



April 21, 2021

Hon. Gustavo Rivera, Chair
Senate Committee on Health
LOB Room 502C
Albany, NY 12248

Hon. Richard N. Gottfried, Chair
Assembly Health Committee
LOB Room 822
Albany, NY 12248

Dear Chairman Rivera and Chairman Gottfried

On behalf of the ERISA Industry Committee (ERIC), the Business Council of New York State, and the employers we represent, we are writing in regard to the New York Health Act, S.5474/A.6058, which would create a single-payer health care system in New York. Specifically, we believe that the proposal will disrupt self-funded employer-sponsored health benefit plans and runs counter to the goals of the federal Employee Retirement Income Security Act (ERISA) to provide uniformity in benefit administration for multi-state employers, raising the likelihood of preemption.

Passed in 1974, ERISA was intended to ensure that a company's employees could have access to the same set of benefits regardless of where they lived, worked, or received medical care. Adoption of a single-payer system in one state would cause citizens of that state to be subject to different health benefit requirements, ultimately eroding the national uniformity guaranteed to employers through ERISA.

As outlined in ERIC's enclosed policy brief, state-based single payer bills would force self-insured employers to abide by a mix of health care rules and an arbitrary patchwork of inconsistent tracking and reporting requirements. The New York Health Act's provisions related to tax credits for employers with cross-border employees offers one example that would add a layer of administrative complexity for multi-state employers, which is directly counter to the original purpose of ERISA and could give rise to a potential successful preemption challenge.

Further, while the memo for the New York Health Act states that it "does not create any employment benefit, nor does it require, prohibit, or limit the providing of any employment benefit," the proposed financing structure would impose a substantial new payroll tax on employers that could have the effect of limiting the options of ERISA plans. As it could be prohibitively expensive for employers to pay both for health coverage for their employees and the increased payroll tax, it would restrict some ERISA plans from sponsoring their own group coverage. Existing court precedents have held that leaving employers with such limited choices could be preempted.

It is our view that the financing structure proposed in the bill would create a financial burden that would act as a major deterrent for employers to offer health insurance benefits of their own. Further, the New York Health Act would add significant complexity for multi-state employers and is unlikely to withstand ERISA preemption challenges.

ERIC's policy brief discusses these issues in greater detail. We appreciate the opportunity to provide our insights on this legislation and would be happy to discuss them in greater detail with you or members of your staff.

Sincerely,



James Gelfand
Senior Vice President, Health Policy
ERIC The ERISA Industry Committee



Lev Ginsburg, Esq.
Senior Director of Government Affairs
The Business Council of New York State, Inc.

Cc: New York State Senate
New York State Assembly