



**Written Statement on Behalf of the  
National Business Group on Health**

**U.S. Department of Labor  
2017 Advisory Council on Employee Welfare and Pension Benefit Plans**

**Reducing the Burden and Increasing the Effectiveness of  
Mandated Disclosures with Respect to  
Employment-Based Health Benefit Plans in the Private Sector**

**August 23, 2017**

The National Business Group on Health appreciates the opportunity to appear before the ERISA Advisory Council and commends the Council's efforts to reduce the burden and increase the effectiveness of mandated disclosures from employer-sponsored group health plans.

The National Business Group on Health represents 413 primarily large employers, including 73 of the Fortune 100, who voluntarily provide group health plan coverage and other health programs to over 55 million American employees, retirees, and their families. Our members employ and provide health coverage under a wide variety of arrangements, including full-time, part-time, seasonal, and temporary. They often have multiple lines of business in multiple locations and tailor employee work and benefit plans to the specific needs of each line of business. Our members' group health plans generally are self-insured or a combination of insured and self-insured plan options.

In regard to the Council's proposals, our members generally support (1) elimination of the Summary Annual Report requirement for health benefit plans not already exempt, (2) consolidation of annual notices into a single annual notice issued in a standard format, and (3) modification of the summary plan description requirements to allow a short resource reference tool to be updated annually. As our members continue to comply with the numerous disclosure requirements under ERISA, the ACA, HIPAA, and other statutes, a primary concern will be minimizing the administrative and cost burdens associated with these requirements. We believe that implementing these proposals would reduce those administrative and cost burdens, thereby allowing plan sponsors to devote more resources toward maintaining and improving health benefits for employees and their families. We also encourage the Council to consider the following recommendations, which we discuss in greater detail below:

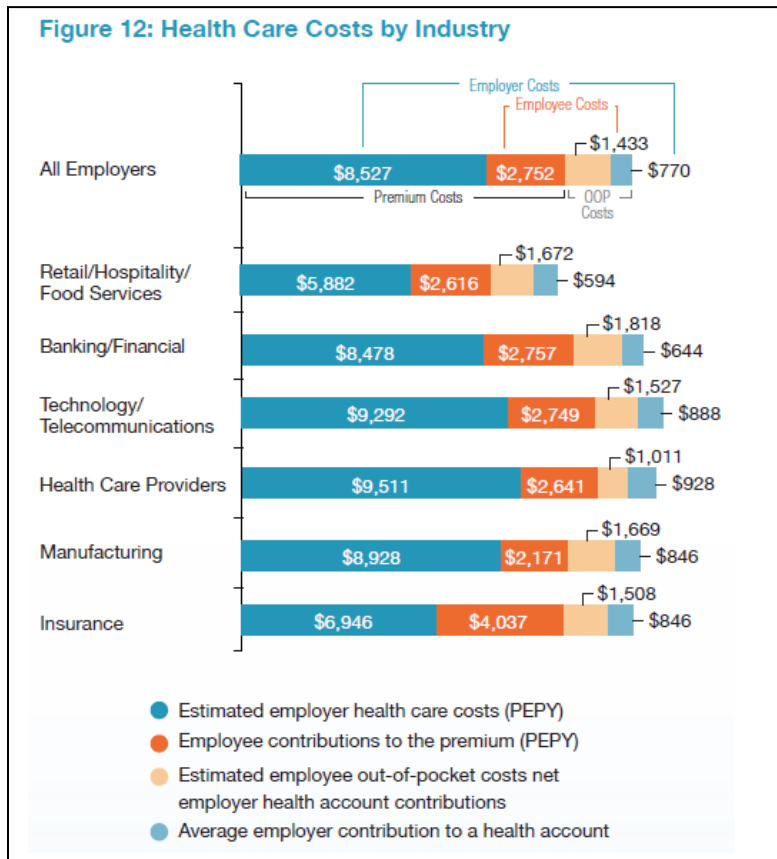
- As the cost of group health plan coverage continues to rise, plan sponsors will need and seek cost-effective ways to communicate with and engage their

employee populations with benefit programs. Regulatory guidance should take into account the need to continually update the content and format of group health plan-related communications and the limitations of mandatory disclosures such as SPDs.

- Electronic communications already are and will continue to be critical in communicating effectively with plan participants.
- A safe harbor document such as the SPD Guide should allow flexibility for plan sponsors and incorporate as many mandatory disclosures as possible.

**I. Need for Effective, Low-Cost Plan Communications**

As noted above, we support the Council’s three proposals for reducing the burden and increasing effectiveness of mandated disclosures. We also emphasize that as the health care system becomes more complex and costly for both plan sponsors and participants, there will be an even greater need to minimize compliance costs, including those related to mandatory plan disclosures. For 2017, our members estimate that health care costs on a per employee per year basis will be \$11,279, approximately \$2,752 of which will be borne by employees. In addition, median annual deductibles for 2017 will be approximately \$1,300 for employee-only coverage and \$3,000 for family coverage. Our members expect overall health care costs to increase by approximately 5% in 2018.<sup>1</sup>



<sup>1</sup> National Business Group on Health, *2018 Large Employers’ Health Care Strategy and Plan Design Survey* 7, 10 (2017).

In efforts to contain costs and increase participant engagement in health care, large employers are offering consumer-directed health plans (CDHPs) such as high-deductible health plans paired with health savings accounts. Our members estimate that by 2018, 90% of large employers will offer CDHPs, with 39% offering *only* CDHPs.<sup>2</sup> Our members are also implementing plan features designed to change how health care is delivered and paid for, such as telehealth services, on-site clinics, and accountable care organizations. These trends indicate that in the coming years, group health plan communications will need to focus on:

- Minimizing overall plan costs and
- Plan participants' need for information that will help them navigate more complex plan designs.

To navigate their group health plan coverage and the health care system, plan participants will need information, but much—if not most—of the most critical information will not come from mandated disclosures such as SPDs, SBCs, and plan documents. Our members' experience with mandated disclosures is largely consistent that of other witnesses. Specifically:

- Generally, plan participants do not read these documents and do not find them useful for planning purposes.
- When plan participants do need benefits information for planning purposes (such as during open enrollment or when the need for health care arises) the most critical information—such as cost of care, the quality of services, and whether specific providers are in-network—will not be found in mandated disclosures.
- While documents such as SPDs—which include information on participants' ERISA rights and responsibilities—may be useful in the context of a claim denial, it is not certain that a plan participant will have the relevant version of a plan document or SPD on hand. Most often, the participant will contact the plan sponsor at the time of the denial to request relevant plan documents.

Meanwhile, plan sponsors, recognizing the need for effective plan communications, have devoted substantial time and resources toward developing tools that participants will use to navigate new plan designs and a complex health care system. These tools include:

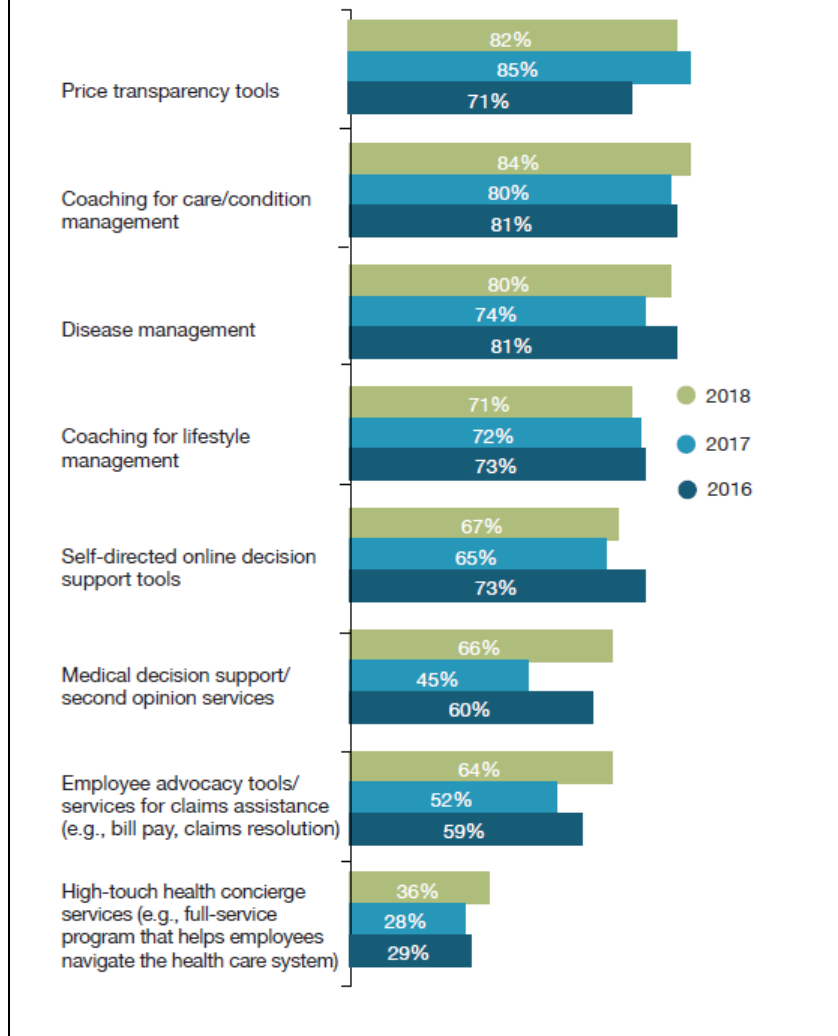
- Price transparency tools,
- Health care decision support programs,
- Advocacy tools such as claims resolution services, and
- Concierge services that help participants navigate the health care system.

These services are increasingly available through both self-insured and insured plan options.

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<sup>2</sup> *Id.* at 11.

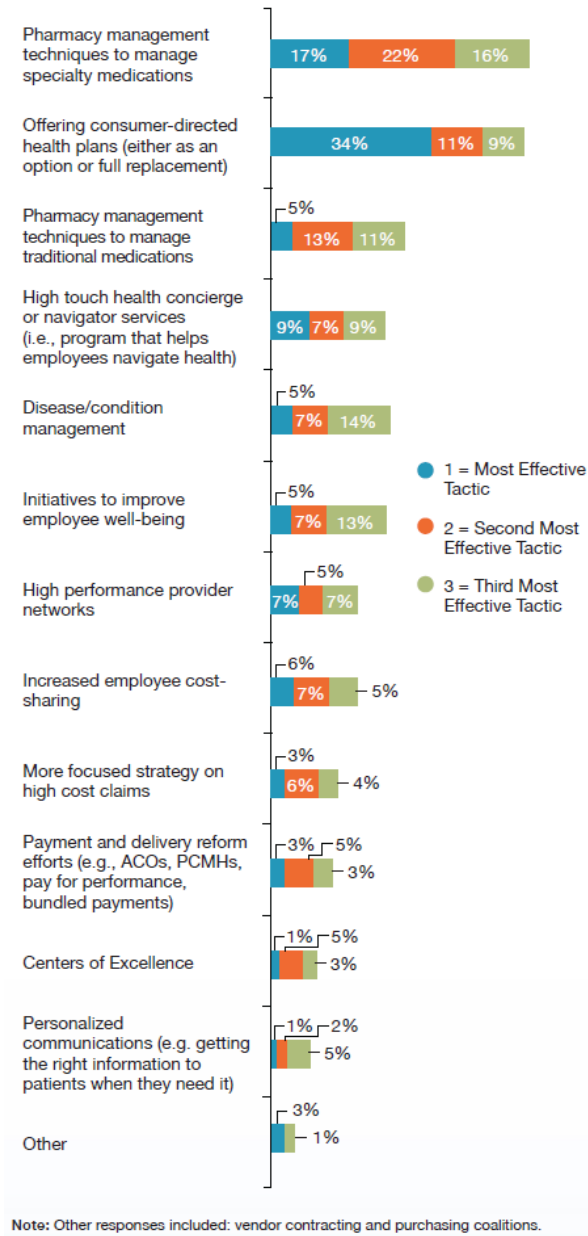
Figure 58: Employer Tools and Programs



In fact, our survey respondents view health care navigation tools as some of the most effective tools for controlling overall health care costs.<sup>3</sup>

<sup>3</sup> National Business Group on Health, *2018 Large Employers' Health Care Strategy and Plan Design Survey 9* (2017)

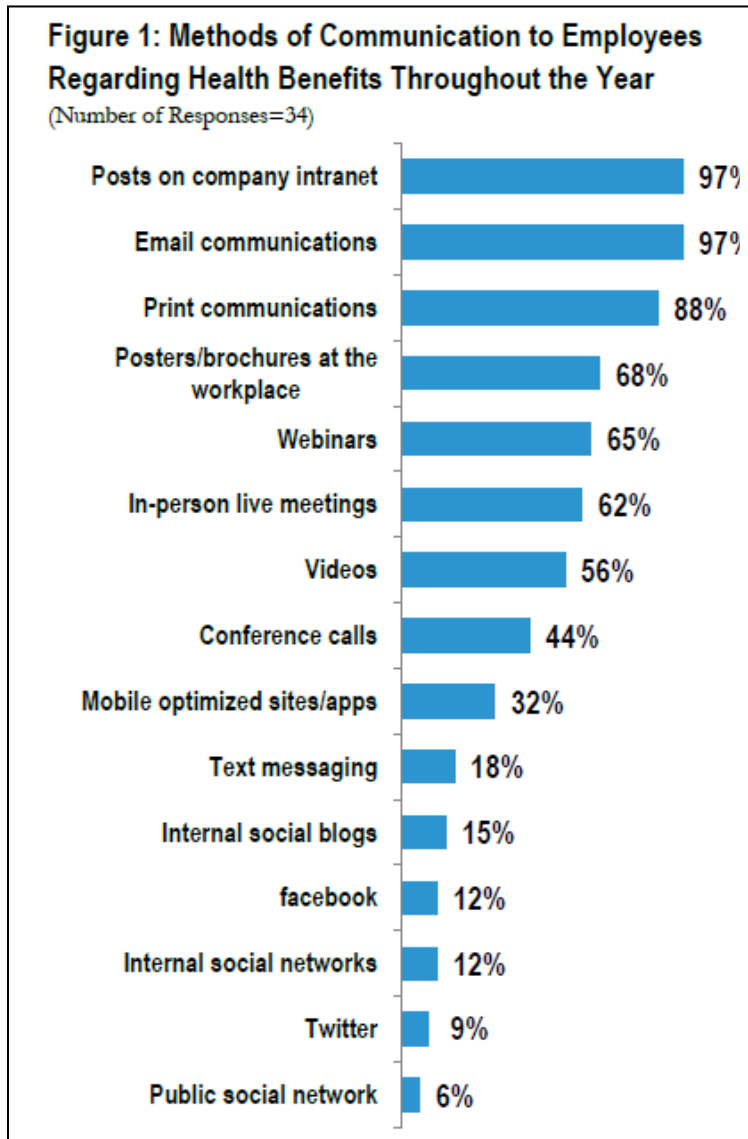
**Figure 15: Most Effective Tactics to Control Health Care Costs**



As the health care system undergoes rapid change, the information plan participants need—and that plan sponsors provide—also will change. We therefore recommend that any future regulatory guidance take into account the need for flexibility in how group health plans communicate with plan participants. Disclosures such as SPDs and plan documents will continue to play a role in protecting plan participants and sponsors. However, we believe the most critical communications for group health plans will be the navigation tools that plan sponsors and insurers develop to assist participants in making health care decisions at or near the time of service.

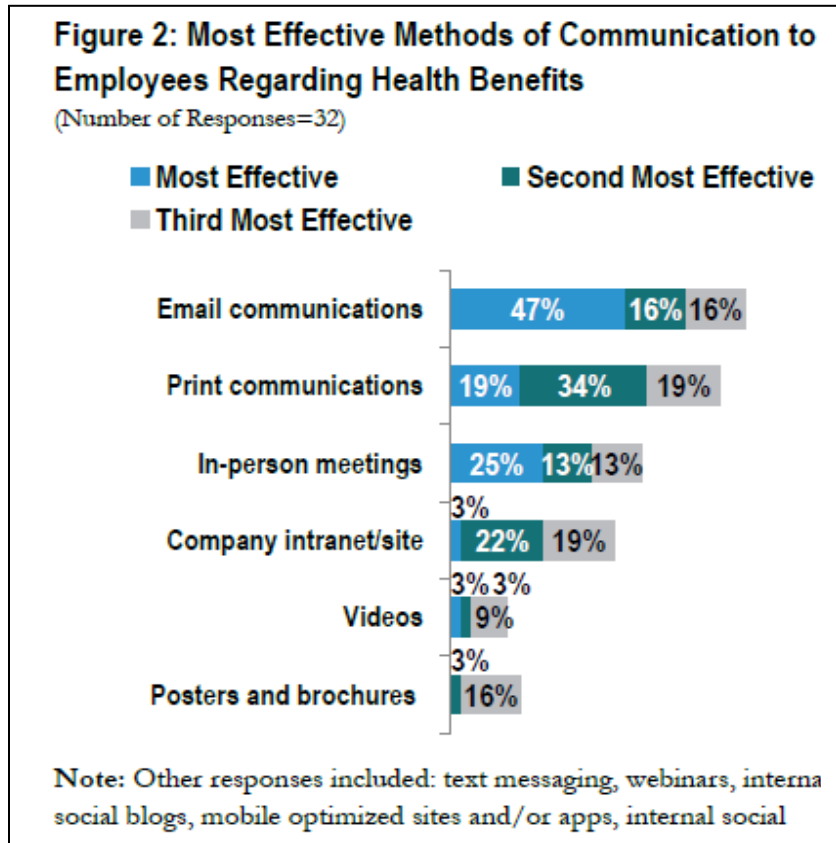
**II. Electronic Communications**

To communicate plan offerings and designs, our members rely on a mix of communications methods rather than SPDs, SPDs, or plan documents. For example, in 2016, we conducted a Quick Survey<sup>4</sup> on how employers communicate health and well-being programs and initiatives. The responses show that while intranet, email, and print communications are the most common, employers use a wide variety of communication methods in the effort to engage their employee populations.



In this same Quick Survey, member responses indicated that they view email as the most effective communication method.

<sup>4</sup> Ridgley, Lisa, *Quick Survey Findings: Health and Well-Being Communications – Innovative Tactics and Strategies* (2016).



While we support a requirement to provide paper copies of documents such as SPDs upon request, future regulatory guidance should permit electronic communications as a default option. Electronic documents allow greater flexibility and availability of information by:

- Allowing plan sponsors and participants access to the all plan information in a single location at all times;
- Allowing plans sponsors the ability to provide additional information (such as pricing tools or portals to disease management programs) that may be useful to plan participants; and
- Making it possible to easily access prior versions of plan documents.

### III. SPD Guide

In addition to the communications methods described above, we support the adoption of a “safe harbor” document such as the SPD Guide that would satisfy SPD, SAR, and annual notice requirements. We encourage the Council, in developing this document, to consider the following:

- Many large employers have devoted significant resources and time to plan communications, tailored to their specific employee populations, that convey substantially the same information as that included in the SPD Guide. We therefore recommend that safe harbor guidance allow flexibility to adapt the

format and content of the SPD Guide, provided the information provided is substantially similar.

- In many cases, plan participants would benefit from a shorter document than the SPD Guide. We recommend that safe harbor guidance allow plan sponsors to cross-reference or link to a source document (such as an SPD or plan document), which would allow for a shorter SPD Guide that lists the information available in the plan document or SPD.
- To maximize utility of the SPD Guide, we recommend that the Guide allow plan sponsors to satisfy as many disclosure requirements as possible. We believe that plan sponsors and participants would benefit from a single document that links to all plan-related disclosures, including the SPD, plan document, COBRA notices, MHPAEA-related notices, etc.

We believe that the above recommendations, if implemented, will reduce administrative and cost burdens and allow group health plan sponsors much-needed flexibility in complying with ERISA, the ACA, and other applicable laws.

Thank you for considering our comments and recommendations.

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