



Small Business, the New York Health Act, and the Sources of Chamber of Commerce Opposition

The single-payer New York Health Act will benefit small business. Why are chambers of commerce actively opposing it?

An Investigative Report

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Highlights

- The New York Health Act (NY Health) has passed the New York Assembly (A5248) and is near passage in the Senate (S3577)¹. The legislation aims to remove the profit-seeking commercial insurance middleman from our health system, greatly simplifying the reimbursement process and providing guaranteed universal coverage to all New Yorkers with no premiums, deductibles, or copays.
- The taxes needed to finance NY Health will be based on the ability to pay and will be lower, on average, than what most individuals spend on health care and what small businesses currently spend on insurance for their employees. This reduction will be accomplished through administrative savings from ending our current complex and wasteful reimbursement system and negotiating lower prices from drug and medical device companies.
- NY Health will be a superior plan including dental, pharmacy, vision, hearing, and long-term care coverage. Moreover, the legislation will end county spending on Medicaid, allowing counties to reduce property taxes or redirect funds to other services.
- By severing insurance from employment, it will protect workers against losing health insurance in a recession, such as has occurred during the coronavirus pandemic.
- The legislation will provide sizable benefits to New York businesses, eliminating the need to negotiate with insurance companies and reducing their costs.
- In spite of these positive benefits, key chambers of commerce, especially in upstate New York, are actively organizing against the NY Health Act and spreading misinformation about it. They are members of the “Realities of Single Payer” group, an insurance industry-sponsored coalition whose sole purpose is to prevent the legislation from being enacted.
- Chambers of commerce and business councils are non-profit, non-partisan organizations whose mission is to serve their business members. This report documents the clear conflict of interest motivating their negative campaign.
- Put simply, these chambers derive substantial revenue from the sale of health insurance products. They are part of the commercial insurance industry.

How the New York Health Act will benefit small businesses

Many small business owners have difficulty affording quality health insurance for themselves and their employees. They simply can't afford the premiums. NY Health addresses this problem by financing the program through progressively graduated payroll taxes.

Using this financing approach, a 2018 RAND Corporation study of the legislation concluded that:

For employers offering coverage under the status quo, contributions to employee health benefits would decrease on average under NYHA. The largest percentage decreases would be for firms with fewer than 25 employees.²

In more detail, the study concluded that “small firms would pay about 16-19 percent less and medium firms would pay 6-10 percent less”.³ RAND defined small firms as those with fewer than 25 employees and medium firms as those with between 25 and 99 employees. New York State defines a small business as having between 0 and 99 employees, combining the two RAND categories. This amounted to over 400,000 enterprises in New York in 2016.⁴ Small businesses make up the largest share of membership in chambers of commerce, by far, especially in the upstate regions.

In 2016, 83% of medium firms (25-99 employees) offered health insurance and would therefore benefit from the projected savings. However, only 30% of small firms (0-25 employees) offered insurance that year, meaning that the remaining 70% would be susceptible to an increase in spending.⁵ RAND calculated that these employers would spend \$1200 per employee more, on average, in the first year of the program.⁶ This is an average number, however, and those businesses with low-wage employees will pay much less, and no tax at all, according to the bill, for employees making under \$25,000 per year. In any case, most small business employers would like to offer health insurance but cannot afford the premiums available in either the private market or the Small Business Health Options Program (SHOP) offered through the Affordable Care Act. The NY Health tax levy would be far lower than the cost of health plans and an affordable way to ensure that their employees have quality insurance.

Insured sole proprietors and the self-employed earning below about \$150,000 per year would also experience savings or no increase in health care spending, given the current cost of premiums and cost-sharing in the private market and on the ACA exchanges.⁷

In sum, most small businesses will benefit from NY Health and only a small number will see an increase in overall spending. In exchange, they will have a plan with superior benefits, including dental, pharmacy, hearing, vision, and long-term care. They will also benefit through increased competitiveness. Firms that do not offer health insurance have difficulty attracting the best workers.

Universal, guaranteed health insurance with no cost-sharing and no financial barriers to care at the point of service, such as NY Health will provide, will improve employee health and productivity through better medication compliance and early detection and treatment of medical conditions.

The RAND Corporation is a non-partisan organization associated with Stanford University and a recognized leader in health analytics. The Political Economy Research Institute (PERI) at the University of Massachusetts came to similar conclusions when looking at the Healthy California single-payer legislative proposal. The California bill is similar to NY Health and, when using a payroll tax model for financing, the PERI group confirmed the RAND findings for small businesses.⁸

Blatant conflicts of interest: Why chambers of commerce are opposed to New York Health

Robert Duffy, former Lt. Governor under Andrew Cuomo, is the CEO of the Greater Rochester Chamber of Commerce. He and the CEOs of the large North Country and Capital Region chambers serve small businesses across wide swaths of upstate New York. Their members include dozens of smaller local chambers as well as thousands of small businesses with hundreds of thousands of employees.

Duffy and the North Country Chamber CEO, Garry Douglas, are also leaders in the conservative Unshackle Upstate business lobby group, which, in addition to

opposing NY Health, actively organized against the Essential Workers Bill of Rights and paid sick leave legislation. Both were introduced with the aim of saving lives during the coronavirus pandemic. All three chambers, and the Unshackle group itself, are also members of Realities of Single-Payer, a coalition backed by the health insurance industry and created solely for the purpose of organizing against the legislation. The Buffalo-Niagara Partnership and the Greater Binghamton Chamber of Commerce, both serving large regional constituencies, are leading members of both groups and also actively oppose the legislation.

That Duffy and the Greater Rochester Chamber of Commerce would be actively opposed to legislation that promises to benefit Chamber members is less surprising when one realizes that the Chamber sells health insurance. According to its website:

The Greater Rochester Chamber of Commerce is a full-service health insurance broker. We offer a variety of health, dental, and vision products from MVP Health Care, Excellus Blue Cross and Blue Shield and Guardian to verified employees of member firms. We can insure individuals, as well as employer groups with up to 50 employees”⁹

The Chamber maintains a licensed insurance broker on staff and manages its insurance business in partnership with Bond Benefits Consulting, also a member of the Realities group. The Chamber splits insurance broker fees with Bond and, unsurprisingly, the insurers involved provide sizeable direct donations to the Chamber, including sponsorship of Chamber events and activities where they are often given public relations mic time. An Excellus Executive Vice President sits on the Chamber board.

While it is not unusual for insurance brokers to be members of chambers and to market products and services to other chamber members, it is another matter entirely when the chamber itself receives a meaningful part of its revenue from the sale of the same insurance products.

Similar arrangements exist at the North Country and Capital Region chambers, as well as at other chambers and business councils around the state, showing that it is a common practice for chambers to strengthen their bottom lines through the sale of insurance

North Country Chamber of Commerce

The North Country Chamber is home to 15 smaller chambers and has 3200, mostly small, business members. The Chamber wholly-owns a for-profit licensed

insurance agency, North Country Services Corporation, that sells insurance products to Chamber members and to non-member businesses as well. Commissions from insurers, including MVP Health, Blue Cross and Blue Shield of Northeast New York, and Excellus, go directly to the Chamber. As with Greater Rochester, these insurers also donate directly to the North Country Chamber and sponsor Chamber activities and events.

Capital Region Chamber of Commerce

The Capital Region Chamber covers nine-counties and serves many smaller chambers along with 2900, mostly small, businesses with 160,000 employees. They too have a wholly-owned, licensed insurance agency, Business Services Corporation doing business as Benefit Choices NY. The agency is listed at the Chamber address. The agency generates revenue from commissions received from CDPHP, MVP Health, and other insurers, including Guardian which provides dental plans. CDPHP and MVP Health are listed at the Chamber website as “Sustaining Investors”, their highest category of donor supporter. Blue Shield of Northeast New York is listed as a “Gold Investor”. The Annual Women of Excellence Luncheon, the Annual Chamber Dinner, and the Annual Golf Outing, are examples of recent insurer-sponsored events. The MVP Health CEO even served as Chairman of the Chamber Board in 2016

Amherst Chamber of Commerce and Buffalo-Niagara Partnership

The Amherst Chamber, located near Buffalo, notes on its website that it “is the ONLY chamber in the region that has its own in-house insurance agency with 3 dedicated, licensed brokers on staff.”¹⁰ Representatives of the main insurers they sell for, Blue Cross and Blue Shield of Western New York, Independent Health, and Universal Healthcare (Excellus), all sit on the Chamber Board. They, too, provide direct donations and event sponsorships to the Chamber. While Amherst is a small district in Western New York, the Amherst Chamber also sells to business members of the large Buffalo-Niagara Partnership, which serves as the chamber of commerce for the Greater Buffalo region. Representatives of the Partnership sit on the Unshackle Upstate Board along with Bob Duffy and executives from the North Country and Capital Region chambers, and the Partnership is a member of the Realities of Single Payer group. Independent Health and Universal are listed in the highest category of investor partners.

Other chambers and business councils

The above-listed chambers serve most of upstate New York and play the most visible role in opposing NY Health. Still, there are other chambers and business

organizations that derive benefits from the sale of health insurance products. The Greene County and Columbia County chambers, for example, work in partnership with the HMS and EP Nevins insurance agencies, respectively. These agencies are also members of the Realities coalition. The Business Council of New York State, a statewide umbrella group for businesses and chambers, is a prominent member of the Realities group and has experienced rapid recent growth in revenue derived from the sale of dental insurance products.

“Realities of Single Payer” = Myths and Misinformation about New York Health

As noted earlier, key chambers of commerce and their broker partners are members of the Realities of Single Payer coalition, formed for the sole purpose of combating the New York Health Act. Coalition members, including chamber executives, have been testifying at legislative hearings, submitting legislative memos, publishing op-eds, and financing anti-NY Health propaganda on social media. Health insurance companies and brokers make up the largest share of the 91 companies listed in the Realities group. They also make up the largest share of members who are affiliated with a chamber of commerce.

Here are a few of the issues they raise along with the misinformation and distortions that underlie them.

Tax increases: Their most prominent complaint relates to what they call the “massive” tax increases that will burden New Yorkers and New York businesses under NY Health. They cite the RAND study which estimated a tax increase of \$139 billion in the first year of the program. What they fail to point out is that RAND also concluded that overall health care spending in New York would decrease under NY Health in its first year and would continue to decline in subsequent years.¹²

RAND also concluded that at least 90% of New Yorkers would spend less on the health care taxes, on average, than what they currently spend on health care. Here’s how RAND puts it:

- *In 2022, New Yorkers with household compensation below the 75th percentile would pay an average of \$3,000 less per person for health care (a decrease from 24 percent of compensation per person to 14 percent) ...*

- *... For those in the 75th to 90th percentile of household compensation, average health care payments would decrease by \$1,500 per person in 2022 (a decrease from 21 percent of compensation per person to 19 percent).¹²*

Most small businesses will also see savings, as described earlier.

State budget constraints: Coalition member Unshackle Upstate claims that NY Health would be subject to “the uncertainty of a state budget process” as they put it in a legislative memo.¹³ The requirement that the state balance its budget each year would subject NY Health, they suggest, to the vagaries and politicization of what amounts to an annual zero-sum exercise. This is a myth. The bill explicitly establishes a NY Health Trust Fund with independent tax financing. This will serve to remove the program from the annual budget process in the same way that trust funds support the federal Social Security and Medicare programs.

New York seniors would lose their Medicare: The Coalition claims that “People covered by Medicare would lose their Medicare coverage”¹⁴ by being forced to enroll in the new program. This is simply incorrect. Medicare is a federal entitlement program which no state law can affect. New Yorkers would still have their Medicare cards and could use them as they see fit, including for out-of-state care. The program simply re-directs Medicare reimbursement to New York hospitals and physicians to the NY Health Trust Fund with NY Health covering any amount not covered by Medicare. NY Health will also reimburse Medicare premiums deducted from social security checks, and paying extra for Medi-gap or Medicare Advantage would be unnecessary since NY Health offers a more comprehensive program.

Long waits for health care services: The Coalition claims that government control of health care will inevitably lead to long waits for care. Numerous studies have shown, however, that the timeliness of care has little or no relationship to the structure of insurance reimbursement.¹⁵ There are single-payer programs with timely services and those with wait lists. It depends on program design, financial supports, and management of the flow of services. These same studies show that urgent care services and primary care visits for illness are prioritized in all systems. Wait lists, if they exist, are typically for elective procedures.

New Yorkers will lose choice: The Realities coalition claims that employees “like” their company health insurance plans and do not want to see the government deny

them the right to a plan of their choice. But there are aspects of “choice” not mentioned, like the lack of choice of physician or hospital in HMO plans with narrow provider networks or the loss of wage and salary increases in the face of higher and higher insurance premiums for company plans. And choice does not mean much to those who lose health insurance when they are laid off or who are trapped in a job they dislike because they fear losing insurance, or who can’t afford any insurance at all. Surveys show that choice of provider far outweighs choice of insurer and NY Health allows New Yorkers to choose any provider, with no gatekeeping referral requirement.

Health care will be managed by government bureaucrats: The Coalition also drags out the tired old saw about “faceless” government bureaucrats managing one’s health care. The government, however, would only be the payer under NY Health, as it is in the very popular Medicare program. Hospital and physician practices would continue to be privately managed. And does anyone believe that people prefer having their health care managed by the bureaucrats of commercial health insurance companies, whose primary motivation is to deny care where they can, and increase profitability and shareholder value?

Job losses under NY Health: This is a legitimate concern with estimates that, because of insurance simplification, 150,000 administrative workers in insurance companies and hospital and physician billing and insurance departments will lose their jobs. This is key, however, to the savings that will ensue under NY Health. Insurance company overhead, including profits and executive compensation, exceeds 12% while, for example, the administrative spending for the single-payer traditional Medicare program is around 2%.¹⁶ Hospitals and physician offices employ an army of billing and insurance clerks to deal with hundreds of insurance companies and thousands of constantly changing plans, each with its own procedures and forms. They also deal with prior authorization, appeals of coverage denials, and collecting cost-sharing and unpaid bills. Program and provider administrative savings in New York State have been estimated at between \$36 and \$40 billion annually under NY Health.¹⁷

Yet, layoffs are certainly a concern. What the opponents of NY Health don’t mention is that the legislation calls for a “just transition”, providing extended unemployment benefits, job training, and re-employment assistance for all laid off workers. The legislation establishes a task force to analyze potentially impacted employees by job title and geography, research labor market opportunities, and establish regional re-training and re-employment systems. The bill makes each impacted employee eligible for:

(A) up to two years of retraining at any training provider approved by the commissioner of labor; and (B) up to two years of unemployment benefits, provided that the impacted employee is enrolled in a department of labor approved training program, is actively seeking employment, and is not currently employed full time; provided, however, that such impacted employee may maintain unemployment benefits for up to two years even if he or she does not meet the criteria set forth in this clause but is sixty-three years of age or older at the time of loss of employment as an impacted employee.¹⁸

Some administrative employees will be able to transition immediately to health care positions that will arise due to expected increases in utilization, including, for instance, nurses who now work for insurance companies. Otherwise, a study of re-employment data available through the Bureau of Labor Statistics by economist Gerald Friedman led him to estimate that 70% of laid off workers will be re-employed in a similar field within six months and 99% will be re-employed within two years.¹⁹

Moreover, Friedman estimates that 200,000 new jobs will be created in the state as a result spending that will ensue from the savings and from increased wages made possible by eliminating private health insurance spending by employers.²⁰ The RAND Corporation has a similar estimate: “The NYHA could lead to an estimated 2-percent increase in employment compared with the status quo”.²¹ In 2022, the first year of the projected plan, this would also amount to 200,000 jobs.

Chambers endorsed Trump’s effort to revive association health plans

Chambers of commerce have a history of using the sale of insurance products to bolster membership and revenue. Before the advent of the Affordable Care Act, they promoted so-called association health plans (AHPs). Such plans allowed small businesses to join together to form de facto large businesses for insurance purposes in order to take advantage of lower rates. They also avoided state regulations due to federal ERISA rules prohibiting state interference in employment-related group insurance programs. Geographic proximity allowed chambers to become vehicles for such plans and chamber membership grew substantially as a result.

The lack of state regulation, however, led to an explosion of insolvencies and incidents of fraud leaving hundreds of thousands with unpaid claims and generating prosecutions of program executives who diverted funds for their private use.

The Affordable Care Act effectively ended AHPs through a series of regulations that required all plans to meet the ACA essential benefits and other requirements. In addition, while businesses that shared a common trade or profession could still form a large group, mere geographical proximity would no longer be acceptable under ERISA. Chambers of commerce could no longer use AHPs as an inducement for membership and many states, including New York, followed by implementing laws that would reinforce restrictions on such plans.

In June 2018, the Trump Administration Department of Labor (DOL) expanded the rules governing AHPs to allow businesses in geographic proximity to band together to offer such plans and further allowed such plans to bypass ACA rules regarding minimum benefits. New rules would also allow such plans to charge higher premiums based on age, gender, occupation, and other factors and would allow sole proprietors to be considered employees for insurance purposes in a direct challenge to ERISA's definitions of employers and employees.

Chambers across the country began rapidly adopting such plans and experienced membership growth as a result. While some states established regulations encouraging such arrangements, others worked to discourage or prohibit them, including New York. These states claimed that AHPs would be prone to scandal and would destabilize health insurance marketplaces.

In 2019, 11 states, led by New York, sued in federal court to block the DOL rules and a federal judge invalidated most of them. He saw the new order as an end run around ERISA and the ACA. He said that geographic proximity was too weak a commonality to satisfy ERISA and that the order violated the definitions and regulations governing small businesses under the ACA.

The judge ordered the DOL to reconsider and bring the rules into compliance. While the DOL did not appeal the ruling, it declared that it would not pursue enforcement if a plan was formed in good faith prior to the ruling. Going forward, the DOL agreed to abandon several of the new rules but would continue to exempt AHPs from covering the ACA essential benefits and continue to allow premium differentials based on criteria other than health status.

While the court case plays out, New York has acted aggressively to discourage chambers of commerce from going forward with AHPs and their presence in New York has been limited. Nonetheless, chambers have lobbied in favor of Trump's attempt to undermine the ACA. They see an opportunity to grow their membership by offering cheap plans with skinny benefits through a revival of AHPs.

Conclusion

The New York Health Act will benefit small businesses across the state. Those businesses currently offering health insurance will see substantial savings. Businesses that do not offer insurance will see their employees insured at a reasonable cost to the business. Many self-employed and sole proprietors will also see savings. In all cases, NY Health will provide a superior program, including dental, vision, hearing, and drug coverage along with a long-term care benefit. There will be no financial barriers to care and no restricted networks of physicians and hospitals.

Chambers of commerce are non-profit, non-partisan service organizations whose mission is to serve local and regional businesses. In this regard, they should be inviting the sponsors of the NY Health legislation to explain how the program will work instead of actively opposing the legislation. For-profit health insurers will be severely restricted under NY Health. If chamber opposition is motivated by financial ties to these same insurers, then their boards and executives should be held accountable for compromising chamber values.

Sources

Information concerning the chambers of commerce and associated insurance agencies was obtained through their websites and through direct communication by the research team with chamber staff members, state officials, and independent experts. Websites used included:

- Greater Rochester Chamber of Commerce <https://greaterrochesterchamber.com/>
 - Business Services Corporation <https://www.benefitchoicesny.com/>
- North Country Chamber of Commerce <http://www.northcountrychamber.com/>
 - North Country Services Corporation <https://www.gochamberhealth.com/>
- Capital Region Chamber of Commerce <https://capitalregionchamber.com/>
- Amherst Chamber of Commerce <https://amherst.org/>

Information concerning the influence of profit-making organizations on non-profits were obtained from the Public Accountability Initiative https://littlesis.org/maps/4773-healthcare-interests-bnp?Buffalo_Niagara_Partnership and ProPublica's non-profit explorer <https://projects.propublica.org/nonprofits/>

Information concerning the Realities of Single Payer coalition and Unshackle Upstate was obtained at their websites:

- Realities of Single Payer coalition <https://realitiesofsinglepayer.com/>
- Unshackle Upstate <https://www.unshackleupstate.com/>

Details concerning the history and present legal status of association health plans was derived from:

- Jost, Timothy (2019). The Past and Future of Association Health Plans. The Commonwealth Fund. Available at <https://www.commonwealthfund.org/blog/2019/past-future-association-health-plans>

Details of the New York Health Act legislation can be found at: <https://www.nysenate.gov/legislation/bills/2019/a5248>

Notes

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