



# Toward Evidence-Based Health Care Reform

## Vol. 1, No. 2

### Why a Single Payer is Impossible in Vermont

*Welcome to "Toward Evidence-Based Health Care Reform," a periodic e-memo providing facts, figures, examples and analysis of current issues in health care reform in Vermont. The memo is written by Jeanne Keller, Keller & Fuller, Inc., and sponsored by BRS, Inc., a member organization providing a range of services and support to Vermont's small businesses. For more about BRS, please visit our website: [LINK](#)*

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According to a single payer advocacy group in Vermont, Vermont Health Care for All, their goal is "a universal and comprehensive health-care system based on a single, statewide plan with administration supervised by a non-partisan commission with every Vermonter covered without regard to age, income, employment or medical condition."<sup>1</sup>

But on the same website, read this explanation of the single payer from their key legislative leader:

"Single payer supporters like Rep. John Tracy, D-Burlington, said the single payer plan concept he has been working on as chairman of the House Health Care Committee was designed to be a safety net and supplement to private insurance, not a replacement... 'Our intention is not to put insurance companies out of business. What we need to do is re-engineer the way health care is provided. ... We need a way to reasonably finance health care. Individuals need to be part of the game.' "

**Question: When is a "single payer" not a single payer?**

**Answer: When there is more than one payer.**

Rep. Tracy (Chair of the House Health and Welfare Committee and co-chair of the legislative Commission on Health Care Reform) claims to be working on a single payer plan concept that is a "supplement to private insurance, not a replacement." That doesn't sound like a single payer, does it? Has the proposal changed? Is it actually not really a single payer any more?

More to the point, are Rep. Tracy and the other "single payer" advocates finally acknowledging that it is simply not possible to have a single payer? Because the fact is, we can't – not without a specific Act of Congress, the signature of the President, and/or a long and expensive battle in federal court to overturn federal laws. Here are the facts...

- In 2006 Vermont will spend \$3.8 Billion on health care. \$1.8 Billion, or 48% of those funds, are for Medicare and Medicaid beneficiaries. These are entitlement programs, and benefits are dictated by federal laws and regulations.
- \$2 Billion of the funding came from private insurance, and nearly half (approximate 46% of the \$2 billion or 26% of overall funds)

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<sup>1</sup> <http://www.vthca.org/newsarticles/021904greensboro.htm>

was from self-insured, employer-sponsored plans. These plans are governed under federal law (the Employee Retirement Income Security Act, or ERISA), and are not subject to state laws. Experts on ERISA agree that states are preempted from: mandating that employers provide health insurance; taxing employers who do not provide health insurance (“pay or play”); taxing health care providers (e.g. hospitals) in amounts that “significantly affect” self-insured plans by raising the cost of self-insured plans; and mandating the types of coverage provided by self-insured plans. Only Congress and the President can waive the ERISA preemption for a state, and only one state, Hawaii, received such a waiver and that was in the early 1970s.

So, 46% of the funds in VT’s health system come from Medicaid and Medicare, and 26% come from self-insured employers, meaning that 72% of funds come from sources that Vermont cannot legislate, control, regulate or otherwise govern, without waivers and approval from both Congress and the Executive branch of the federal government. That means that no matter what the legislature does, it cannot order anyone from Medicare, Medicaid or a self-insured employer into a uniform state plan. There can never be a single payer, in other words. There will always be Medicare, Medicaid and self-insured employers. Other than what the federal government allows Vermont to do under Medicaid waivers, the legislature’s proposals can only control commercially insured (Blue Cross/Blue Shield, CIGNA, MVP, etc) plans and out-of-pocket expenditures, or less than 30% of what is currently spent in Vermont.

This has an enormous impact on what Vermont can and cannot do to reform the system within our own borders:

- A “global budget” for a hospital cannot restrict the price paid for or services delivered to persons covered by Medicaid, Medicare or self-insured employers, without risking action by the federal government or lawsuits by self-insured employers and their employees.
- While the state has some latitude in how it delivers Medicaid benefits, the state cannot force people covered by Medicare or self-insured employers into that same plan.
- Federal laws dictate the minimum benefits for Medicaid and 100% of what is covered by Medicare. Self-insured employers are allowed to determine 100% of their plan design. Thus, the state cannot establish a single, uniform benefit package and impose it on any of these groups.
- The state cannot impose a payroll tax on all employers to fund a “universal plan” without risking a protracted, expensive lawsuit in federal court, to test whether this is a violation of ERISA. Past case law indicates that it would be very hard to construct a state payroll tax, either on insuring, non-insuring or self-insuring employers that would withstand such a challenge, because it is intrinsically linked to provision of health benefits, which is precisely what the federal law preempts states from governing.

And there will surely be a court challenge. Self-insuring and multi-state companies that already provide generous health care benefits, like General Dynamics, IBM, BankNorth, National Life, General Electric, Eveready Battery, etc, are not likely to accept a new payroll tax or trade their current health plan for a state plan. Their combined resources could mount a formidable legal challenge to the Attorney General’s office, which would be required to defend Vermont’s “single payer” law, with the bill picked up by tax payers.

That’s the reality. If Vermont wants a single payer, Vermont needs an Act of Congress, the signature of the President, or victory in a protracted and expensive lawsuit against the biggest corporations in America. Is this how Vermonter’s want to spend our legislature’s time and our taxpayers’ dollars? Do we want to spend even one more year getting nowhere on reforming our system? Or can we dedicate ourselves now to implementing realistic and reasonable reforms?