



September 4, 2018

*Submitted electronically via: [advancenotice@dobi.nj.gov](mailto:advancenotice@dobi.nj.gov)*

Denise M. Illes  
Chief, Office of Regulatory Affairs  
New Jersey Department of Banking & Insurance  
20 West State Street  
PO Box 325  
Trenton, NJ 08625

**Re: Out-of-Network Consumer Protection, Transparency, Cost Containment and  
Accountability Act**

Dear Ms. Illes:

The National Business Group on Health appreciates the opportunity to provide comments on the Department of Banking and Insurance's advance notice regarding implementation of the Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act (Act).

The National Business Group on Health represents [420 primarily large employers](#), including 75 of the Fortune 100, who voluntarily provide group health plan coverage to over 55 million American employees, retirees, and their families. A number of these employers employ and provide group health coverage for employees, dependents, and retirees in New Jersey. 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.

Regarding implementation of the Act, we support efforts to protect consumers, contain costs, and increase transparency in the health care system. However, our members have concerns with the Act's potential impact on self-insured group health plans and the employees and dependents they cover. As employers continue to develop group health plan designs and comply with applicable federal and state legal requirements, primary concerns remain:

- (1) Minimizing the administrative and cost burdens associated with those requirements and
- (2) Having flexibility to provide comprehensive health coverage in the most efficient, cost-effective way possible while ensuring employee affordability

and access to providers and facilities that provide high-quality, evidence-based care.

Our members are particularly concerned that the proposed arbitration process for self-insured group health plans that do not opt to participate in the Out-of-Network Arbitration Program will create confusion for plan participants and administrative burdens for group health plans.

We urge the Department, in developing its guidance, to consider the following:

- Large employers are at the forefront of implementing innovative plan designs that deliver high-quality, cost-effective, and affordable health coverage. Uniform, efficient plan administration is critical to such innovation.
- Minimizing cost and administrative burdens will allow employers to devote more resources to maintaining and developing high-quality health coverage that is affordable for employees and their dependents.
- The proposed arbitration program, as applied to participants of self-insured group health plans, could easily result in decisions that do not take into account governing plan documents and policies. Such decisions would only increase confusion without providing any benefit to the employees and dependents covered by those group health plans.

We therefore recommend that arbitration program not apply with respect to individuals covered by self-insured group health plans that do not opt into the program. We provide further discussion below.

## **I. Features of Large, Self-Insured Group Health Plans**

We encourage the Department, in developing guidance and regulations, to take into account large, self-insured group health plan designs and goals. As noted above, National Business Group on Health members employ and provide health benefits for employees in a wide variety of industries, locations, and work arrangements. To ensure the efficient, cost-effective plan administration, it is critical that plan sponsors be able to maintain uniform procedures—including procedures related to out-of-network claims. Therefore, we encourage the Department to consider that ERISA's preemption provision explicitly provided for national, uniform administration of self-insured employee benefit plans and preempts procedures such as the proposed arbitration process for self-insured group health plans that do not opt to participate in the Out-of-Network Arbitration Program. ERISA's preemption provision is crucial to the efficient administration of multi-state group health plans such as those maintained by Business Group members. Uniform administration allows large employers to offer benefits packages for all employees, streamline administration and communications processes, and reduce costs by negotiating with providers on a multi-state or national basis. Uniform administration also provides much-needed flexibility to tailor plan designs to the features and needs of employers and their employee populations.

## II. Need to Control Cost of Health Coverage

As noted above, we support New Jersey’s efforts to protect consumers, contain costs, and increase transparency in the health care system. However, we emphasize that as the health care system has become more complex and costly for both employers and employees, self-insured group health plans have already made substantial investments in cost containment, transparency, and communication with plan participants. For 2019, our members estimate that health care premium costs on a per employee per year basis will be \$11,730, approximately \$2,572 of which will be borne by employees. Our members expect overall health care costs to increase by approximately 5% in 2019.<sup>1</sup> Maintaining employee affordability for high-quality care is a paramount concern.



### Total Health Care Costs

Q: For 2018, what are you estimating the total cost of health care to be on a per capita basis?

	All Respondents 2018
<b>Health Care Costs</b>	
Total estimated health care costs, combined employer and employee (PEPY)	\$11,730
Estimated employer health care costs	\$9,150
Employee contributions to the premium	\$2,572
<b>Estimated employee out-of-pocket costs</b>	<b>\$2,378</b>
Employer contributions to a health account	\$910
Employee out-of-pocket costs (net employer contributions)	\$1,467
<b>Total estimated health care costs PLUS Out-of-Pocket Costs</b>	<b>\$14,099</b>

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In efforts to contain costs and increase participant engagement in health care, large employers are offering more virtual care solutions, developing strategies to address high cost claims, and implementing engagement platforms and concierge services to help plan participants navigate the health care system. These trends indicate that in the coming years, group health plans will need to focus on minimizing overall plan costs and adopting innovative solutions to rising health care costs.

Our survey results highlight the most effective tools for controlling overall health care costs.<sup>2</sup>

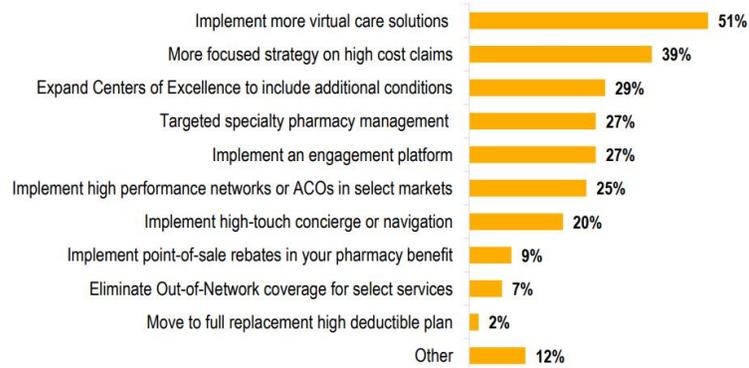
<sup>1</sup> National Business Group on Health, *2019 Large Employers’ Health Care Strategy and Plan Design Survey* (2018).

<sup>2</sup> National Business Group on Health, *2018 Large Employers’ Health Care Strategy and Plan Design Survey* 9 (2017)



# Top Initiatives for 2019

**Q: What are the top new initiatives you will implement in 2019?**



Note: Other responses included: reviewing coverage of behavioral health; implementing CDHPs, focusing on leave strategy; adding new well-being vendor.

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As employers continue to seek ways to maintain high-quality, cost-effective health coverage for employees and dependents, adding administrative burdens such as the proposed arbitration procedures will only force employers and employees to bear additional costs with no discernible benefit. We therefore urge the Department not to apply the proposed arbitration process to individuals covered by self-insured group health plans that do not opt into the process.

Thank you for considering our comments and recommendations. Please contact me or Debbie Harrison, the National Business Group on Health’s Assistant Director of Public Policy, at (202) 798-4421 if you would like to discuss our comments in more detail.

Sincerely,

Brian Marcotte  
President