

Company Responses to Supreme Court Reproductive Rights Decision

Implications for Employers

JULY 6, 2022

Agenda

- Welcome and Setting the Context
- Survey Results
- Legal Liabilities
- Healthcare and Benefits Perspective
- Crafting a Communications Approach
- What Happens Next?

TODAY'S SPEAKERS

Ani Huang

*Senior Vice President, **HR Policy Association***
*President and CEO, **Center On Executive Compensation***

Gregory Hoff

Associate Counsel
HR Policy Association

Michele A. Carlin

Executive Vice President
HR Policy Association and
Center On Executive Compensation

Timothy J. Bartl

President and CEO
HR Policy Association

G. Roger King

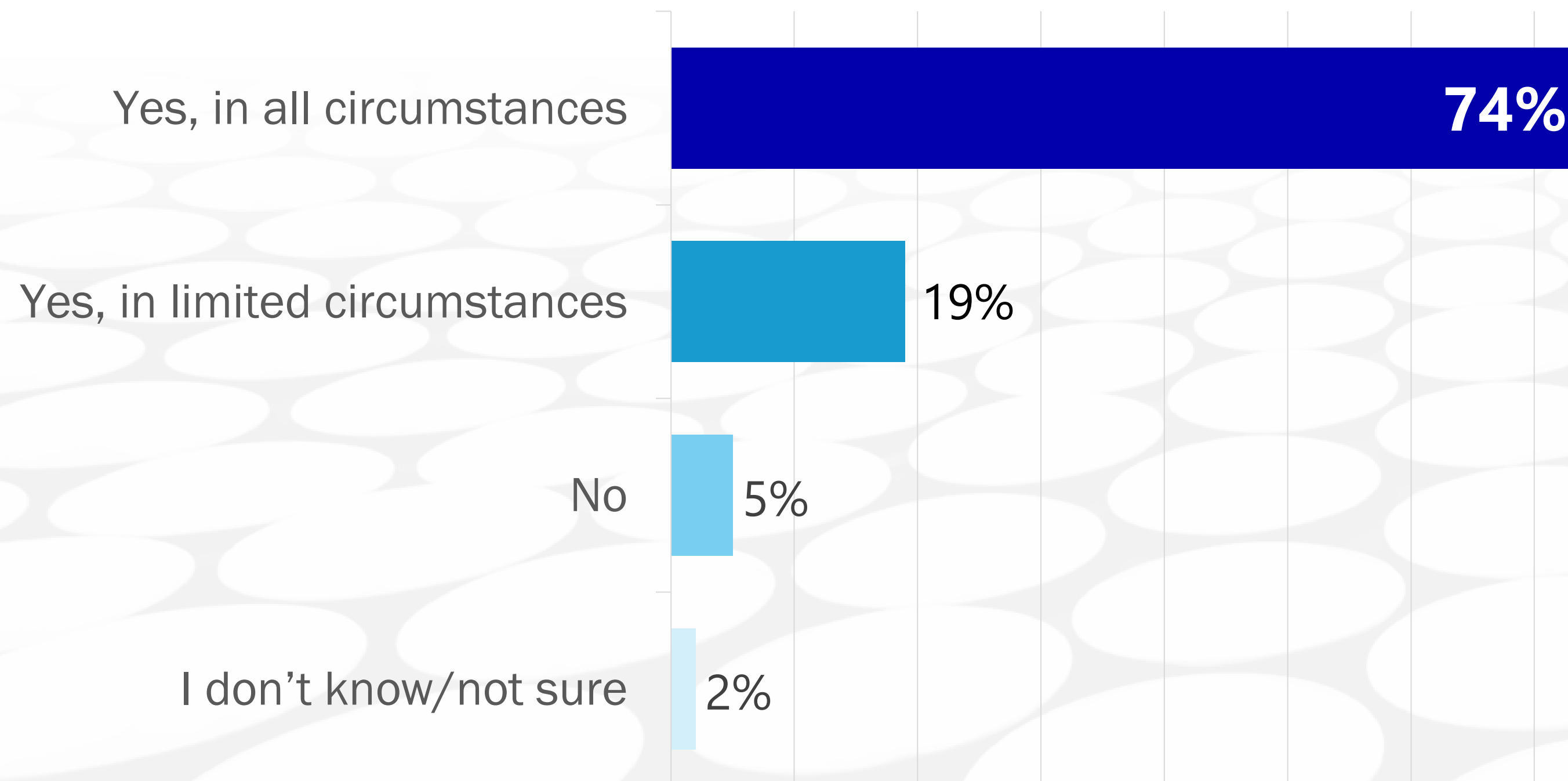
Senior Labor and Employment Counsel
HR Policy Association

D. Mark Wilson

President and CEO
American Health Policy Institute
VP, Health and Employment Policy and Chief Economist
HR Policy Association

93% INCLUDE ABORTION COVERAGE UNDER AT LEAST SOME CIRCUMSTANCES

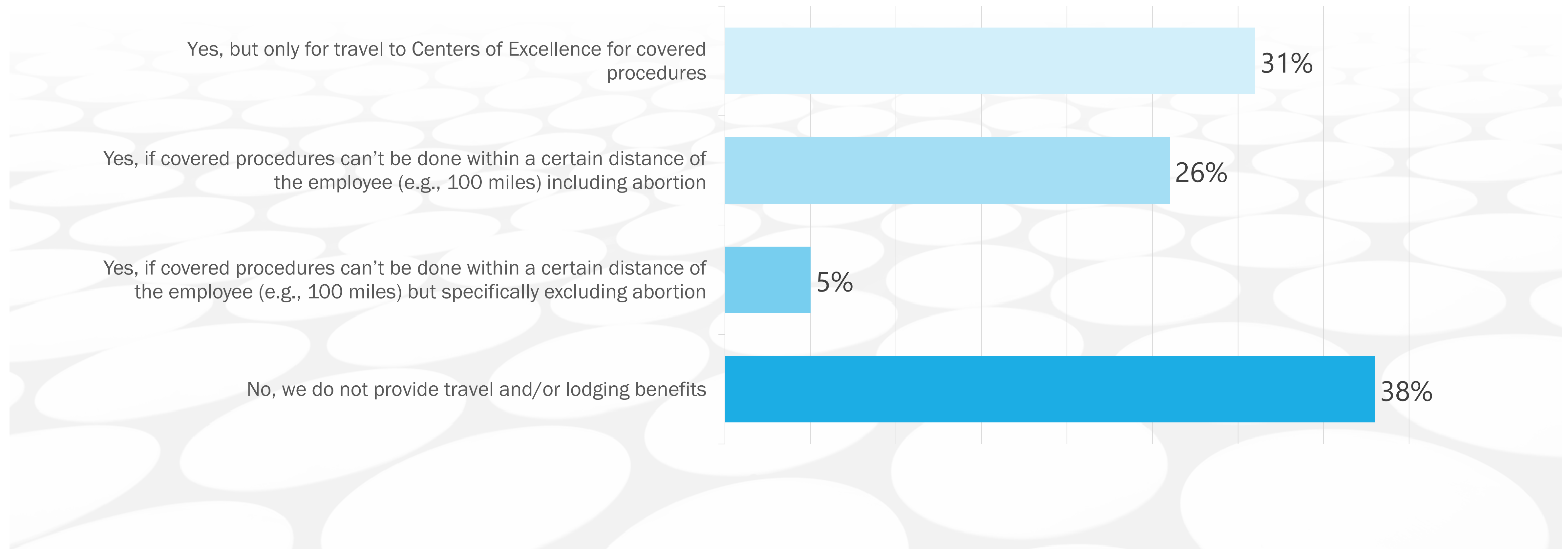
Q: Does your health plan include abortion coverage?



Plans providing abortion coverage under limited circumstances include those which are medically necessary, a result of rape or incest, if the life of the mother is in danger, or “therapeutic abortions” as recommended by providers. Some respondents’ main plans do cover the procedure, but their HMOs do not, and vice versa.

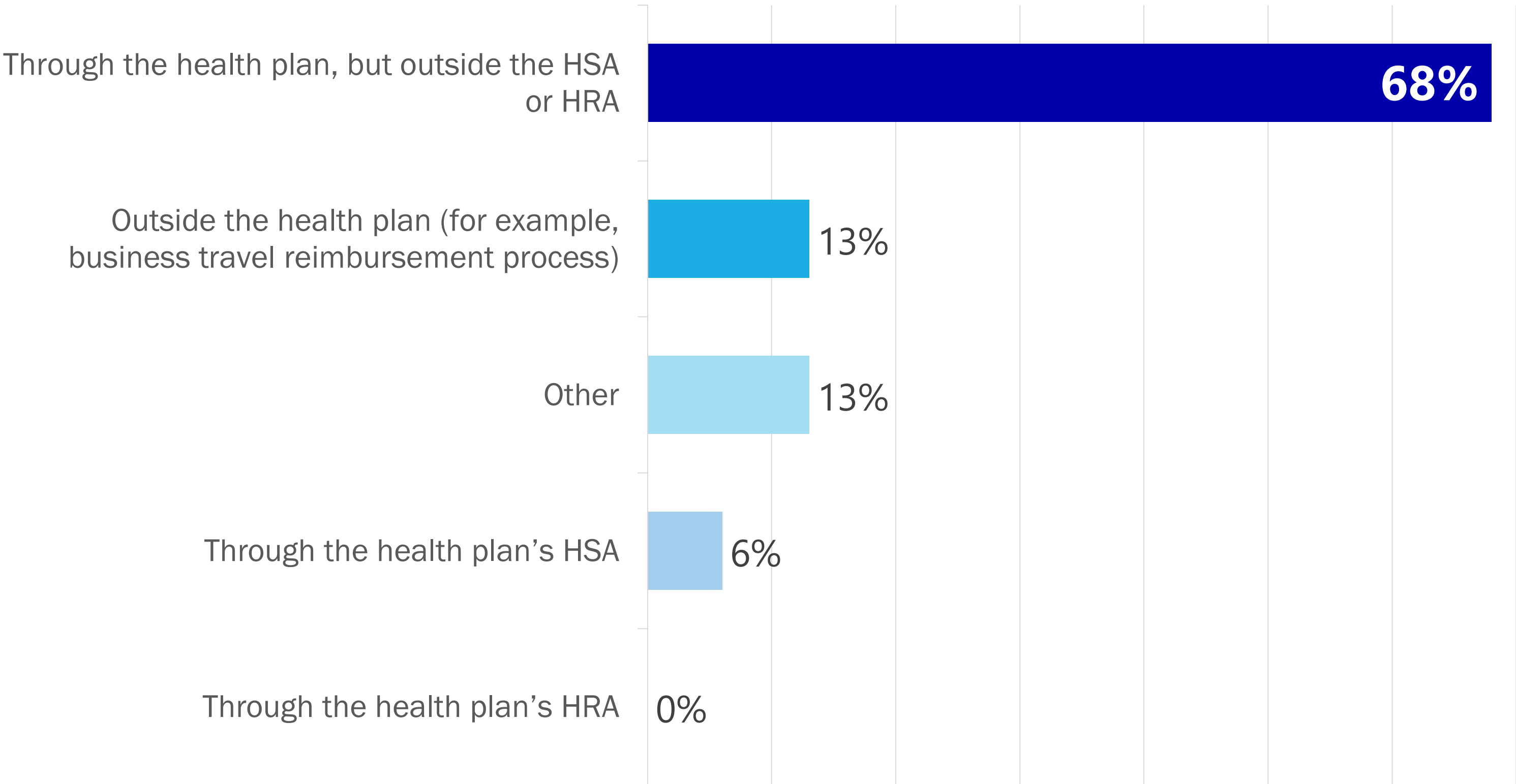
TRAVEL AND LODGING COVERAGE VARIES

Q: Do you provide travel and/or lodging benefits to employees who need to travel for medical care?



TRAVEL BENEFITS PROVIDED THROUGH HEALTH PLAN, BUT OUTSIDE HSA/HRA

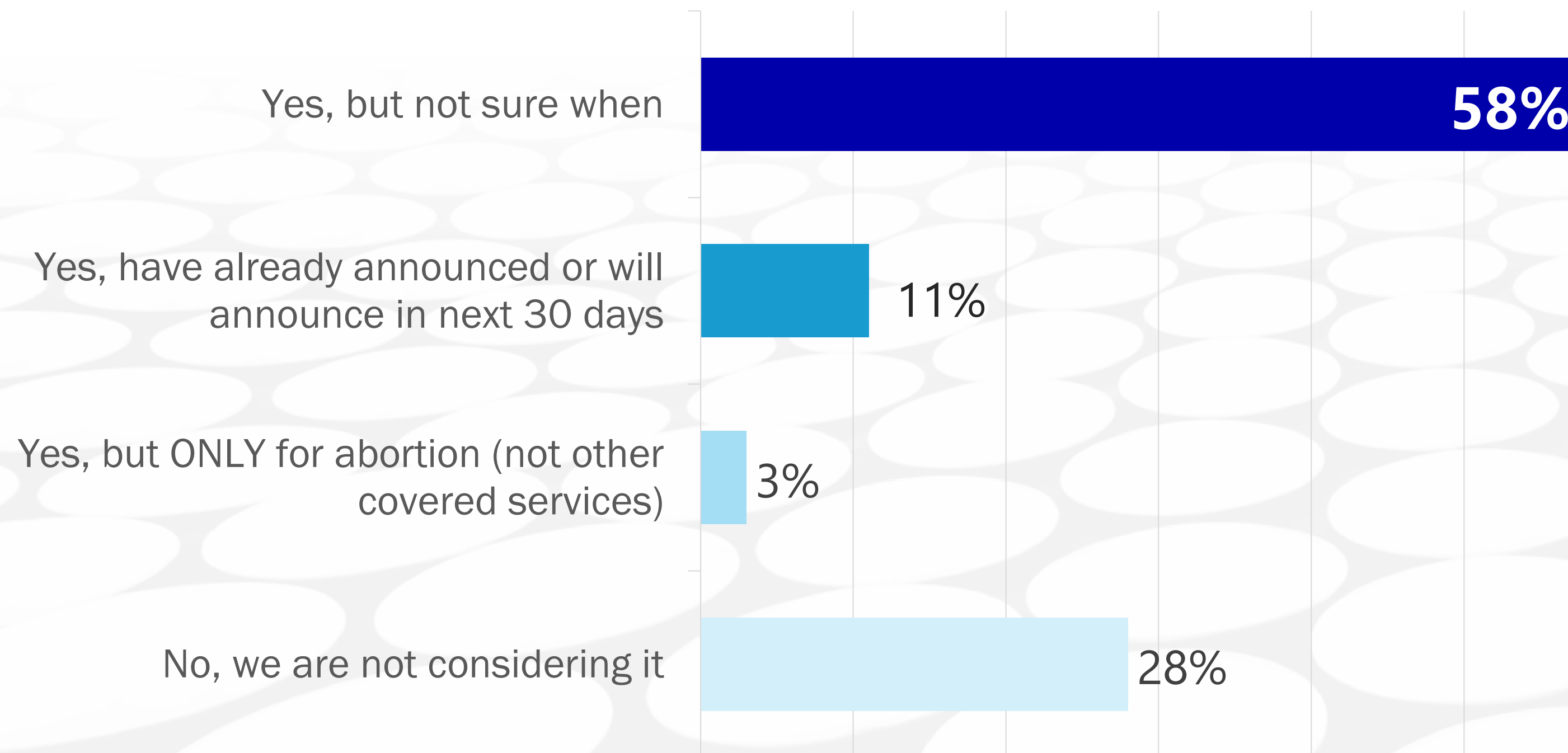
Q: If you already provide travel and/or lodging benefits, how do you do so?



For those respondents with travel/lodging benefits, two-thirds report they are provided through the health plan, but outside HSAs/HRAs. "Other" responses include those provided by a dedicated travel/lodging benefit, employee relief funds, and through both HSAs and PPOs.

OVER TWO-THIRDS PLAN TO PROVIDE TRAVEL/LODGING BENEFITS

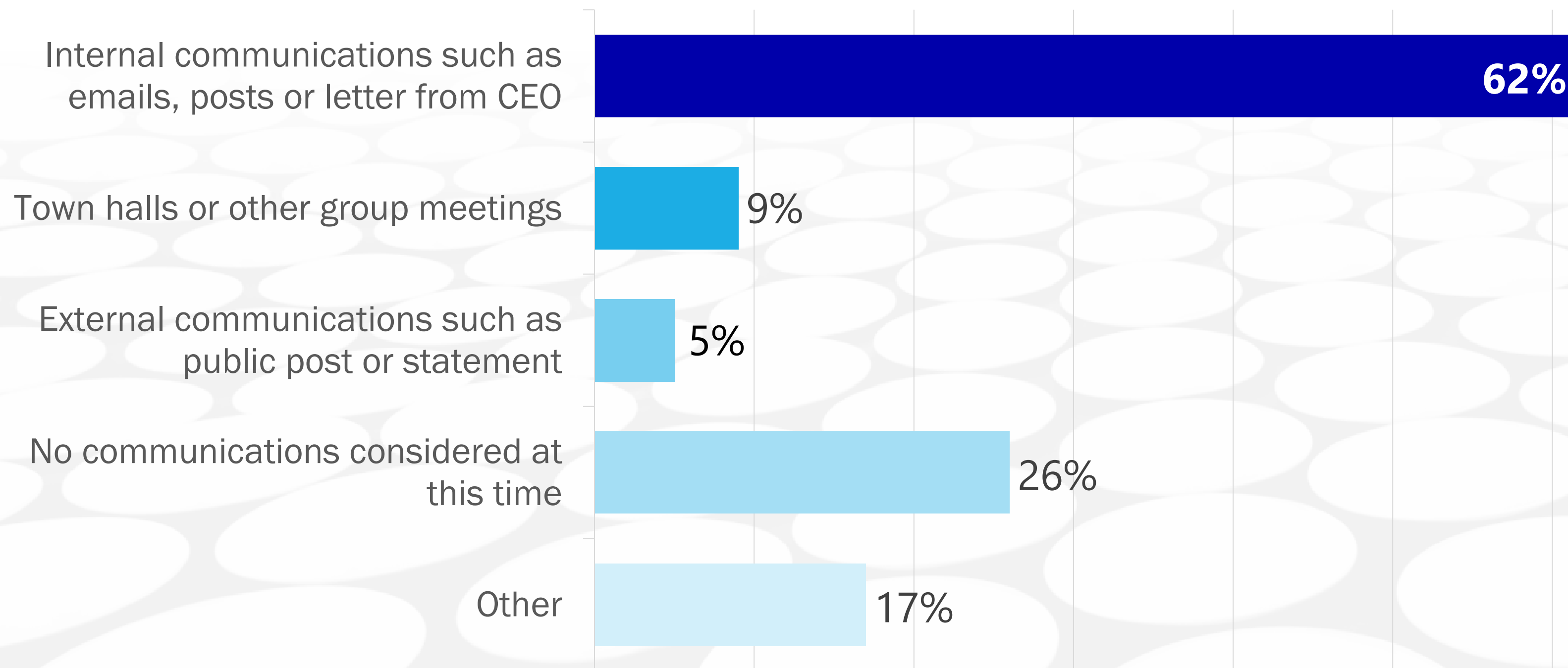
Q: If you do not currently provide travel and lodging benefits or only provide for travel to Centers of Excellence, are you considering providing these benefits to employees who need to travel for medical care, including abortion?



For respondents not currently providing travel/lodging benefits, 72% are either considering doing so or have already announced their intent to do so. 3% will provide benefits, but ONLY for abortion. 28% of respondents report that they are not considering providing travel/lodging benefits at this time.

COMMUNICATION IN THE WAKE OF THE SCOTUS DECISION

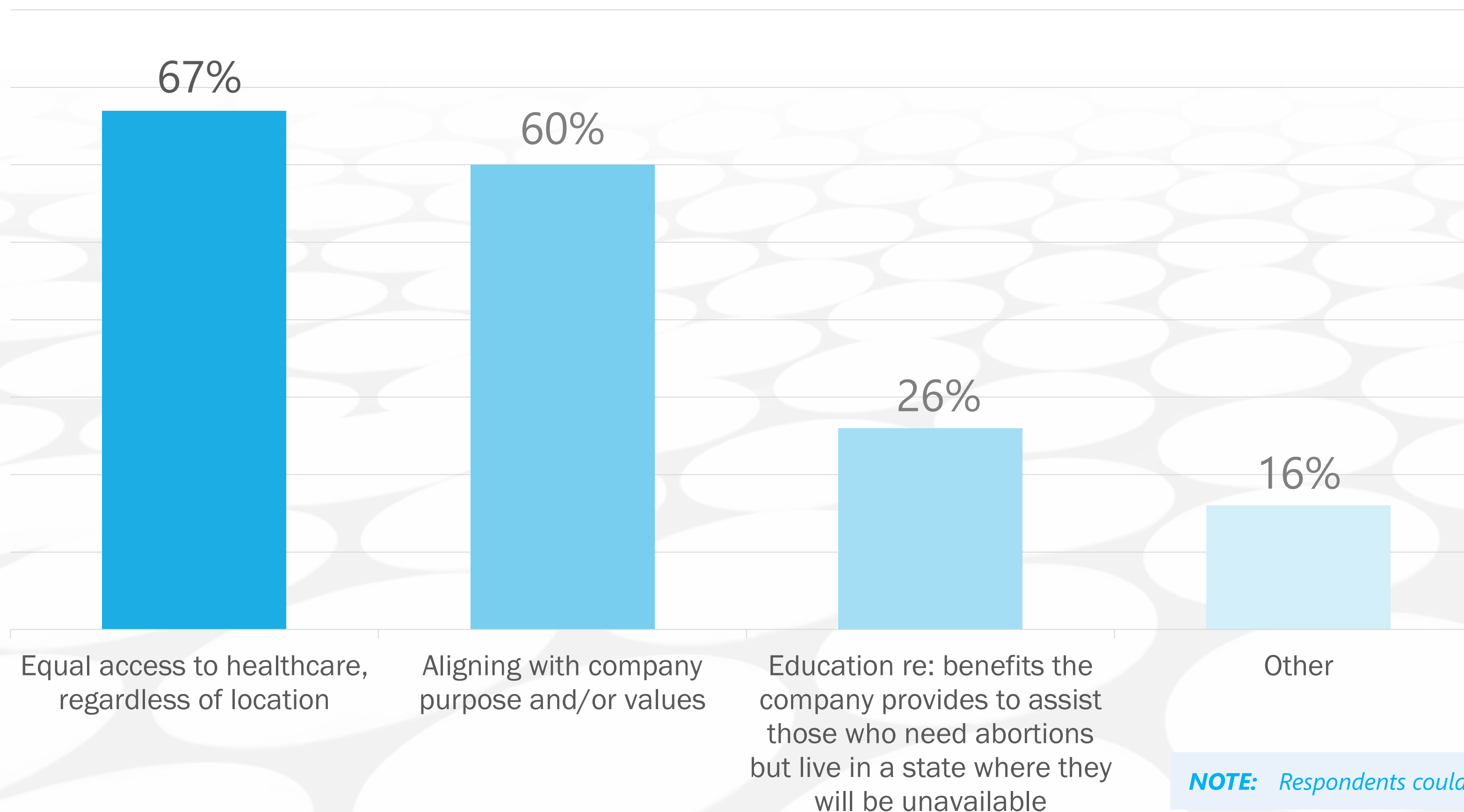
Q: What types of communications have you already implemented or are you considering in the wake of the SCOTUS decision? *(Please select all that apply.)*



NOTE: Respondents could select more than one choice; totals may not equal 100%

EMPLOYERS FOCUS ON EQUAL ACCESS, COMPANY VALUES

Q: If you plan to or are already communicating, what is/will be the focus of your communications?
(Please select all that apply.)



Most respondents report a focus on equal access to care regardless of location and making sure their communications are in line with company values. 26% will also focus on education regarding benefits they provide to employees who live in states where abortion is illegal.

NOTE: Respondents could select more than one choice; totals may not equal 100%

Frequently Asked Questions

Can employers be civilly/criminally liable under state anti-abortion laws for providing travel expenses or cost of care for employees seeking abortions in states where legal?

- TX and OK currently only states with laws that could impose such liability
 - More states could follow
- Constitutional questions – e.g. interstate commerce, interstate travel
- ERISA preemption

Frequently Asked Questions

What are the reimbursement limitations under tax and health care laws for travel expenses related to an abortion?

- Reimbursable as tax-free medical expenses up to certain IRS limits:
 - \$0.22 per mile for cars
 - Assuming reasonable price, fully reimbursable for plane, train, and bus tickets
 - Lodging expenses can be reimbursed for up to \$50 per night per person
- What if reimbursements are provided under regular travel and expense policies and not as part of health care coverage?
 - Could be considered “compensation”

Frequently Asked Questions

Does ERISA preempt state anti-abortion laws and allow employers to include coverage of abortive care in employer-sponsored health plans?

- General preemption for self-insured employer-sponsored benefit plans, with exceptions:
 - State criminal laws of general applicability
 - Fully-insured plans (subject to state insurance laws instead)
- Extent of preemption will be decided by the courts

Frequently Asked Questions

Can employees have abortion medication shipped to them out of state?

Several states have restrictions on abortion medication, including requiring that physicians be physically present (therefore blocking telemedicine). Are such restrictions lawful?

- Issue implicates constitutional interstate commerce issues, will likely be decided by the courts

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THANK YOU!