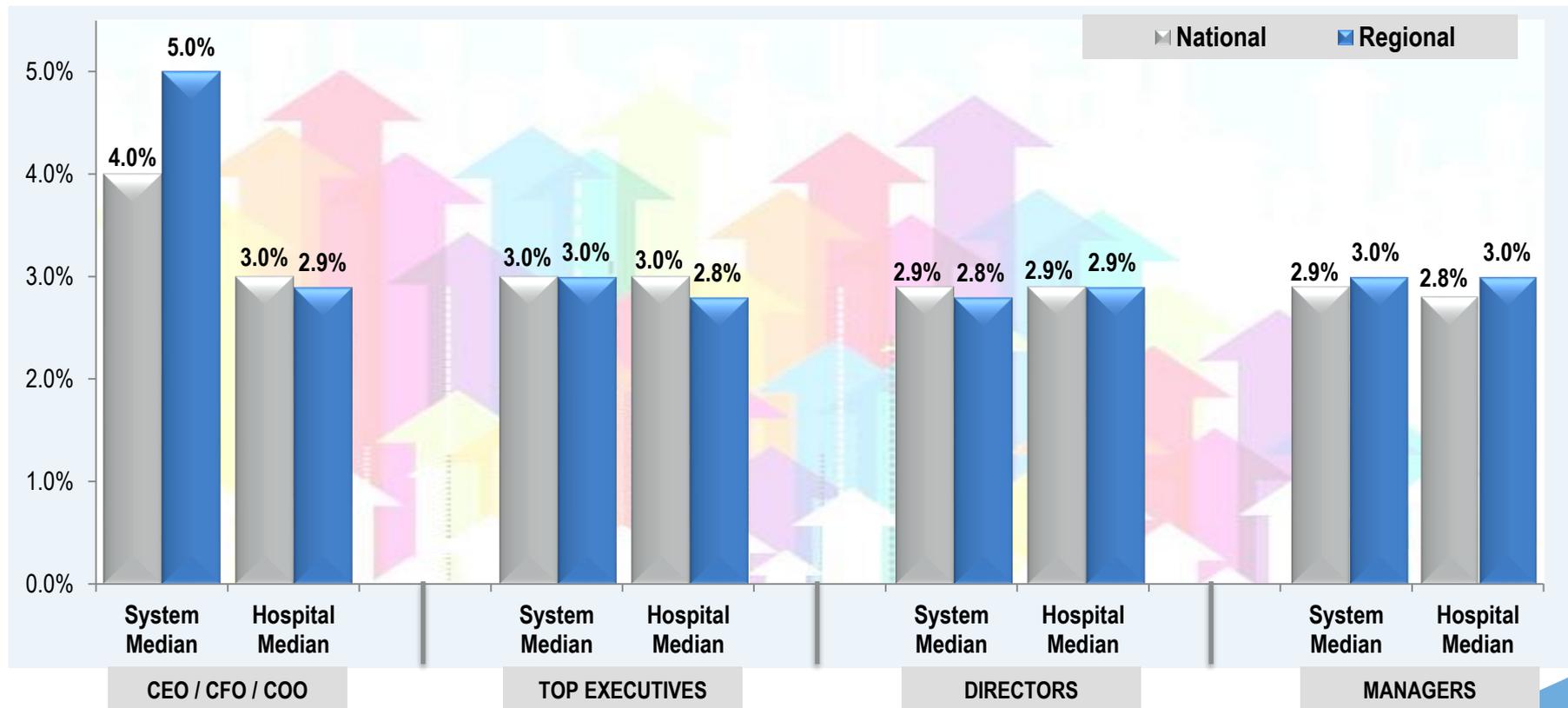
## Market Is Highly Competitive

- Recruitment of highly qualified executives to successfully grow and manage more complex organizations
- Recruitment of executives with more diverse experience and talents
- Recruiting from general industry and the challenges of for-profit compensation structures
- Retention of talent in a highly mobile environment
- Evolution of new roles and how to appropriately compensate them
- Aging senior leadership and the need for succession planning



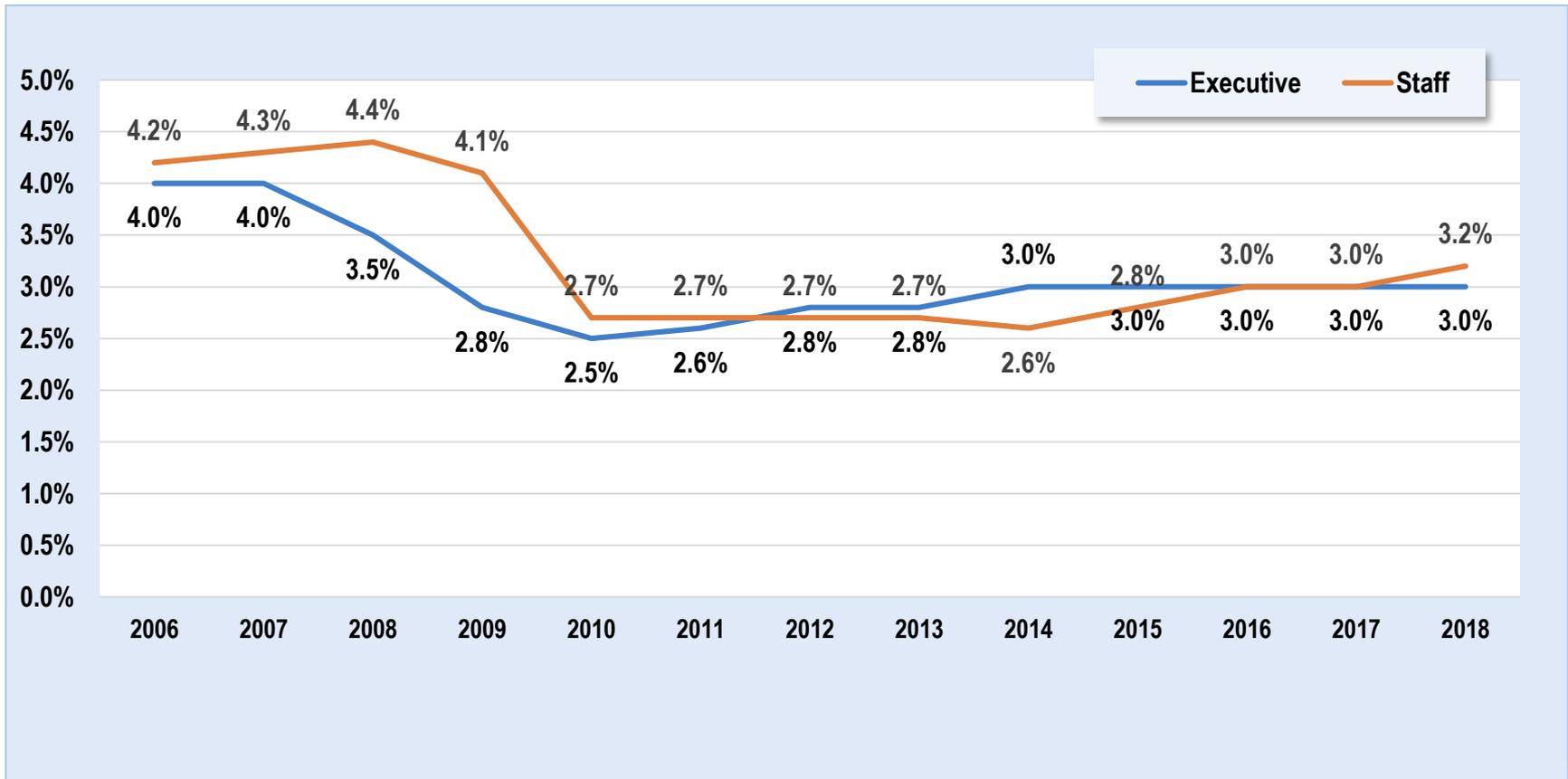
# Executive Salary Change

## 2017 TO 2018 MARKET MOVEMENT BY LEADERSHIP LEVEL



\* States included in the regional sample – NC, SC, VA, KY, WV, TN, GA

# Compensation Average Total Salary Increases from 2006 to 2018



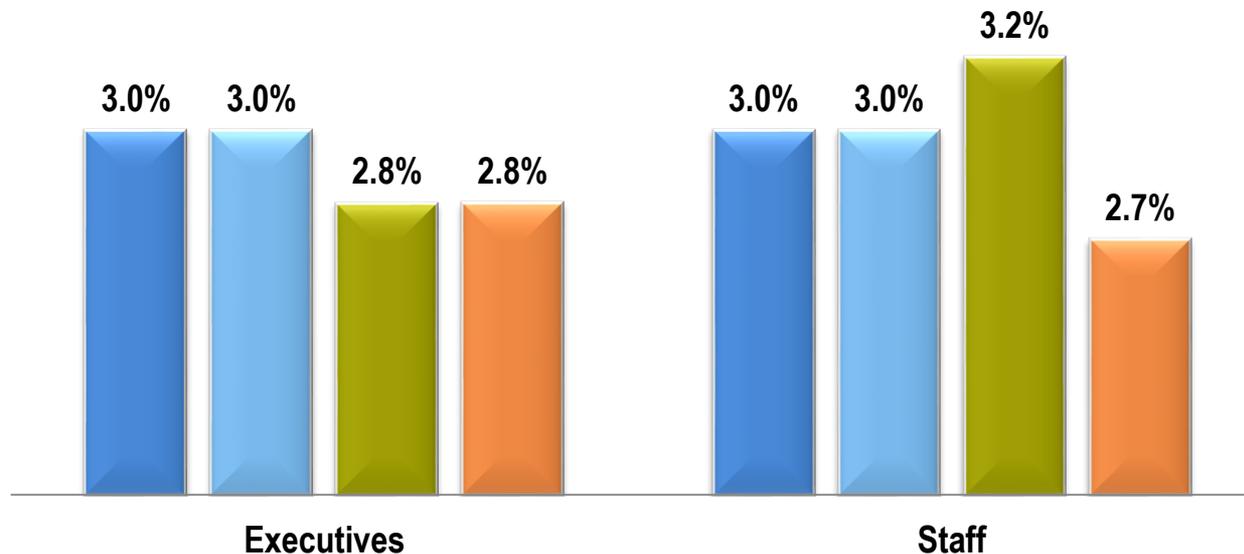
Integrated Healthcare Strategies National Healthcare Leadership and Staff Compensation Surveys



# Budgeted Salary Increases

## Projected 2019 Median Salary Increases in Hospitals and Health Systems\*

■ Ntl P50   ■ Reg P50   ■ Ntl Avg   ■ Reg Avg



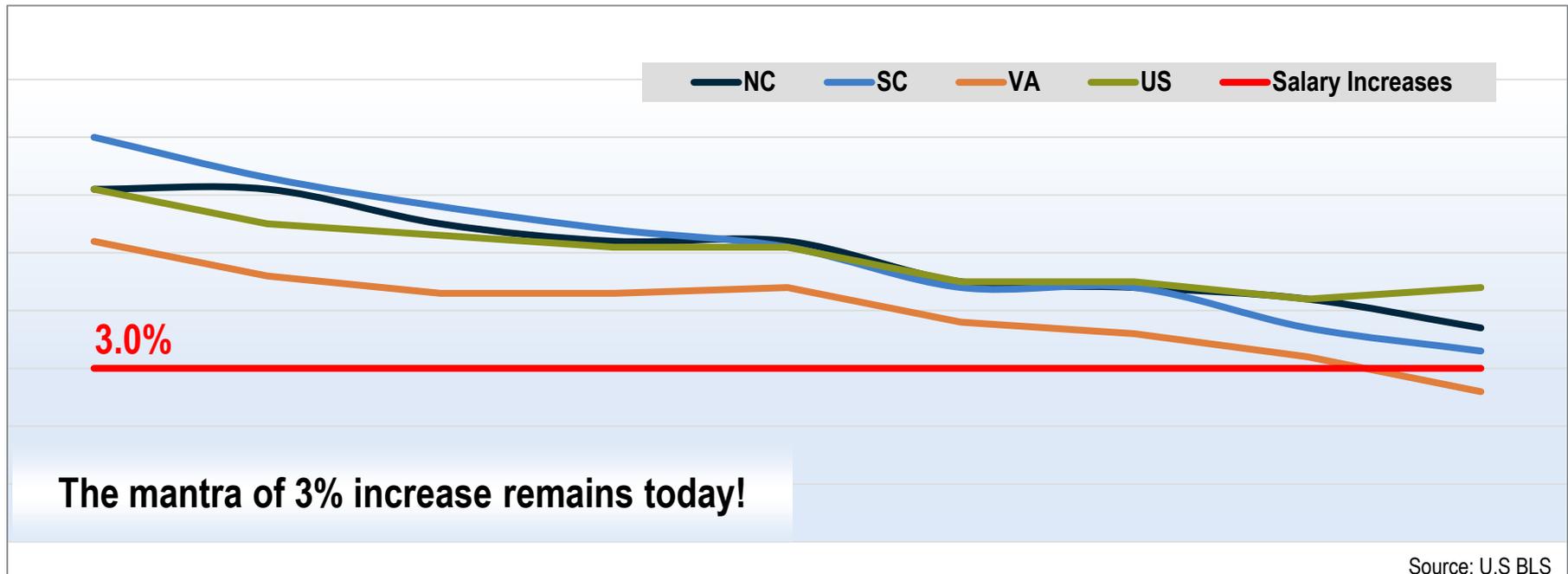
From Integrated Healthcare Strategies' 2018 National Healthcare Leadership and Staff Compensation Surveys of over 2,100 health care organizations

\* States included in the regional sample – NC, SC, VA, KY, WV, TN, GA



# Unemployment and Wage Growth

## UNEMPLOYMENT TREND PAST 4 YEARS



### DISAPPOINTING WAGE GROWTH. WHY?

Employers offering **more benefits** – or **non-wage** compensation.

**Doubling** of variable pay **opportunities**.

**Lingering scars** from the recession – workers are not yet “restless” enough to drive change.



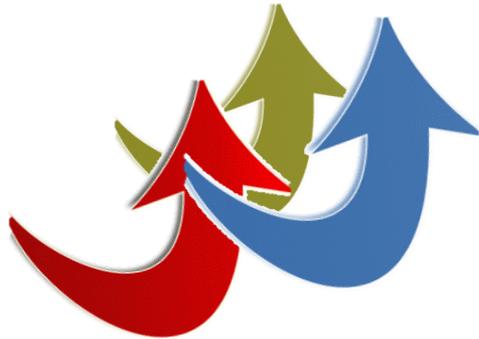
# Rising Minimum Wage

## PUSH TO \$15.00 ACROSS THE UNITED STATES – STATUS UPDATE

Markets	2018	2019	2020	Beyond
<b>CALIFORNIA</b>	\$11.00	\$12.00	\$13.00	\$14.00 - 1/1/21 \$15.00 - 1/1/22
<b>D.C.</b>	\$13.25	\$14.00	\$15.00	More to follow
<b>NEW YORK</b>	\$11.10	\$11.80	\$12.50	Rates vary based on employer size and city; adjusted annually for inflation until it hits \$15.00
<b>CHICAGO</b>	\$12.00	\$13.00	\$13.00	Adjusted annually by CPI
<b>MASSACHUSETTS</b>	\$11.00	\$12.00	\$12.75	Increases \$0.75/year until it reaches \$15.00 by January 1, 2023
<b>ATRIUM HEALTH</b>	\$12.50	\$12.50	\$12.50	Moved to minimum of \$12.50 with additional wage and salary investments totaling over \$125M last year



# Rising Minimum Wage Impact



## INCREASED COST OF LABOR

Expanded investments to **automate low wage** occupations

## EFFECTS ON UNEMPLOYMENT RATE – COMPLETELY MIXED RESULTS

**No effect:** Illinois Economic Policy Institute

Seattle – **Raised minimum wage**, employers **reduced hours** which had a **net effect** of a wage reduction  
Congressional Budget Office **projects job loss** if increase Federal minimum wage



## EXPANDS POTENTIAL LABOR POOL

Vast majority of low wage workers work within **5 mile radius** of homes

Employees who would not have considered a job at lower rates

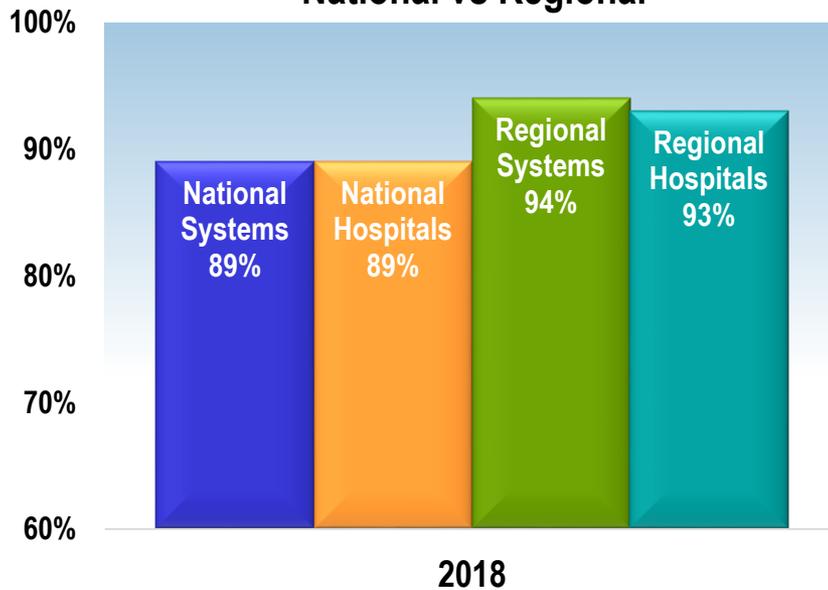
**may consider** the job at \$10.00 and **considerably more** at \$12.50 or above



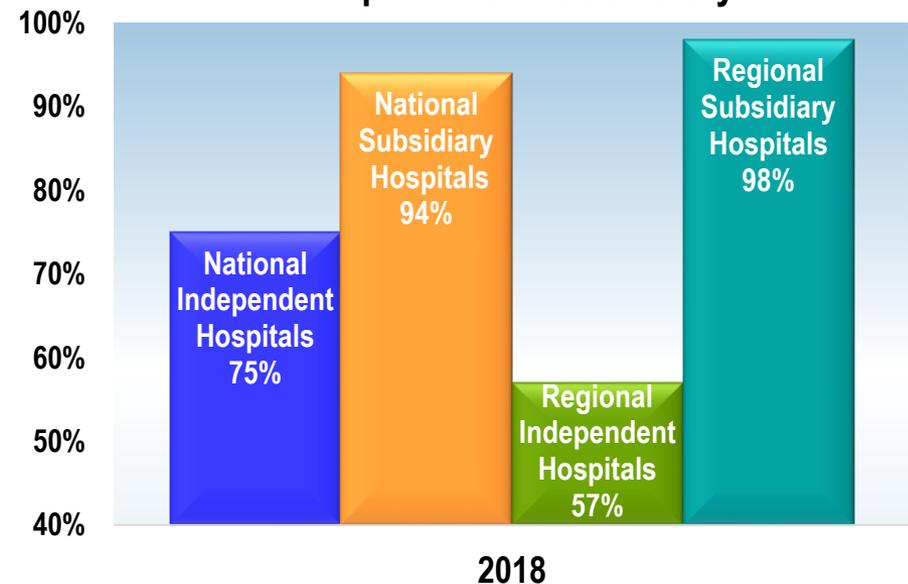


# Pay for Performance Prevalence

### Short-term Incentive Plan Prevalence National vs Regional



### Short-term Incentive Plan Prevalence Independent vs Subsidiary



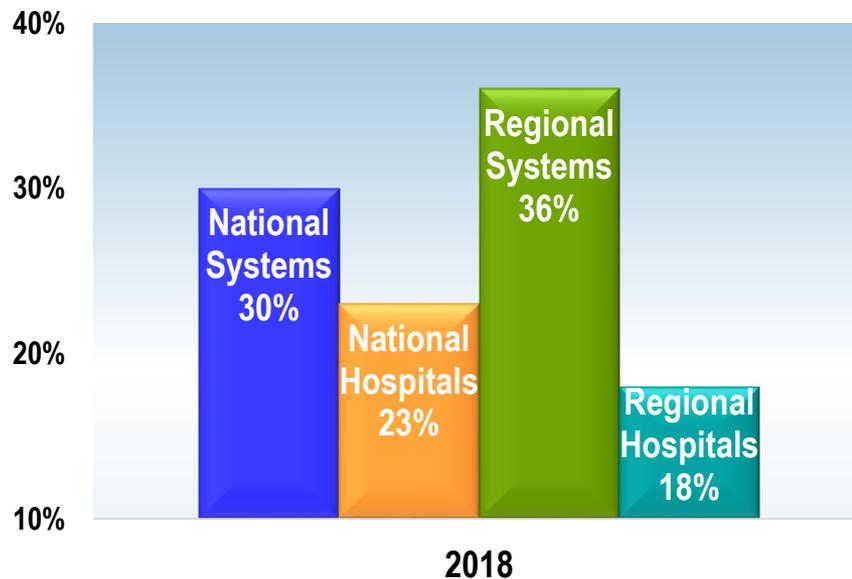
**The majority of hospitals and health systems have an annual incentive plan for executives**

- Among largest integrated and academic systems, prevalence is nearly universal
- Many organizations also extend annual incentives to Director and/or Manager positions

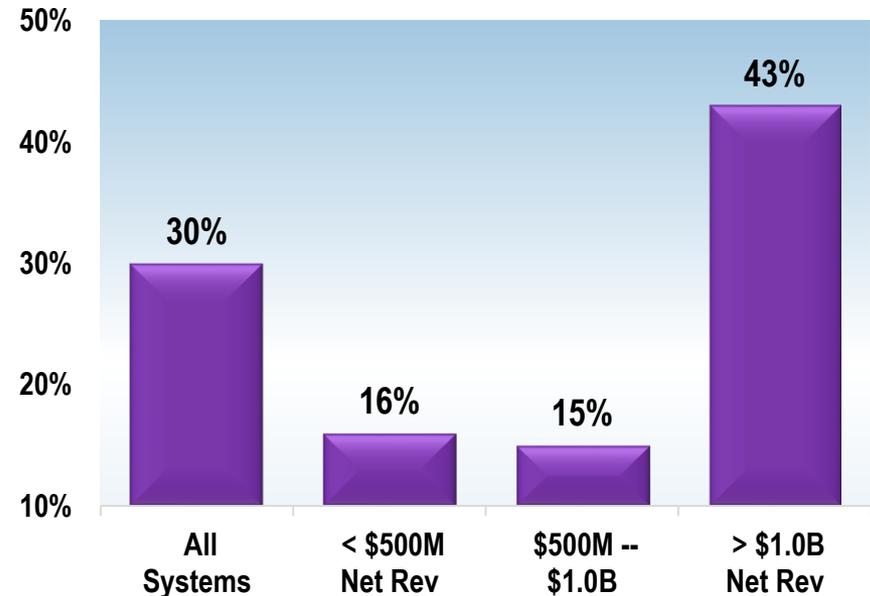


# Pay for Performance Prevalence

### Long-term Incentive Plan Prevalence All Organizations



### Long-term Incentive Plan Prevalence Organization Size



**Long-term incentive plans are far more prevalent at large integrated systems**



# Executive Incentive Plans Performance Measures

## Leadership performance measures used for incentive plans continue to evolve

Moving from process-based to outcome-based goals for clinical quality

Continued expansion of the use of external benchmark data  
(e.g. rewarding performance compared to peers)

Using HCAHPS as measure of patient experience

Employee engagement important as health systems in acquisition mode reorganize and centralize

Aligning short-term plans with long-term strategy achievement

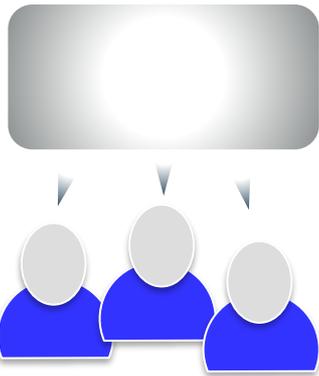
## SETTING GOALS AROUND

Value-based Purchasing  
Community Health  
Population Health Management  
Building Accountable Care Organizations  
Transformation/Integration



# Executive Incentive Plan Administration

## STATUS OF EXECUTIVE INCENTIVE PLANS



Generally **high level of satisfaction** expressed by both participants and governing Boards and they feel that plans are working as intended

What portion of incremental surplus should be paid as bonuses?

**Lower margins** across the industry are affecting awards

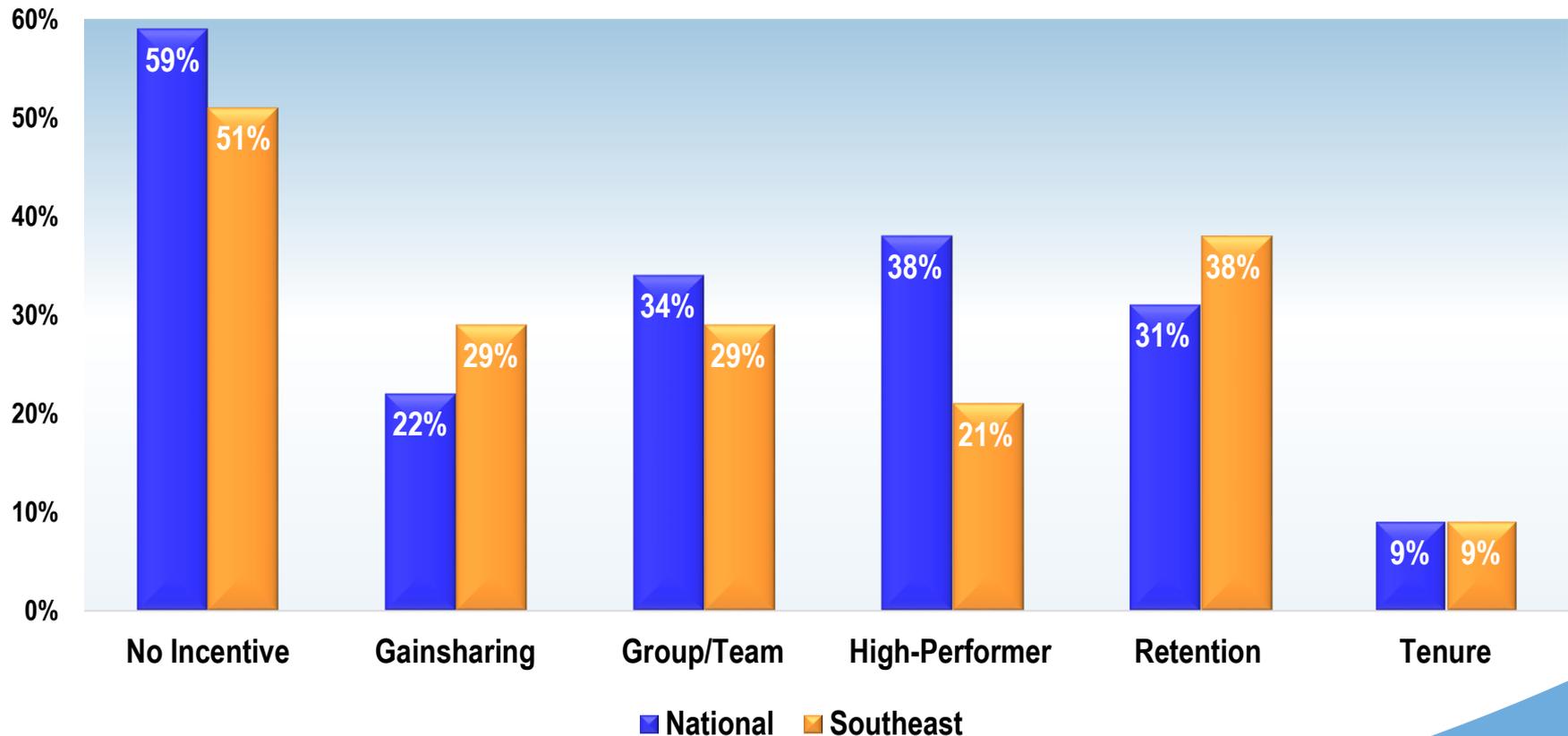
*When margins are low, boards get concerned about portion of surplus allocated to incentive awards*

Debate over whether to **pay awards for non-financial success** when financial hurdles, triggers or “circuit breakers” aren’t met



# Staff Incentive Pay Programs

## Incentive Plan Prevalence



Integrated Healthcare Strategies National Healthcare Staff Compensation Surveys



# Staff Incentive Pay Programs

## Everyone wants Pay for Performance

- In a recent review of a major health system, over 80% of leaders and employees responded “YES” when asked if they were interested in Pay for Performance, why?

## Performance-based programs

- Outcome driven results are murky
- Part of an overall performance-driven culture
- People can influence the metrics
- No one “best” program, often use a layered approach
- Effective programs take time and constant nurturing to develop

## Key Issues in most Pay for Performance Programs

- Format
- Span of Control issues
- Rater bias & lack of education
- Moving to a Common Review Date
- Distribution and Lack of Resources

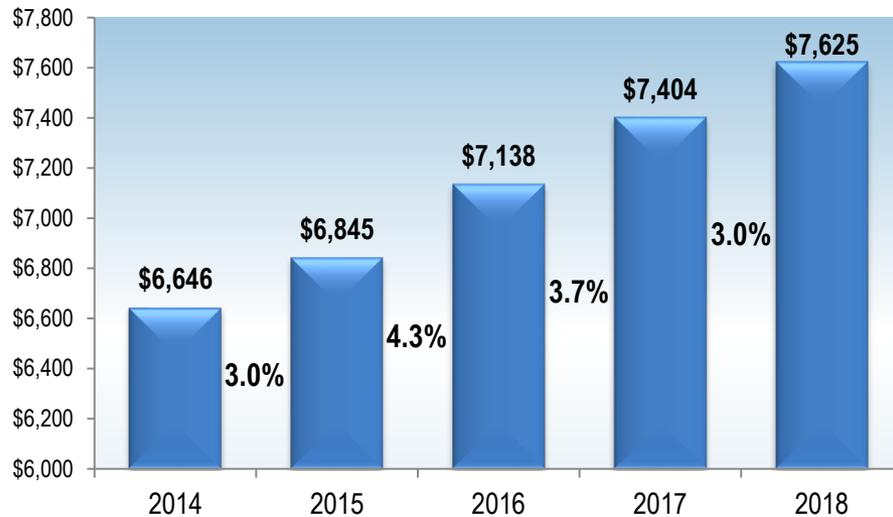




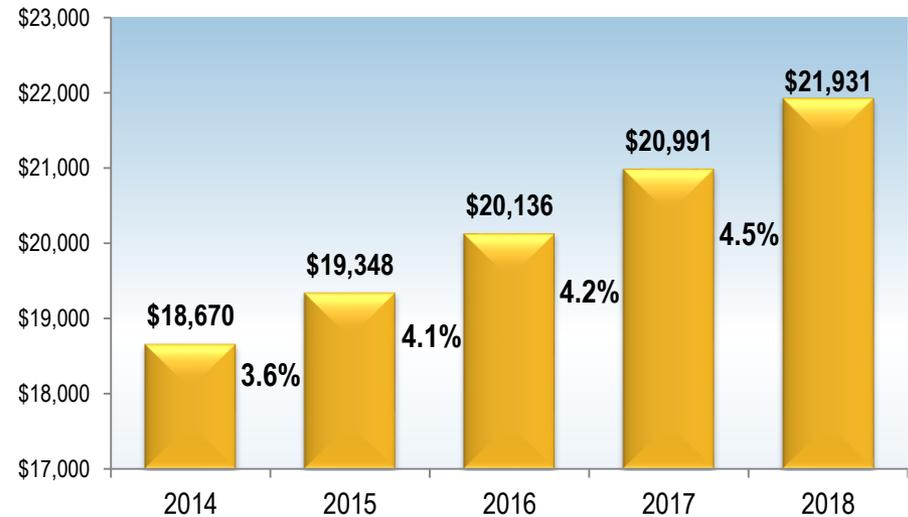
# Medical Premium Increase

## Median total medical premium spend at healthcare organizations nationally

### EMPLOYEE ONLY COVERAGE



### FAMILY COVERAGE



Integrated Healthcare Strategies National Healthcare Leadership and Staff Compensation Surveys



# Retirement Benefits

## 457(B) PLANS AUDITS ARE INCREASING WITH THE FOLLOWING ISSUES SURFACING

- Non-governmental organizations using the age 50 catch up provisions that are only available to governmental plan sponsors
- Vesting provisions on contributions that exceed the allowed annual deferral
- Requests for the DOL top-hat letter filing

**Voluntary correction procedures have not been issued by the IRS**

## SUPPLEMENTAL EXECUTIVE RETIREMENT PLANS (SERPS) STILL THE NORM WITH REDESIGN CONTINUING

- Impact of 457(f) proposed regulations
- Balancing the deferral length
- Defined benefit approach continues to decline

### **New Life Insurance Funding Alternatives Emerge**

- Current interest rate environment making split dollar an attractive option
- Leverage a tax-free benefit
- Benefit reporting avoids the excise tax but appears as a loan



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# Best Practices in a Regulatory Environment

Integrated Healthcare Strategies



# Pay Equity Best Practices

**1**

## **REVIEW PAY COMPENSATION PRACTICES AND POLICIES**

Ensure current strategy of total rewards connects with the diversity and inclusion goals

**2**

## **COMMUNICATE WITH ALL EMPLOYEES**

Messaging should be consistent and aligned with overall strategy

**3**

## **CONDUCT INTERNAL EQUITY REVIEW**

Comparable jobs – NOT JUST JOB TITLES

**4**

## **CONDUCT EXTERNAL BENCHMARK ANALYSIS**

Review of peer groups, does the data reflect comprehensive labor market.

**5**

## **ESTABLISH PROCEDURES TO ADDRESS ANY PAY DISPARITY**

Response to concerns – do not ignore



# IRS Exempt Organization Checklist

## THE IRS ASKS THE FOLLOWING QUESTIONS IN ITS AUDITS AND STUDIES





## Taxpayer Bill of Rights 2 and Section 4958

### Taxpayer Bill of Rights 2 (TBOR 2) substantially increased the power of the IRS to penalize executives and Board members

- Prior to TBOR 2, the penalty available to the IRS was revocation of the organization's tax exempt status
- With the passage of TBOR 2, the IRS can impose civil fines on persons receiving excessive compensation and on decision makers who approve arrangements providing excess compensation
  - An excise tax equal to 25 percent of the excess benefit is imposed on each excess benefit transaction between the tax exempt organization and a disqualified person
    - ≈ Non-correction results in an additional excise tax equal to 200 percent of the excess benefit
  - An excise tax equal to 10 percent of the excess benefit may be imposed on those approving the excess benefit transaction (maximum of \$20,000)

#### **EXCESS BENEFIT**

**Unreasonable Compensation**  
**Revenue-based Compensation**  
**Bargain Sales**  
**Unreported Compensation**



## Taxpayer Bill of Rights 2 and Section 4958

### The intent of the law is three-fold:

- To get boards to exercise diligence in governing executive compensation to prevent misuse of charitable assets for private benefit
- To require any recipient of an excess benefit to repay the charitable organization
- To get tax-exempt organizations to disclose the full value of executive compensation accurately and completely on IRS forms 990 and W-2

**Not-for-profit organizations can create a “rebuttable presumption of reasonableness” and shift the burden of proof of unreasonable compensation to the IRS by following several guidelines**



# Rebuttable Presumption of Reasonableness

**Step One: Compensation arrangements for any “disqualified individual” should be approved in advance by a Board or Committee made up entirely of independent directors**

## Disqualified Individuals include

CEO, CFO, and the COO of each separately incorporated tax-exempt organization

Other persons with substantial influence over the affairs of the organization as a whole

Anyone who has or shares authority to control or determine a substantial portion of the organization’s capital expenditures, operating budget, or compensation for employees

Anyone who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income or expenses of the organization





# Rebuttable Presumption of Reasonableness



## Step Two: Committee must obtain and rely upon appropriate comparability data in making its decisions

- Data should be collected by reputable consulting firm
- Committee should have direct access to the consultant
- Committee should supervise/direct the work of the consultant
- Data should represent like jobs and like organizations
- Data must represent total compensation (salary + incentives + benefits + perquisites)
- Committee should meet in executive session for debate, deliberation, and vote

The report should identify organizations from which the data is drawn with enough detail to allow the Committee to judge whether the peer group is truly comparable



# Rebuttable Presumption of Reasonableness

## **Step Three: Decisions, rationale, and process must be documented in contemporaneous minutes that include**

Intent to establish a rebuttable presumption of reasonableness

People present during debate, deliberation, and vote and should explicitly indicate:

- Lack of conflict of interest for all present

- Executives left room prior to debate on their own compensation

Minutes must document source of comparability data:

- How it was collected and obtained

- State that data represents total compensation for like jobs in like organizations

Minutes should indicate the following:

- Directors relied on comparability data in making decisions

- Rationale for approval of any compensation above competitive norms

- Total compensation was considered in making compensation related decisions

- Directors' determination that approved pay represents fair market value for service rendered



**The process used to review executive compensation will aid in establishing a rebuttable presumption of reasonableness, but only if all compensation decisions are carefully documented**



# Staff Compensation Regulations

Staff compensation is governed by anti-trust laws enforced by entities such as the Federal Trade Commission, Department of Justice, and Attorneys General

**PROHIBIT** organizations from directly sharing compensation information with one another (price-fixing)

*Illegal for HR or any leader to discuss or otherwise share pay strategies / levels with anyone at competitor organizations (cannot circumvent by using staff as intermediaries)*

**REQUIRE** that survey information be collected by third parties

**REQUIRE** that survey data be “blinded” so that pay from individual organizations cannot be identified

**REQUIRE** that data be in the aggregate for a minimum of five organizations in order to be reported; preferably 10 or more

*No single organization can represent 25% or more of any reported data*

**REQUIRE** that data be historical: a minimum of 90 days old; preferably 180 days or more

*Using anecdotal information is neither a sound nor safe strategy for administering a defensible compensation program*



# Antitrust Red Flags

## ANTITRUST RED FLAGS FOR EMPLOYMENT PRACTICES

Agreements and information exchanges among employers that compete to hire or retain employees may be illegal. If you are a **manager or human resource (HR) professional**, antitrust concerns may arise if you or your colleagues:

-  Agree with another company about employee salary or other terms of compensation, either at a specific level or within a range
-  Agree with another company to refuse to solicit or hire that other company's employees
-  Agree with another company about employee benefits
-  Agree with another company on other terms of employment
-  Express to competitors that you should not compete too aggressively for employees
-  Exchange company-specific information about employee compensation or terms of employment with another company
-  Participate in a meeting, such as a trade association meeting, where the above topics are discussed
-  Discuss the above topics with colleagues at other companies, including during social events or in other non-professional settings
-  Receive documents that contain another company's internal data about employee compensation



# Penalties and Compliance

## The following are the penalties that can be assessed to organizations and individuals if found guilty of violations of antitrust laws:

- Organizations
  - Maximum penalty of \$100 million per organization
  - The maximum penalty can be increased to twice the amount the organization gained from illegal acts or twice the money lost by the victims of the crime, if either amount is over \$100 million
- Individuals
  - \$1 million
  - Up to 10 years in prison

**The introduction of Pay Equity, Pay Transparency, and Living / Socially Just Wage mechanisms are mostly derivatives of good governance protocols being introduced to better empower employees**

**Parties affected by violations of antitrust legislation have four years after the violations occur to bring cases to light**

**Similar to the “safe harbor” provision for highly compensated executives, each organization can protect themselves against litigation for wage fixing and no poaching by complying with the Antitrust Safety Zone practices**



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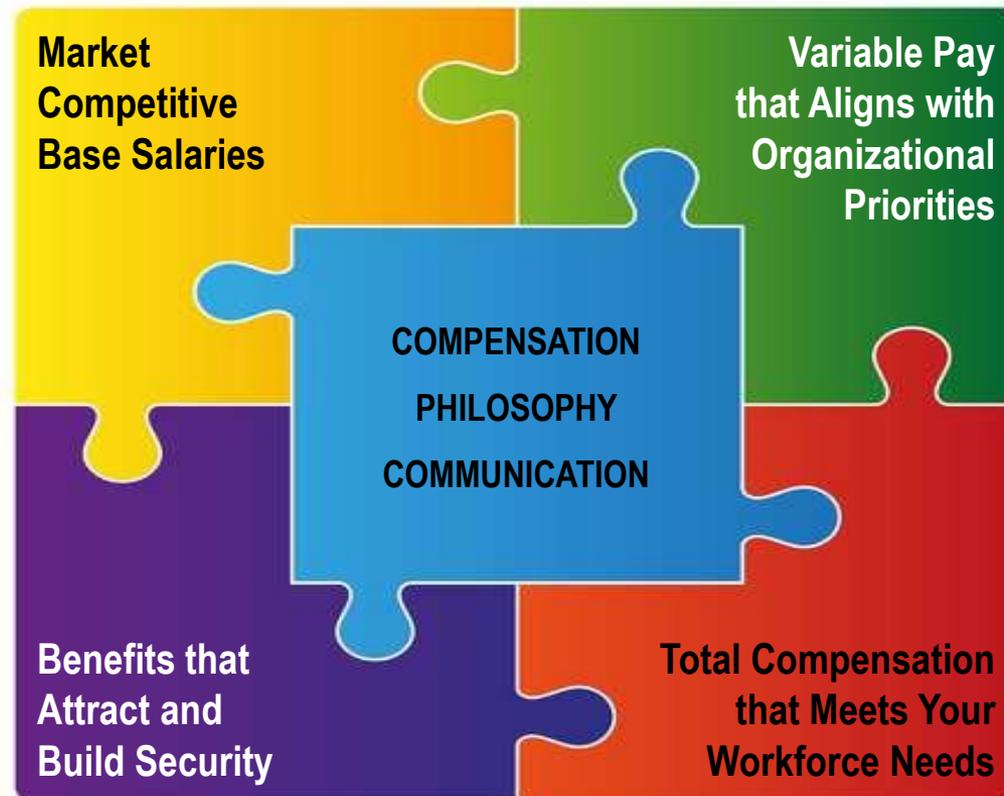
# Practical Applications

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# Your Compensation Brand

**THE STRENGTH OF YOUR PROGRAM IS  
GREATER THAN THE SUM OF THE PARTS**





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# Presenters

Integrated Healthcare Strategies



## Linette Allison



### Linette Allison

Managing Director  
Operations Leader

Linette Allison is a Managing Director & Operations Leader for the Total Compensation and Rewards practice at Integrated Healthcare Strategies, a division of Gallagher Benefit Services, Inc. She plays a key role in daily management and development of the practice in addition to providing consulting services to a broad array of clients.

For more than 24 years, Ms. Allison has advised healthcare organizations of all sizes on all aspects of executive compensation and benefits, including helping them comply with regulatory requirements and governance best practices. Areas of expertise include total compensation analyses, retention program development, executive and physician benefit plan design, supplemental executive retirement plan design; severance plan development, employment contract review, and formal reasonableness opinion development.

In addition to her consulting role, Ms Allison is responsible for compensation surveys, consultant education and training, technology interface, database quality and programming, project management, and practice administration. Ms. Allison's focus is the provision of consistent, high-quality, and responsive consulting services.

Ms. Allison graduated summa cum laude from Winona State University, receiving a bachelor of science degree with an emphasis in both finance and marketing. Ms. Allison is a current member of the Enrollment and Capacity Management Advisory Committee for School District 279. She also held the position of President of Sandstone Investment, a financial investment partnership, for three years.

### Professional Highlights

- Lead consultant for specialized healthcare executive and physician compensation surveys
- Develops and maintains healthcare industry benefit competitive norms
- Specializes in physician and executive benefit plan structure and development
- Highly experienced in executive compensation analysis, physician benefit analysis, and health care industry trends
- Leads the compensation survey group which publishes over 25 national and regional healthcare industry surveys annually
- Manages the maintenance of and enhancements to Integrated Healthcare Strategies' proprietary databases



## Michael Ritter



**Michael Ritter**  
Senior Consultant

Michael Ritter is a Senior Consultant with the Total Compensation and Rewards service line of Integrated Healthcare Strategies, a part of the Gallagher Human Resources & Compensation Consulting practice. Mr. Ritter consults with myriad healthcare organizations nationwide, including acute care providers (independent hospitals and health systems of all varieties), independent and subsidiary medical practices, ancillary healthcare organizations, and innovative disruptors such as marketplace exchanges and technology firms. Mr. Ritter manages customized compensation program audits and understands best practices to advise healthcare stakeholders ranging from board members to human resource leaders in competitiveness and reasonableness of employee pay.

Prior to joining Gallagher, Mr. Ritter worked for a large managed care company as a senior analyst as well as in the financial services industry as both a loan officer and outside sales representative. Mr. Ritter's unique blend of managed care and general industry experience, coupled with a formal education in healthcare management and operations, allows him to understand the dynamic relationships healthcare delivery organizations face in executing superior care while striving to improve budgetary efficiencies.

Mr. Ritter holds a Bachelor of Science degree in Business Administration from the University of Kansas and later earned a Master of Health Services Administration graduate degree from The University of Kansas Medical Center. As part of his graduate education capstone projects, Mr. Ritter competed in a national healthcare case competition to develop and implement an ACO and co-authored a community health needs assessment for a subsidiary of the region's leading healthcare system.

### Professional Highlights

- Detailed and customized Compensation Program Audits that include a full review of base wages, pay ranges, and special pay practices with financial modeling scenarios for implementation
- Accomplished in Total Compensation Reviews (cash and benefits) for director and executive leaders
- Extensive understanding of the compensation function for ancillary and specialty organizations such as home health, hospice, health insurance exchanges, and critical access hospitals
- Compensation philosophy and strategy development that adhere to industry best practices



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# Data Sources

Integrated Healthcare Strategies



## Integrated Healthcare Strategies Data

### Proprietary Total Compensation Database

- Largest data base of total compensation in the healthcare industry
- Includes data from consulting work and several national compensation and benefits surveys

